STATE OF MICHIGAN

COURT OF APPEALS

JOSEFINA RODRIGUEZ,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE, and SAFECO INSURANCE CO.,

Defendants-Appellees.

UNPUBLISHED
January 26, 2006

No. 262443
Van Buren Circuit Court
LC No. 01-048134-CK

SAFECO INSURANCE CO.,

Plaintiff/Counter-Defendant-Appellee,

v

JOSEFINA RODRIGUEZ,

Defendant-Appellant,

and

FARMERS INSURANCE EXCHANGE,

Defendant/Counter-Plaintiff-Third-Party-Appellee.

No. 262444
Van Buren Circuit Court
LC No. 01-048128-CK

Before: Bandstra, P.J., and Neff and Markey, JJ.

PER CURIAM.

In these consolidated cases, plaintiff Josefina Rodriguez appeals as of right the trial court order denying her motion for summary disposition under MCR 2.116(C)(10) and granting summary disposition in favor of defendants Farmers Insurance Exchange (Farmers) and Safeco Insurance Company (Safeco) with regard to plaintiff's claim for penalty interest on overdue insurance payments, MCL 500.3142, and attorney fees, MCL 500.3148(1). Because we

conclude that the trial court erred in granting summary disposition in favor of Farmers, we affirm in part and reverse in part.

I

This case arises out of plaintiff's claim to recover no-fault personal injury protection (PIP) benefits after she sustained serious injuries in an automobile accident in August 2000, which left her an incomplete quadriplegic. Because it did not appear that plaintiff was covered under a no-fault insurance policy at the time of the accident, she applied to the Assigned Claims Facility in September 2000 for payment of PIP benefits. In October 2000, the claim was assigned to Farmers as the assigned claims insurer.

At the time of the accident, plaintiff lived with her parents and brother in a mobile home, which was located on the same property, and shared the same mailing address, as a mobile home in which plaintiff's sister and brother-in-law resided. Upon investigating plaintiff's claim, Farmers discovered that Safeco insured plaintiff's sister and brother-in-law under a no-fault insurance policy, which was in effect at the time of the accident. In November 2000, Farmers denied plaintiff's assigned claim on the basis that Safeco was liable for payment of plaintiff's PIP benefits. Farmers advised plaintiff to submit a claim to Safeco. Plaintiff submitted her claim to Safeco; however, Safeco refused to pay PIP benefits to plaintiff, maintaining that plaintiff was not a "resident relative" of her sister and brother-in-law and therefore was not covered under their policy.

Plaintiff retained counsel and attempted to secure payment of PIP benefits from Farmers and Safeco. When payment was not forthcoming, in April 2001, plaintiff filed an action in circuit court to obtain insurance benefits (Docket No. 262443). Safeco also filed a declaratory judgment action against plaintiff and Farmers (Docket No. 262444). On April 20, 2001, the trial court entered an ex parte order requiring Farmers and Safeco to pay plaintiff's pending and future benefits on an equal basis, until entry of a final order determining which insurer was ultimately responsible for payment of plaintiff's PIP benefits. As of that date, Farmers and Safeco began making payments. In June 2001, the trial court entered a temporary order in conformance with the ex parte order.

During discovery, the parties learned that plaintiff's brother, who lived with plaintiff and her parents, owned a vehicle insured with defendant Allstate Insurance Company (Allstate), and Allstate was added as a party to these actions. In September 2001, the trial court amended the June 2001 order to substitute Allstate for Farmers. The trial court ultimately ruled that Allstate was liable for the payment of plaintiff's PIP benefits, and entered an order requiring Allstate to reimburse Farmers and Safeco for any payments made to plaintiff.

In January 2005, plaintiff filed a motion pursuant to MCR 2.116(C)(10) for summary disposition of her claims for penalty interest and attorney fees against defendants Farmers and Safeco. The trial court denied the motion and ruled as a matter of law that Farmers and Safeco were not obligated to pay penalty interest or attorney fees. In May 2005, the trial court entered a final judgment denying plaintiff's motion for summary disposition under MCR 2.116(C)(10) and granting summary disposition in favor of defendants Farmers and Safeco under MCR 2.116(I)(2).

II

We review de novo a trial court's decision on a motion for summary disposition. *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *State Auto Ins Cos v Velazquez*, 266 Mich App 726, 728; 703 NW2d 223 (2005). In reviewing the decision on the motion, we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted in the light most favorable to the party opposing the motion. *Id*. Summary disposition under MCR 2.116(C)(10) is proper if there is no genuine issue regarding any material fact and if the moving party is entitled to judgment as a matter of law. *Id*. Summary disposition under MCR 2.116(I)(2) is appropriate if the opposing party, rather than the moving party, is entitled to judgment as a matter of law. *Local Area Watch v Grand Rapids*, 262 Mich App 136, 142; 683 NW2d 745 (2004).

We also review de novo questions of statutory interpretation. *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005). In reviewing questions of statutory interpretation, our purpose is to discern and give effect to the intent of the Legislature. *Id*. We begin by examining the plain language of the statute—where that language is unambiguous, there is a presumption that the Legislature intended the meaning clearly expressed and no further judicial construction is required or permitted, and the statute must be enforced as written. *Id*.

III

The no-fault act provides for penalty interest and attorney fees if an insurer's payment of benefits is untimely. Under MCL 500.3142, "[p]ersonal protection insurance benefits are overdue if not paid within 30 days after an insurer receives proof of the fact and of the amount of loss sustained"; overdue payments are subject to interest of twelve percent per annum. Under MCL 500.3148(1), a claimant is entitled to the payment of attorney fees "if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." Further, if a delay in payment results from a priority dispute between two or more insurers, MCL 500.3172(3)(f) requires the reimbursement of reasonable attorney fees and interest by an insurer ultimately found obligated to pay benefits.

A

Plaintiff argues that the trial court erred in granting summary disposition in favor of Farmers and Safeco on the issue of penalty interest. We agree with respect to Farmers on the basis that Farmers was the assigned claims insurer in this case.

MCL 500.3172(1) provides for the payment of PIP benefits through the assigned claims plan under four circumstances:

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained

> because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed.

The no-fault act requires prompt payment of benefits by an assigned claims insurer.

> . . . An insurer to whom claims have been assigned *shall make prompt payment of loss in accordance with this act* and is thereupon entitled to reimbursement by the assigned claims facility for the payments and the established loss adjustment cost, together with an amount determined by use of the average annual 90-day United States treasury bill yield rate, ... [MCL 500.3175(1) (emphasis added).]

With respect to timely payment of benefits and penalty interest, MCL 500.3142 more specifically provides:

> (1) Personal protection insurance benefits are payable as loss accrues.
>
> (2) Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Any part of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. . . .
>
> (3) An overdue payment bears simple interest at the rate of 12% per annum.

Under the assigned claims statutory scheme, Farmers became liable for payment of benefits as the assigned claims insurer. Accordingly, Farmers was liable for prompt payment of benefits and if another insurer was subsequently found liable, Farmers could seek reimbursement from that insurer. MCL 500.3175(1).

We disagree that Safeco is liable for penalty interest on the basis that a priority dispute between Farmers and Safeco resulted in overdue payment of her PIP benefits. Although a claim may be assigned to an insurer for immediate payment if there is a priority dispute among the insurers,[1] this claim was not initiated as a priority dispute. As Farmers states in its brief on

---

[1] MCL 500.3172(3) provides in part:

> If the obligation to provide personal protection insurance benefits cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, and if a method of voluntary payment of benefits cannot be agreed upon among or between the disputing insurers, all of the following shall apply:

(continued…)

appeal, this assigned claim arose because no applicable insurance could be identified. Had this claim arisen from a priority dispute, plaintiff's claim would have been assigned to an insurer for immediate payment pending resolution of the priority dispute, which clearly did not happen in this case. See *Spencer v Citizens Ins Co*, 239 Mich App 291, 303-304; 608 NW2d 113 (2000) (MCL 500.3172(3) does not control the outcome if the initial basis for submission of the claim to the Assigned Claim Facility arises out of the inability to identify an applicable insurance policy rather than a dispute between two or more insurers).

Farmers characterizes plaintiff's claim as an assigned claims "eligibility dispute over benefits" as opposed to a priority dispute. Farmers essentially argues that only if an assigned claims insurer is ultimately found obligated to pay benefits can the insurer be held liable for sanctions.

However, Farmers' argument and assertions are not in accord with the authority cited. To the contrary, to hold that an assigned claims insurer could delay payment while it investigates a claim would defeat the purpose of the no-fault act and the assigned claims plan, which is "to provide prompt monetary relief for losses suffered in vehicular accidents at the lowest cost to the system and the individual." *Spencer, supra* at 300, 308, quoting *Walker v Farmers Ins Exch*, 226 Mich App 75, 78; 572 NW2d 17 (1997).

That a dispute concerning the liability of potential insurers arose after assignment to Farmers is not a basis for ignoring the well-recognized policy that injured persons should not be subjected to delay in payment. In *Spencer, supra* at 304-305, this Court held that an assigned claims insurer may not cease paying assigned claims benefits in the event it subsequently discovers a higher priority insurer:

> The determinative issue then becomes whether any provision of the no-fault act permits defendant, the assigned-claim insurer, to cease paying assigned-claim benefits in the event it subsequently discovers a higher priority insurer. For several reasons, we conclude that an assigned-claim insurer that subsequently ascertains a higher priority insurer cannot thereafter simply refuse to pay the assigned-claim insured party further benefits. First, absolutely no language in the assigned-claims provisions of the no-fault act specifically relieves an insurer to whom the Assigned Claims Facility has assigned a claim of its obligation to pay benefits on the basis that the assigned insurer later discovers another applicable insurer. Absent the Legislature's authorization of this particular relief, we will not simply infer its availability as a matter of logic. . . .

(…continued)

> (a) The insurers who are parties to the dispute shall, or the claimant may, immediately notify the assigned claims facility of their inability to determine their statutory obligations.
>
> (b) The claim shall be assigned by the assigned claims facility to an insurer which shall immediately provide personal protection insurance benefits to the claimant or claimants entitled to benefits.

Second, we observe that statutory language provides a different recourse, other than unilaterally terminating the assigned-claim insured's receipt of benefits, to an assigned-claim insurer that later discovers a higher priority insurer. Subsection 3175(1), MCL 500.3175(1); MSA 24.13175(1), explains that "an insurer to whom claims have been assigned shall make prompt payment of loss in accordance with this act and is thereupon entitled to reimbursement by the assigned claims facility for the payments and the established loss adjustment cost." Section 3175 further provides in relevant part as follows:

"(2) The insurer to whom claims have been assigned shall preserve and enforce rights to indemnity or reimbursement against third parties and account to the assigned claims facility therefor and shall assign such rights to the assigned claims facility upon reimbursement by the assigned claims facility. This section shall not preclude an insurer from entering into reasonable compromises and settlements with third parties against whom rights to indemnity or reimbursement exist. The insurer shall account to the assigned claims facility for such compromises and settlements. [MCL 500.3175(2); MSA 24.13175(2).]"

This statutory language plainly demands that the assigned-claim insurer must promptly reimburse the assigned-claim insured for any losses, while providing for the assigned-claim insurer the right and the duty to seek reimbursement from and enter settlements with any appropriate third parties, which category would include subsequently identified higher priority insurers. *Auto-Owners Ins Co v Michigan Mut Ins Co*, 223 Mich App 205, 210; 565 NW2d 907 (1997). Subsection 3172(2), MCL 500.3172(2); MSA 24.13172(2), contemplates that the assigned-claim insured might be entitled to benefits from sources other than the assigned-claim insurer, and thus is consistent with the assigned-claim insurer's obligation to seek reimbursement from third parties:

"[P]ersonal protection insurance benefits . . . payable though an assigned claims plan shall be reduced to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits, to a person claiming personal protection insurance benefits through the assigned claims plan. This subsection shall only apply when the personal protection insurance benefits are payable through the assigned claims plan because no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. As used in this subsection "sources" and "benefit sources" do not include the program for medical assistance for the medically indigent under the social welfare act . . . or insurance under the health insurance for the aged act . . . ."

Subsection 3172(2) nowhere contemplates, however, that the assigned-claim insurer shall be completely relieved of its responsibility to pay benefits should another benefit source exist.[4]

---

[4] This Court in *Allen v Farm Bureau Ins Co*, 210 Mich App 591; 534 NW2d 177 (1995), foreshadowed our instant decision. There, Farm Bureau was assigned the plaintiff's claim through the Assigned Claims Facility because the plaintiff suffered injuries in a motor vehicle accident and could not identify the responsible insurer. The plaintiff eventually filed suit against Farm Bureau when it refused to pay wage-loss benefits. During discovery, Farm Bureau learned that Farmers Insurance Exchange was a higher priority insurer of the driver of the vehicle in which the plaintiff was injured. The plaintiff amended his complaint to add Farmers as a defendant, and Farm Bureau initiated a third-party complaint against Farmers, both occurring more than one year after the plaintiff's accident. *Id*. at 593-594. The trial court granted Farm Bureau's motion for summary disposition regarding the plaintiff's claim on the basis that Farmers qualified as a higher priority insurer, and the parties on appeal did not dispute that ruling. *Id*. at 594. The plaintiff instead challenged the trial court's grant of summary disposition to Farmers, which the court had granted on the basis of the plaintiff's failure to notify Farmers of his claim within the applicable one-year period of limitation. This Court affirmed the trial court's grant of summary disposition to Farmers, likewise concluding that the one-year period of limitation precluded the plaintiff's attempt to sue Farmers. Relevant to the instant case, this Court noted that the plaintiff had not challenged the trial court's grant of summary disposition to Farm Bureau.

"We note that plaintiff does not argue that although Farmers is a higher priority insurer, Farm Bureau, as assignee under the assigned claims plan, was required to pay his wage-loss benefits, to the extent they were justified, and then seek reimbursement from Farmers. Had plaintiff done so, a different result may have obtained. [*Id*. at 600.]"

Thus, this Court implied that had the issue been presented, it might have found Farm Bureau under a continuing obligation to provide the plaintiff assigned-claims benefits, while permitting it to seek reimbursement from the higher priority insurer.

Last, the public policy behind the no-fault act supports our interpretation of the assigned-claims provisions. As mentioned above, the Legislature intended the no-fault act to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses. *Belcher v Aetna Casualty & Surety Co*, 409 Mich 231, 240; 293 NW2d 594 (1980)]; *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978)]; *Walker*, *supra* at 78. The statutory language of several assigned-claims provisions reflects the goal to provide the injured victim prompt monetary relief. See MCL 500.3172(3)(a), (b); MSA 24.13172(3)(a), (b) (requiring in the event of a dispute between two or more

insurers "immediate" notification of the Assigned Claims Facility and that an assigned-claim insurer "shall immediately provide . . . benefits to the claimant"); MCL 500.3174; MSA 24.13174 (requiring that the Assigned Claims Facility "shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned"); and MCL 500.3175(1); MSA 24.13175(1) (requiring that an assigned-claim insurer "shall make prompt payment of loss in accordance with this act"). Defendant's unilateral termination of plaintiff's benefits contravened this public policy favoring plaintiff's prompt benefit recovery.[5]

---

[5] See generally *Allstate Ins Co v Citizens Ins Co of America*, 118 Mich App 594, 603-604; 325 NW2d 505 (1982):

"[W]e note that whenever a priority question arises between two insurers, the preferred method of resolution is for one of the insurers to pay the claim and sue the other in an action of subrogation. This resolution permits the insured person to receive prompt payment while the insurers thereafter dispute their liabilities. [Citation omitted.]"

[*Spencer, supra* at 304-308.]

The analysis in *Spencer* applies equally in this case. It would defy logic to hold here that Farmers was not liable for payment, and therefore not subject to the penalties for overdue payment, merely because it refused to ever make payment rather than making payment and subsequently discontinuing those payments as in *Spencer*.

Farmers argues that pursuant to *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 13; 369 NW2d 243 (1985), an "assigned claims carrier has 'no obligation to pay benefits until it has been determined that no personal protection insurance is applicable to plaintiff's case.'" Farmers accurately quotes the statement in *Darnell*, which was made in the context of a claim to recover attorney fees against State Farm Mutual Automobile Insurance Company, the assigned claims carrier. The *Darnell* panel stated:

The trial court in the instant case found that defendants Auto-Owners and Dairyland "definitely had a place in the priority sections" and that payment should have been made because plaintiff was entitled to no-fault benefits from someone. In light of *Kalin* [*v DAIIE,* 112 Mich App 497; 316 NW2d 467 (1982)], we agree. The lower court's finding of unreasonableness as to Auto-Owners was not clearly erroneous. State Farm was not assessed attorney fees as it had no obligation to pay benefits until it had been determined that no personal protection insurance was applicable to plaintiff's case. MCL 500.3172 []. [*Darnell, supra* at 13.]

Considered in context, we conclude that the Court was merely stating, rather inartfully, that the trial court did not err in declining to assess attorney fees against State Farm because it ultimately was not determined liable as an assigned claims carrier. State Farm in fact did pay benefits because the opinion states that State Farm filed a motion seeking recovery from Auto-Owners Insurance Company of the no-fault benefits (totaling $76,041.72) which it had paid on behalf of

plaintiff. *Id*. at 8. Clearly, the Court was not drawing a legal conclusion that State Farm was never obligated to pay benefits because that issue was not raised, and Farmers therefore cites *Darnell* for a holding that was not intended.

B

With regard to Safeco, the trial court granted summary disposition on the basis that Safeco was never liable for plaintiff's loss, had no statutory means of reimbursement from the insurer ultimately liable, and therefore was not liable for penalty interest or attorney fees related to alleged overdue payment of benefits. The trial court's reasoning comports with our analysis above, and we therefore affirm the grant of summary disposition with respect to Safeco on the issue of penalty interest.

IV

An analogous analysis applies to the issue of attorney fees. We conclude that Farmers, but not Safeco, is subject to MCL 500.3148(1), which permits recovery of attorney fees if an insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

In *Lakeland Neurocare Ctrs v State Farm Mut Automobile Ins Co*, 250 Mich App 35, 42-44; 645 NW2d 59 (2002), the Court reviewed the same penalty and fee provisions at issue in this case and held that a medical provider could seek interest and attorney fees against an assigned claims insurer that denied payment for rehabilitation services rendered to an injured person for which no applicable insurance could be identified. The Court noted that the imposition of the penalty provisions of the no-fault act under the circumstances furthered the purpose and goal of the no-fault act:

> The no-fault system was adopted in an effort to eradicate problems inherent in the tort liability system, significantly, long payment delays, high legal costs, and an overburdened court system. See *Shavers*[, *supra*]. The goal of the no-fault system was "to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Id*. at 579. The no-fault act does not, however, accomplish its purpose or goal by sanctioning actions of no-fault insurers that include unreasonable payment delays and denials of no-fault benefits that force the commencement of legal action by the injured person's health care provider.
>
> * * *
>
> In sum, plaintiff was entitled to attempt enforcement of the penalty interest, MCL 500.3142, and attorney fees, MCL 500.3148(1), provisions of the no-fault act. This result is consistent with the purpose and goal of the no-fault system in that it promotes the reasonable and prompt payment of no-fault benefits to rightful payees, minimizes the likelihood of a no-fault payee's unjustified economic loss, and mitigates the potential for litigation predicated on such claims. [*Lakeland, supra* 42-44.]

Given the purpose and intent of the no-fault act, as stated in *Lakeland*, plaintiff is entitled to enforce the penalty interest and attorney fee provisions of the no-fault act. The trial court erred in granting summary disposition in favor of Farmers.

Affirmed in part, and reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Jane E. Markey