STATE OF MICHIGAN

COURT OF APPEALS

LAURA BETZLER by her conservator, MARY JANE BETZLER,

Plaintiff-Appellant,

v

BLUE CROSS/BLUE SHIELD OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
June 10, 2004

No. 249249
Calhoun Circuit Court
LC No. 01-004063-NM

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition to defendant under MCR 2.116(C)(10). We affirm. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This case arose when the car plaintiff was driving collided with a train, causing plaintiff to suffer severe head trauma. Plaintiff's father received health care coverage for himself and his family from a plan administered by defendant through the Michigan Funeral Directors Association. Similarly, the car was covered under a business no-fault policy maintained by the Betzler Funeral Home. Plaintiff applied for benefits under both policies, but defendant eventually began denying claims paid or payable by the auto-insurance company. Defendant claimed that the auto-insurance policy provided primary coverage, so defendant's coordinated health care plan would only pay qualifying benefits if the auto-insurance company failed to pay them first.

Plaintiff first argues that the trial court erred when it held that the Employee Retirement Income Security Act (ERISA), 29 USC 1001, *et seq.* superseded its common-law breach of contract claim. Plaintiff argues that a potentially applicable copayment certificate states that the "contract" is "subject to and interpreted under the laws of the State of Michigan," so ERISA standards do not govern the contract. We disagree. Choice of law clauses serves to specify which jurisdiction's laws will provide the backdrop for analyzing the contract's terms. The clauses have special import in diversity cases where, in their absence, the question of which jurisdiction's law applies might prove vital but extraordinarily complicated. *Prudential Ins Co of Am v Doe*, 140 F3d 785, 791 (CA 8, 1998). Nevertheless, they do not displace the application of ERISA when the "contract" is plainly an "employee benefit plan" that otherwise falls under the act's scope. *Id.* Therefore, while we adhere to the contract's terms by leaving the contract "subject to and interpreted under" our law, the parties also remain subject to the ERISA because defendant's plan undisputedly qualifies as an "employee benefit plan". 29 USC 1003(a).

Consistent with our long-established precedent, ERISA preempts actions for breach of contract brought under Michigan common law, so the trial court did not err when it applied ERISA's standards. *Brinker v Michigan Bell Telephone Co*, 152 Mich App 729, 732; 394 NW2d 88 (1986).

Next, plaintiff argues that the trial court erred when it failed to find an issue of material fact regarding whether the plan administrator's decision to deny benefits was arbitrary and capricious or abuse of discretion. We disagree. The plan's "Summary Plan Description" states that the plan "coordinates its benefits with other 'health plans' under which an individual may be covered . . . ." Included in the definition of "health plans" are "group insurance or other coverage for a group of individuals" and "coverage under any individual no-fault auto insurance, by whatever name called." Whether we consider the business auto insurance policy "coverage for a group of individuals" or "individual no-fault auto insurance," the plan's plain language prevents plaintiff from receiving double the amount of her medical expenses. Therefore, the administrator properly denied plaintiff's claims, and the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio