STATE OF MICHIGAN

COURT OF APPEALS

DR. JOHN R. COTNER and BARBARA KRASNY, as Co-Conservators of MICHAEL GILLESPIE, a Legally Incapacitated Person,

Plaintiffs-Appellees,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant,

and

AMERISURE INSURANCE COMPANY and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendants.

UNPUBLISHED
May 23, 2006

No. 259060
Washtenaw Circuit Court
LC No. 01-000836-NF

ROSEMARY L. SHARP and ROBERT J. SHARP, as Co-Conservators of ROBERT JOHN SHARP, JR., a Legally Incapacitated Person,

Plaintiffs-Appellees,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

No. 259338
Washtenaw Circuit Court
LC No. 04-000705-NF

BARBARA A. KRASNY, as Guardian of the Estate of TERRY W. BUCKLER,

Plaintiff-Appellee,

v

No. 259848

SECURA INSURANCE,

Defendant-Appellant.

Washtenaw Circuit Court
LC No. 02-001086-NF

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Defendants appeal by leave granted the trial courts' denial of their motions for summary disposition. We vacate and remand for further analysis under the correct legal framework in Docket No. 259060. In the other cases we reverse in part, vacate in part, and remand.

In Docket No. 259060, the insured, Gillespie, was injured in a 1997 automobile accident, and defendant Farmers initially disputed coverage. Plaintiffs notified Farmers of the accident and brought suit in 2001, relying on the insanity saving provision, MCL 600.5851, in the Revised Judicature Act (RJA), MCL 600.101 *et seq*., to neutralize the expiration of the one-year limitations period for notification and recovery of personal protection insurance (PIP) claims, MCL 500.3145(1). Following our decision in *Cameron v ACIA*, 263 Mich App 95; 687 NW2d 354 (2004), lv gtd 472 Mich 899 (2005), Farmers moved for summary disposition, claiming that under *Cameron*, the saving provision in MCL 600.5851 does not apply to no-fault actions. Farmers argued that the trial court should apply *Cameron* retroactively to bar plaintiffs' PIP claims, about which defendants did not receive notice until after the one-year limitations period in MCL 500.3145(1) expired. The other two defendants similarly ask us to apply *Cameron* retroactively, but in their cases the insureds were involved in accidents that predated the amendment *Cameron* interpreted to reach its conclusion. Therefore, we must determine whether, and to what extent, *Cameron's* analysis applies to insane persons whose accidents occurred before the Legislature amended the RJA's saving provision.

We begin by acknowledging that we disagree with *Cameron*. The entire case rests on the unsubstantiated premise that the Legislature's modification of the term "action" in MCL 600.5851 with the phrase "under this act" indicates an intention to prevent insane persons and minors from asserting the saving provision unless their lawsuit is specifically grounded on a statute in the RJA. Aside from the fact that this central assumption prevents the saving provision from applying to basic contract, tort, and innumerable other common-law actions, the decision fails to present sufficient affirmative support for its interpretation. The phrase was added in 1993 PA 78, which dealt primarily, if not exclusively, with altering rules regarding medical malpractice. In context, the addition of the three-word phrase is far from a clear and unambiguous manifestation of legislative intent, which one generally expects to find when the Legislature decides to reroute or block off entirely long-established and heavily traveled legal avenues.

Moreover, contrary to its central premise, *Cameron* did not need to extend the phrase so far to give it purpose. The RJA governs Michigan's court system, so the phrase more likely limits the saving provision's application to actions brought in state court as opposed to

administrative actions, federal actions, and other methods of dispute resolution. In any event, we question *Cameron's* claimed ability to decipher confidently such an expansive and unanticipated change in law from the unassuming, cryptic, and seemingly boilerplate addition of the phrase "under this act" to the saving provision. However, *Cameron* stands as viable, if precarious, precedent that will soon elicit a final response from our Supreme Court, so we will dutifully follow it for the moment.[1]

Regarding the initial question whether we should apply *Cameron* retroactively to these cases, in *Pohutski v City of Allen Park*, 465 Mich 675, 696; 641 NW2d 219 (2002), our Supreme Court provided three factors and one threshold question to apply before limiting a case to prospective application. The threshold question is "whether the decision clearly established a new principle of law." *Id*. This question is complicated by the fact that *Cameron* did not claim that it was establishing new law, but claimed to interpret a legislative change that was implemented more than a decade earlier. It is axiomatic that if the Legislature changes a law, then application of the change should not begin when the judiciary first recognizes the change, but when the Legislature intended to effectuate the change. Nevertheless, a drastic shift in the judiciary's longstanding misinterpretation of a statute might necessitate limiting the application of the new, and presumably correct, judicial interpretation. *Id*. at 697.

In this case, however, the only other plausible interpretation of 1993 PA 78 occurred in *Professional Rehabilitation Assoc v State Farm Mut Auto Ins Co*, 228 Mich App 167, 175-176; 577 NW2d 909 (1998), and the case did not address the effect of the amendment at all. In fact, as *Cameron*, *supra* at 101-102, correctly points out, *Professional Rehabilitation* should not have relied on the amended version of MCL 600.5851, because 1993 PA 78 was not effective until after the plaintiffs' cause of action in *Professional Rehabilitation* had accrued. Therefore, *Cameron* does not represent a break from any solid, longstanding interpretation found in *Professional Rehabilitation* or elsewhere, so the designation of its rule as a new principle of law is a dubious one. However, the most persuasive argument for applying *Cameron* retroactively derives from *Cameron* itself. *Cameron* concludes that, "since the effective date of the 1993 amendment, the general saving provision of the RJA does not apply to actions commenced under the no-fault act." *Cameron*, *supra* at 103. Although we may fundamentally disagree with it, this pronouncement leaves no rational doubt that the Court in *Cameron* decided, and accordingly declared, that courts should retroactively apply the new interpretation. We are bound, for now, by that legal conclusion.

Defendant Farmers argues that retroactive application of *Cameron* disposes of its claim because it did not receive notice within the one-year period established in MCL 500.3145(1). We disagree. Under MCL 500.3145(1), a plaintiff may bring suit to recover unpaid PIP claims within one year[2] from the latest claimed expense if the plaintiff has timely filed notice *or* if the

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[1] We note that the Michigan Supreme Court has granted leave to appeal in *Cameron*, *supra*, and that oral argument was held on April 4, 2006. Although we disagree with the *Cameron* decision, we are bound to follow it, MCR 7.215(J), and since the Supreme Court has granted leave, it would be futile to request a conflict panel resolution in this case. MCR 7.215(J)(3)(b).

[2] At oral argument, it was mentioned that the one-year back rule is a damage cap and not a
(continued…)

insurance company has previously paid benefits for the injury. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005). Although plaintiffs concede the failure of the first condition, we cannot locate evidence of the second condition's failure anywhere in the record. Therefore, the trial court's decision is vacated and the case is remanded for this determination.

The other suits are still viable because defendants Allstate and Secura have paid benefits for their insureds' injuries, but these defendants correctly argue that plaintiffs' claims are limited to those that accrued before the effective date of 1993 PA 78 or within one year before plaintiffs' filed suit.[3] According to 1993 PA 78, § 4(1), its amendment to MCL 600.5851 does not "apply to causes of action arising before October 1, 1993." However, attendant care and other no-fault PIP expenses that are unrealized at the time of the accident do not provide a plaintiff with a cause of action until they are incurred. *Harris v Mid-Century Ins Co*, 115 Mich App 591, 596-597; 322 NW2d 718 (1982). Only after the PIP expense is incurred does the cause of action accrue. MCL 500.3110(4). Therefore, Secura and Allstate correctly argue that the "one-year back" rule applies to all the PIP claims that accrued after October 1, 1993, but more than one year before plaintiffs filed suit. To the extent that the trial courts' orders denied defendants summary disposition on these claims, those orders are reversed. Because the trial courts did not operate within the appropriate legal framework when they ruled on issues defendants raised below but did not appeal, we vacate the orders as they pertain to any ancillary issues and remand for reconsideration of the summary disposition motions in their proper legal light.[4]

The balance of the parties' constitutional and procedural challenges to *Cameron* and MCL 600.5851 were effectively resolved in *Hatcher v State Farm Mut Automobile Ins Co*, 269 Mich App 596; ___ NW2d ___ (2005), so they lack legal merit. Amicus curiae's challenge under the title-object clause lacks factual merit because the official title of 1993 PA 78 does not contain the averred offending language.

The appealed order in Docket No. 259060 is vacated, and this case is remanded for further proceedings consistent with this opinion.

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statute of limitations. Since this issue was not raised below or briefed on appeal, we will not consider it. However, we note that this issue may be dispositive in the Supreme Court's *Cameron* decision.

[3] Secura's motion for summary disposition also argued issues regarding a 4 ½-year window of time when Terry Buckler acted as his own guardian. The trial court's ruling did not address this issue, however, and the argument may be entirely mooted by our decision, so we express no opinion on the argument's validity.

[4] Remaining issues potentially include Secura's argument that Buckler was not insane for an extended period and Allstate's apparent overgeneralization that *any* claim arising before July 7, 2003, is excluded. Presumably, Secura may face factual issues regarding continuing insanity, and Allstate may face a valid claim that arose before October 1, 1993. In any case, we do not reverse on these issues or otherwise pass judgment on them, but merely vacate any portion of the appealed orders that may deal with these secondary issues so that the trial court can address the issues anew from the appropriate perspective.

The appealed orders in Docket Nos. 259338 and 259848 are reversed in part and vacated in part, and these cases are remanded for further proceedings consistent with this opinion.

We do not retain jurisdiction in any of these cases.

/s/ William B. Murphy
/s/ Peter D. O'Connell