STATE OF MICHIGAN

COURT OF APPEALS

RACHEL ANN VELAZQUEZ,

Plaintiff-Appellant,

v

MEEMIC, a wholly owned subsidiary of PRONATIONAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 6, 2006

No. 264776
Oakland Circuit Court
LC No. 2004-059959-NF

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals by right from the order of the circuit court granting summary disposition to defendant under MCR 2.116(C)(10) on plaintiff's complaint for no-fault benefits. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was a passenger in a car driven by the son of the car's owner and insured by defendant insurance company, when it was involved in an accident. Plaintiff was injured and obtained medical services, all of which were rendered by the end of March 2003. Plaintiff claims that the driver and the owner of the car did not cooperate with her by disclosing the identity of their automobile insurer so that plaintiff could obtain benefits to pay her medical bills for treatment that she received incident to the accident.

On October 23, 2003, in an action factually related to the action now on appeal, plaintiff sued the driver alleging negligence and requesting both damages and no-fault benefits from the driver. The driver was represented by attorneys provided by MEEMIC, the defendant insurance company in this action. The attorneys for the driver denied liability for the claim, raised affirmative defenses, listed MEEMIC on the preliminary witness list, and sent a letter informing plaintiff of the insurance limits. During the course of litigation in the related action, plaintiff's attorney did not fax medical bills to the driver's defense counsel until May 6, 2004, which was more than one year after plaintiff had received medical treatment and incurred medical expenses for her injuries. Plaintiff's attorney also voluntarily dismissed the negligence claim against the driver but proceeded with the claim for no-fault benefits against the driver. At case evaluation, the driver's attorneys argued that plaintiff could not obtain no-fault benefits from the defendant driver because plaintiff could only get no-fault benefits from an insurer. The case evaluators

agreed. Defendant moved for summary disposition. The court in that case entered a stipulated order of dismissal without prejudice .

Finally, on July 23, 2004, plaintiff sued MEEMIC in this case seeking no-fault benefits. The parties each filed motions for summary disposition. Defendant argued that it was not liable for no-fault benefits because plaintiff filed her claim for no-fault benefits more than one year after the date of the accident. Defendant also argued that it was not liable for benefits because plaintiff was domiciled at her cousin's house when the accident occurred and, therefore, was covered under her cousin's no-fault insurance policy. Plaintiff maintained that defendant's attorneys knew about the accident and her claim for damages within the limitation period because the same defense attorneys in this case also appeared for the insured driver in the related case. Plaintiff also contended that she did not have no-fault insurance and was not domiciled at her cousin's house when the accident occurred.

The trial court granted summary disposition to defendant. The court reasoned that plaintiff's claim for benefits was barred under the one-year-back rule because she did not file her action for personal protection insurance benefits within one year of incurring her final loss arising from the accident. The court also found that plaintiff was covered on her cousin's no-fault insurance policy as a relative domiciled at her cousin's address.

Relying on *Hudick v Hastings Mutual Ins Co,* 247 Mich App 602; 637 NW2d 521 (2001), plaintiff argues on appeal that the one-year-back rule should be tolled. We disagree. MCL 500.3145(1) of the No-Fault Act requires that a claim for personal protection insurance benefits be filed within one year of the accident causing the injury unless a prescribed form of notice was either provided to the insurer or the insurer paid benefits within one year after the accident. Further, the one-year-back rule contained in section 45(1) does not permit recovery of benefits "for any portion of the loss incurred more than 1 year before the date on which the action was commenced." Thus, a claimant may sue more than a year after the accident under certain circumstances, but a claimant may not recover damages for any loss that was incurred more than one year before filing the complaint.

In *Devillers v Auto Club Ins Ass'n,* 473 Mich 562; 702 NW2d 539 (2005), a four-justice majority held: "Our decision in *Lewis* [*v DAIIE,* 426 Mich 93; 393 NW2d 167 (1986)] to apply a judicial tolling mechanism to the one-year-back limitation of MCL 500.3145(1) contravenes the unambiguous text of that statutory provision and represents an unconstitutional usurpation of legislative authority. Accordingly, *Lewis* and its progeny, *Johnson* [*v State Farm Mut Automobile Ins Co,* 183 Mich App 752; 455 NW2d 420 (1990)], are overruled." *Id.* at 593. The Court also held that *Devillers* applied retroactively. *Id.* at 586-587. Plaintiff's reliance on *Hudick* is, therefore, misplaced because it was decided before *Devillers.*

Based on the record in this case, the accident occurred on March 9, 2003, and plaintiff incurred all of her medical expenses by the end of March 2003. Although plaintiff sued the driver within the limitation period, she did not sue defendant MEEMIC until July 23, 2004, which was more than one year after plaintiff received her final medical treatment for her injuries arising from the accident. Therefore, under the one-year-back rule in MCL 500.3145(1) and the holding in *Devillers,* plaintiff cannot recover any personal protection insurance benefits from defendant for her expenses incurred before July 23, 2003.

Plaintiff also claims that the trial court erred in finding that she was covered as a domiciled relative on her cousin's no-fault insurance policy. At plaintiff's initial deposition she stated that she was staying at her cousin's house when the accident occurred and that she used her cousin's address on her driver's license. However, in plaintiff's second deposition and in the depositions of her cousin and her cousin's husband, they all stated that plaintiff did not reside at her cousin's house when the accident occurred. Although we agree with the determination of the trial court that plaintiff was domiciled at her cousin's house, we do not need to decide this issue because plaintiff's claim for benefits is barred by the one-year-back rule as discussed above.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio