STATE OF MICHIGAN

COURT OF APPEALS

GEICO DIRECT,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee,

and

MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION,

Defendant.

UNPUBLISHED
June 22, 2006

No. 267504
Oakland Circuit Court
LC No. 2005-067412-CK

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

In this priority case among no-fault insurers, plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant Allstate Insurance Company.[1] We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

In 1999, Jessica Walker, then 17 years old, was driving her boyfriend's car when she was involved in an accident that left her severely injured. Walker had no insurance of her own, but her mother was insured by plaintiff. Relying on the mother's insistence at the time that Walker resided with her, plaintiff provided personal injury protection benefits for several years.

However, in 2005 plaintiff conducted examinations under oath of both Walker and her boyfriend, whose statements indicated that Walker had in fact lived with the boyfriend at the time of the accident, and apparently for the two months proceeding. Asserting that the

[1] Because Allstate is the only defendant participating in this appeal, for convenience the term "defendant" will refer exclusively to Allstate.

boyfriend's insurer, defendant, was thus responsible for Walker's PIP benefits, plaintiff brought a subrogation action.

Defendant sought summary disposition, in accordance with MCR 2.116(C)(7), on the ground that plaintiff's claim was untimely. The trial court, relying on then-current authorities, granted the motion on the ground that plaintiff was responsible for the delay in its discovering its cause of action against defendant.

MCR 2.116(C)(7) authorizes motions for summary disposition premised upon a "statute of limitations . . . ." When deciding a motion under that rule, the court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. See *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999).

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Likewise, "When the underlying facts are not disputed, whether a claim is barred by a statutory limitations period is a question of law that this Court reviews de novo." *Titan Ins Co v Farmers Ins Exchange*, 241 Mich App 258, 260; 615 NW2d 774 (2000).

MCL 500.3114(1) provides that, but for exceptions not applicable here, "a personal protection insurance policy . . . applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." Subsection (4) in turn provides that, but for exceptions including that provided for in subsection (1), a person injured in a motor vehicle accident is entitled to benefits first from insurer of the owner or registrant of the vehicle occupied, then from the insurer of the operator of the vehicle.

Not in dispute is that Walker had no insurance of her own. Accordingly, subsection (1) does not apply because Walker was not domiciled in plaintiff's insured's household. Subsection (4), then, brings liability upon defendant, as the insurer of the owner of the vehicle in question.

> However, MCL 500.3145(1) provides, in pertinent part, as follows:
>
> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense . . . incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

Not in dispute is that the accident occurred in 1999, but that plaintiff did not assert defendant's liability in the matter until 2005. Defendant does not challenge the factual basis for plaintiff's claim, but asserts only that it is excused from any obligations because of the applicable statute of limitations.

At issue is whether plaintiff can rehabilitate its timing on the grounds that it reasonably relied for several years on Walker's mother's representation that Walker lived with her, then became aware of its claim against defendant only in 2005, upon learning that Walker in fact lived with defendant's insured at the time of the accident. Recent caselaw indicates that no such tolling is available to plaintiff.

Where a secondary insurer who has provided benefits is seeking reimbursement from an insurer of higher priority, the claim is one of subrogation, and thus the one-year period of limitation of MCL 500.3145(1) applies. *Titan Ins Co v North Pointe Ins Co*, ___ Mich App ___; ___ NW2d ___ (2006), slip op at 5. Accordingly, plaintiff in this case stands in the shoes of Walker, enjoying no greater rights. See *id.*, slip op at 3.

Titan Ins Co, held that MCL 500.3145(1) "clearly and unambiguously states the necessary timeline of an action for recovery of personal protection insurance benefits," and that because the statute does not provide for judicial tolling, none is available. *Id.*, slip op at 4. Accordingly, the statute of limitations cannot be adjusted to run from the time an insurer learns of its claim against one of higher priority. See *id.*

In this case, plaintiff seeks to avoid the holding in *Titan, supra*, by citing authority for the proposition that judicial decisions normally apply retroactively only to those pending cases where the issue in question has been preserved, and asserting that this was not done in this instance. We reject this argument, both because the issue was well enough preserved, and because *Titan, supra*, in fact created, not modified, the precise rule that resolves this case.

Plaintiff acknowledges that defendant cited the statutory limitations period below, but protests that it did so only in connection with existing caselaw. However, plaintiff cites no authority for the proposition that the rules set forth in new caselaw apply to only those pending cases that raise the precise argument involved, and anticipate the precise ruling that subsequently ensues. Because defendant in fact cited MCL 500.3145(1) as a basis for summary disposition, defendant is entitled to the benefits of the latest interpretation of that statute.

Moreover, *Titan, supra*, recounts that earlier caselaw had held that "tolling principles could apply to situations involving a lack of notice of a potential claim," but reported that even so "[u]ntil recently, Michigan courts had not addressed the specific question of tolling where an insurer could not ascertain the identity of a primary insurer . . . ." *Titan, supra*, slip op at 3. Because the precise question before this Court had not been answered in earlier cases, plaintiff is not entitled to rely on other than those recent developments that have squarely done so.

Although the trial court granted summary disposition on the basis of now outdated authority,[2] this Court will not reverse when the trial court reaches the correct result regardless of the reasoning employed. See *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997). For these reasons, we affirm the judgment below.

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[2] In particular, *Amerisure Cos v State Farm Mut Auto Ins Co*, 222 Mich App 97; 564 NW2d 65 (1997), implied partial overruling recognized in *Titan, supra*, slip op at 5 n 2.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette