STATE OF MICHIGAN

COURT OF APPEALS

ACCIDENT VICTIMS HOME HEALTH CARE, Plaintiff-Appellant,	UNPUBLISHED June 6, 2006
v ALLSTATE INSURANCE COMPANY, Defendant-Appellee.	No. 257786 Wayne Circuit Court LC No. 04-400191-NF

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

PER CURIAM.

Plaintiff, Accident Victims Home Health Care, appeals the trial court's order that granted summary disposition to defendant, Allstate Insurance Company. We affirm.

I. Facts and Procedural History

On April 28, 2001, Bridget Gaither sustained various injuries when she was struck by an automobile while she was riding a bicycle in the City of Detroit. Among other providers, Accident Victims Home Health Care provided Gaither healthcare services that totaled approximately $40,000. Gaither sought personal protection insurance (PIP) benefits from Allstate Insurance Company, the insurer of the automobile. The parties agree that Allstate paid some of Gaither's medical expenses, but rejected others because, according to Allstate, the expenses were not related to the accident. Accordingly, Gaither's guardian filed a lawsuit on Gaither's behalf to recover no-fault benefits from Allstate.

It is undisputed that some of the benefits Gaither sought were for services she received from Accident Victims. During the litigation, the trial court ordered Accident Victims' owner, George Paige, to appear for deposition. His deposition never took place, however, and Gaither settled with Allstate for $6,000 in October 2003. As part of the settlement process, Gaither's legal guardian signed a release that stated that Allstate did not have to pay any further benefits to her and she also expressly released Allstate from all claims for benefits by Accident Victims and her other healthcare providers. On December 10, 2003, pursuant to a stipulation by the parties, the trial court entered an order that dismissed the case with prejudice.

On January 5, 2004, Accident Victims filed this action against Allstate and asserted that it is entitled to PIP benefits for Gaither's healthcare services. Allstate filed a motion for summary disposition and argued that Gaither's release barred Accident Victims' action. The trial court

granted summary disposition to Allstate on August 11, 2004, and Accident Victims now appeals.[1]

II. Analysis

Our courts have routinely permitted medical care providers to file or intervene in actions to recover no-fault benefits from insurers to pay for medical services provided to automobile accident victims. *Regents of the Univ of Michigan v State Farm Mutual Ins Co*, 250 Mich App 719; 650 NW2d 129 (2002); *Lakeland Neurocare Centers v State Farm Auto Ins Co*, 250 Mich App 35; 645 NW2d 59 (2002); *Munson Medical Ctr v Auto Club Ins Ass'n*, 218 Mich App 375; 554 NW2d 49 (1996); *Johnson v Michigan Mutual Ins Co*, 180 Mich App 314; 446 NW2d 899 (1989). This is true regardless whether the injured person is also involved in the litigation. *Regents, supra*, *Lakeland, supra*, *Munson, supra*. Further, our Court has recognized the validity of an insured's assignment of rights to past due and presently due no-fault benefits to a healthcare provider. *Professional Rehabilitation Assoc v State Farm Mut Auto Ins Co*, 228 Mich App 167, 172; 577 NW2d 909 (1998).

As a practical matter, we also recognize that "it is common practice for insurers to directly reimburse healthcare providers for services rendered to their insureds." *Lakeland, supra* at 39. And, when a dispute arises with regard to the reasonable amounts owing for healthcare, it is far more likely for the provider to seek reimbursement from the insurer, rather than the injured party. As this Court observed in *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577; 543 NW2d 42 (1996):

> [I]n the circumstance where the health care services provider felt that the reasonability determination of the insurer was flawed, it is also unlikely that the provider would be so impolitic as to sue the insured rather than the insurer for the difference. Again, the reason is the very practical one of the provider placing itself on the wrong side of a David and Goliath match-up. Thus, we can anticipate that health care services providers, as practical litigants, would bypass the insured and directly sue, pursuant to third-party beneficiary theories, the entity with prospects identical to their own for engendering jury sympathy -- the insurer. [*Id*. at 585-586.]

When confronted with the question whether a healthcare provider's claim for no-fault benefits is entirely dependant on the rights of the injured party, our Court has also opined that "[a]lthough plaintiffs may have derivative claims, they also have direct claims for personal protection insurance benefits." *Regents, supra* at 733.

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[1] "A trial court's order granting summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo 'to determine whether the moving party was entitled to judgment as a matter of law.' " *Hall v Small*, 267 Mich App 330, 333; 705 NW2d 741 (2005), quoting *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

In light of these precedents, we question the proposition advanced by Allstate that an insured may enter a release that purports to discharge any claim by a healthcare provider for reasonable medical expenses owed by an insurer in exchange for a settlement check made payable only to the insured. However, regardless of the question of the validity of the release, Accident Victims' claim is barred by collateral estoppel. Accordingly, we need not address Allstate's position regarding the release.

"Collateral estoppel, or issue preclusion, precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). In the underlying *Gaither* case, the parties, Gaither and Allstate, voluntarily dismissed the lawsuit with prejudice after they negotiated and settled the claims. See *Limbach v Oakland Co Rd Comm*, 226 Mich App 389, 395; 573 NW2d 336 (1997). Those claims, among others, indisputably included past medical expenses that Gaither incurred when she received healthcare services from Accident Victims. Indeed, the parties agree that Gaither's claim for no-fault benefits from Allstate was based, in part, on Allstate's refusal to pay bills submitted by Accident Victims for its services to Gaither.

Moreover, the precise issue Accident Victims now seeks to litigate was fully litigated in the prior proceeding. In the underlying case, Gaither sought PIP benefits for reasonable and necessary expenses related to her medical care from Accident Victims and other healthcare providers as a result of the motor vehicle accident. Allstate challenged the amounts claimed by Gaither because, it argued, that they were not reasonably necessary or related to the accident. Here, Accident Victims seeks payment for the identical benefits Gaither claimed in the prior proceeding and, again, challenges Allstate's failure to pay the PIP benefits and argues that the expenses resulted from the motor vehicle accident and were the result of reasonably necessary services to Gaither. In the prior case, Gaither and Allstate reached a settlement with regard to the amount of PIP benefits Allstate would pay for reasonably necessary services necessitated by the automobile accident, and they voluntarily dismissed the action with prejudice. This constitutes a final adjudication of the identical issue Accident Victims raises in this case. *Limbach, supra*.

We further hold that, here, the interests of Gaither and Accident Victims are sufficiently similar so that the prior litigation afforded Accident Victims a forum to protect its rights under the no-fault act. Thus, for purposes of collateral estoppel, Gaither and Accident Victims were in privity. This Court set forth in *Phinisee v Rogers*, 229 Mich App 547, 553-554; 582 NW2d 852 (1998) the definitions of privity applicable in this state:

> In *Sloan v Madison Heights*, 425 Mich 288, 295-296; 389 NW2d 418 (1986), our Supreme Court defined "privity" as follows: "In its broadest sense, privity has been defined as 'mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.' " (Citation omitted). Black's Law Dictionary (6th ed.), p 1199, defines privity as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right . . . . [It] signifies that [the] relationship between two or more persons is such that a judgment involving one of them may

> justly be conclusive upon [the] other, although [the] other was not a party to lawsuit.
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> "Privity between a party and a non-party requires both a 'substantial identity of interests' and a 'working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation.' " *SOV* [*v Colorado*, 914 P 2d 355, 360 (Colo, 1996)], quoting *Public Service Co v Osmose Wood Preserving, Inc*, 813 P 2d 785, 787 (Colo App, 1991).

Here, Gaither and Accident Victims had substantially identical interests in the PIP benefits because, while Accident Victims billed the amounts for services, Gaither was entitled to reimbursement for them. Indeed, as noted, our case law holds that Accident Victims has standing to pursue no-fault benefits just as the insurer has that right.

Under these facts, Allstate should not be subject to multiple litigation over the identical expenses that were fully litigated, settled, and dismissed with prejudice in *Gaither*. Our decision is also premised on the undisputed fact that Accident Victims was fully aware of the *Gaither* litigation. Even prior to Gaither's decision to file suit, Accident Victims knew, when it sent bills to Allstate for payment that Allstate rejected them as unnecessary or unrelated to the accident. Further, Accident Victims concedes that it knew that Gaither filed the action and was seeking the same no-fault benefits to which Accident Victims now claims it is entitled. Accident Victims clearly could have sought to intervene in Gaither's case in order to fully protect its own interests in the disputed benefits, but failed to do so. MCR 2.209; *Johnson, supra*.[2] Accident Victims will not be heard to argue that the insurer must now pay the same benefits it litigated in the prior action when Accident Victims sat on its rights during the prior litigation.[3] Accordingly, we affirm the trial court's grant of summary disposition to Allstate, but for reasons different than those relied upon by the trial court.

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[2] Moreover, Accident Victims could have negotiated with Gaither for an assignment of her rights to the past-due benefits and, even now, may seek payment for its services directly from Gaither. While we acknowledge that, in many instances, an accident victim may be unable to pay the substantial medical bills incurred following a motor vehicle accident, this further underscores the healthcare provider's interest in intervening in an action to recover those benefits before its rights to payment are decided or settled, and dismissed.

[3] To the extent Accident Victims may claim rights to benefits, penalty interest or fees that Gaither failed to raise or litigate in the prior action, those claims would be barred by res judicata because, under Michigan's broad application of the rule, claims arising out of the same transaction that were *or could have been raised* in the prior litigation are also barred. *Bergeron v Busch*, 228 Mich App 618, 621; 579 NW2d 124 (1998).

Affirmed.

/s/ Henry William Saad
/s/ Richard A. Bandstra

I concur in result only.

/s/ Janet T. Neff