STATE OF MICHIGAN

COURT OF APPEALS

RAY ALLEN CUNNINGHAM, Plaintiff-Appellant,	UNPUBLISHED August 15, 2006
v	No. 259521 Ingham Circuit Court
AUTO-OWNERS INSURANCE COMPANY, Defendant-Appellee.	LC No. 03-001640-NF

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the summary dismissal of his first-party no-fault action under MCR 2.116(C)(10). We affirm.

Plaintiff first argues that the trial court erred in concluding that the "one-year back rule" provided in MCL 500.3145(1) was not tolled by the general savings provision of the Revised Judicature Act (RJA), MCL 600.5851(1). We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Likewise, we review the interpretation and application of statutes de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

The "one-year back rule" of the no-fault act, MCL 500.3145(1), provides 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, work loss or survivor's loss has been 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. The notice of injury

> required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

Therefore, a claimant may file a no-fault action to recover personal protection insurance (PIP) benefits more than one year after an accident and more than one year after the loss has been incurred if notice of the injury has been given to the insurer or if the insurer has previously paid PIP benefits for the injury. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005). But the one-year back rule limits recovery "to those losses incurred within the one year preceding the filing of the action." *Id.*

Additionally, the RJA contains a general savings provision which tolls the limitations period for persons who are insane. MCL 600.5851(1) provides as follows:

> Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5852.

Previously, this Court held that the RJA's savings provision applied to toll the one-year limitations period of the no-fault act. See *Professional Rehabilitation Assoc v State Farm Mut Auto Ins Co*, 228 Mich App 167, 175; 577 NW2d 909 (1998). However, after the Legislature amended the language of the RJA's savings provision in 1993 from "any action" to "an action under this act," this Court concluded that the amendments were intended to restrict the scope of the RJA's savings provision to only those actions brought under the RJA. *Cameron v Auto Club Ins Ass'n*, 263 Mich App 95, 100-103; 687 NW2d 354 (2004). Our Supreme Court recently affirmed this holding. *Cameron v Auto Club Ins Ass'n*, ___ Mich ___; ___ NW2d ___ (Docket No. 127018, decided July 28, 2006).

Here, plaintiff argues that *Cameron* does not apply to his case and that the limitations period is tolled because his claims accrued before the 1993 amendments to the RJA. However, PIP benefits accrue as the allowable expenses are incurred, not when the injury occurs. *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 483-484; 673 NW2d 739 (2003), citing MCL 500.3110(4). Therefore, plaintiff's argument that his claims accrued in 1982, when the accident occurred, is erroneous. Rather, plaintiff's claims accrued as the medical and replacement services were purportedly rendered to him.

Further, the *Cameron* decision is retroactive to the effective date of the statute—October 1, 1993. See 1993 PA 78, § 3 (noting that the 1993 amendments do not apply to "causes of action arising before October 1, 1993"). So the only claims that are not subject to *Cameron* and, therefore, can be tolled by the general savings provision of the RJA are those incurred before October 1, 1993. However, we conclude that plaintiff has not presented any such claims in this case. Plaintiff presented no invoices at summary disposition that were for expenses incurred before 1993. In fact, plaintiff admitted at his deposition that he made no claim for benefits and, therefore, was not denied any benefits by defendant before he filed the instant action in 2003. Therefore, we conclude that the trial court did not err in applying *Cameron* to this case.

Next, plaintiff argues that even if *Cameron* applies to this case, the trial court erred in dismissing his claim in its entirety. In other words, plaintiff argues that he is at least entitled to the benefits that accrued during the one year preceding the filing of this case. We again disagree.

While we note that the trial court did not specifically articulate why it dismissed plaintiff's claim in its entirety, we presume it did so because plaintiff failed to present any invoices for services rendered during that time frame. And, again, because defendant was never presented with any invoices, there was no denial of benefits. But even if plaintiff had submitted invoices for services incurred during the one year preceding this suit, we agree with defendant that the claims are still barred because there is no evidence that plaintiff notified defendant within one year of the accident of his closed-head injury. Although plaintiff filed a no-fault suit in 1983, his first complaint does not allege any specific injuries, and his medical records from the hospital where he was treated immediately after the accident only noted head lacerations; therefore, there is no evidence that plaintiff put defendant on notice of his closed-head injury. And the statute requires that the insurer be put on notice of a specific injury, not just of a general claim. See *Welton v Carriers Ins Co*, 421 Mich 571, 579-580; 365 NW2d 170 (1984), overruled on other grounds *Devillers, supra* at 562.

Plaintiff also argues that this Court should not follow the *Cameron* decision because it is inconsistent with this Court's prior decision in *Professional Rehabilitation Assoc* and, therefore, violates the doctrine of stare decisis. However, under the rationale of *Cameron*, there is not an actual conflict between the relevant holdings in *Cameron* and *Professional Rehabilitation Assoc*. The *Cameron* panel explained that, although the *Professional Rehabilitation Assoc* panel erroneously cited the 1993 version of MCL 600.5851(1), the pre-1993 version of that provision actually applied in that case. *Cameron, supra* at 101-102. Accordingly, the *Cameron* panel would not consider *Professional Rehabilitation Assoc* as construing the 1993 amendment to MCL 600.5851(1). *Cameron, supra* at 101-102. Thus, consistent with our obligation under MCR 7.215(J)(1) to follow both *Cameron* and *Professional Rehabilitation Assoc* as published opinions of this Court issued after November 1, 1990, the former case should control application of the current version of MCL 600.5851(1) adopted in 1993, while the latter case should control application of the pre-1993 version of MCL 600.5851(1). Again, this holding was recently affirmed by our Supreme Court.

Finally, plaintiff argues that the no-fault act's one-year limitations period and the general savings provision of the RJA are unconstitutional because they violate the equal protection and due process guarantees of the Michigan and federal constitutions. We conclude that plaintiff's arguments are without merit because these arguments were rejected in *Hatcher v State Farm Mut Auto Ins Co*, 269 Mich App 596; 712 NW2d 744 (2005).[1]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

[1] Plaintiff also argues that the no-fault act's strict limitations period violates his Seventh Amendment right to a jury trial. However, plaintiff has abandoned this issue by failing to raise it in his statement of the questions presented. MCR 7.212(C)(5); *Grand Rapids Employees Independent Union v Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999) (stating that an appellant must identify his issues in his brief in the statement of questions presented); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000) (noting that, ordinarily, no point will be considered which is not set forth in the statement of questions presented).