STATE OF MICHIGAN

COURT OF APPEALS

DAVID A. KLADDER,

Plaintiff/Counterdefendant,

v

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant/Counterplaintiff/Third-Party Plaintiff-Appellee,

and

MICHIGAN MILLERS MUTUAL INSURANCE COMPANY,

Third Party Defendant-Appellant,

and

GREAT LAKES MOBILE CATERING, INC., f/k/a BREAKTIME CATERING,

Third-Party Defendant.

UNPUBLISHED
September 21, 2006

No. 257348
Kent Circuit Court
LC No. 03-003654-NF

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Third party defendant Michigan Millers Mutual Insurance Company ("defendant") appeals as of right from the trial court's order granting summary disposition in favor of third party plaintiff ("plaintiff") Liberty Mutual Insurance Company in this dispute over payment of insurance benefits.[1] We reverse.

[1] Although plaintiff David Kladder filed this complaint for insurance benefits, the dispute on appeal involves the payment of benefits between two insurance companies. Therefore, (continued…)

David Kladder was injured in a motor vehicle accident on August 31, 2001. He applied for no-fault benefits from plaintiff, and plaintiff paid in excess of $29,000 in benefits to Kladder. After the payment of benefits, plaintiff realized that it did so by mistake. Plaintiff had insured an automobile owned by Kladder's sister that Kladder previously owned. This vehicle was not involved in the accident, and Kladder did not reside with his sister. On August 26, 2003, plaintiff filed a claim against defendant, alleging that it was the listed insurer of the vehicle that Kladder was driving on the date of the accident.[2] Defendant moved for summary disposition, alleging that plaintiff's claim was barred by the one-year period of limitation set forth in MCL 500.3145. Plaintiff alleged that the case law applying MCL 500.3145 was distinguishable because this case did not involve a priority dispute, but mistaken payment, and the six-year period of limitations applied. The trial court denied defendant's motion for summary disposition and concluded that defendant was required to reimburse plaintiff for the sums erroneously paid.

The trial court's decision regarding a motion for summary disposition is reviewed de novo to determine whether the moving party was entitled to judgment as a matter of law. *E R Zeiler Excavating, Inc v Valenti Trobec Chandler Inc*, 270 Mich App 639, 643; 717 NW2d 370 (2006). Statutory interpretation and the application of a period of limitation in a particular circumstance also present questions of law that are subject to de novo review on appeal. *Id*. at 643-644. MCL 500.3145 governs the time for commencement of an action to recover insurance benefits and provides:

> (1) 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 therefore, 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.
>
> (2) An action for recovery of property protection benefits shall not be commenced later than 1 year after the accident.

(…continued)

references to "plaintiff" and "defendant" refer to the third-party plaintiff and third-party defendant.

[2] Plaintiff also filed a claim against defendant Great Lakes Catering, f/k/a Breaktime Catering, but this claim is not at issue on appeal.

In *Titan Ins Co v North Pointe Ins Co*, 270 Mich App 339, 341; 715 NW2d 324 (2006), the plaintiff insurance company paid benefits arising out of an accident between its subrogor and Robert Price that occurred on April 27, 2002. The police report indicated that Price did not have insurance. The plaintiff indicated that it made numerous attempts to contact Price beginning in September 2002, to determine whether he had no-fault insurance. The plaintiff finally learned in the fall of 2003 that the defendant was Price's insurer. The plaintiff wrote a letter of confirmation addressing coverage to the defendant in November 2003. The plaintiff demanded payment from the defendant and filed suit on March 1, 2004. The defendant refused to make payment, citing the one-year statute of limitations set forth in MCL 500.3145. The trial court granted summary disposition in favor of defendant, concluding that the plaintiff's claim was one of subrogation subject to the one-year limitations period. *Id*. at 341-342.

On appeal, this Court followed *Amerisure Cos v State Farm Mut Automobile Ins Co*, 222 Mich App 97, 103; 564 NW2d 65 (1997), and affirmed by concluding that MCL 500.3145 applied to subrogation claims, and the subrogee acquired no greater rights than those possessed by the subrogor and the subrogated insurer merely substituted for the insured. *Id*. at 343-344. Moreover, the plain language of the statute unambiguously provided the necessary time frame for filing an action to recover personal protection insurance benefits. Because the plaintiff could not identify an exception, the failure to file the action within one year of the accident was fatal to the plaintiff's claim. *Id*. at 345-346. This Court also held that the trial court did not abuse its discretion by denying the plaintiff's motion to amend its complaint to add a count for recovery of the mistaken payment. This Court held that recovery of monies mistakenly paid constituted claims of subrogation subject to the limitations period set forth in MCL 500.3145, and the plain language of the statute did not have a separate limitations period to govern the instance where payment was made by mistake. *Id*. at 346-347. The *Titan* Court expressly held that "even if [the] plaintiff paid the benefits by mistake, its claim is still one of subrogation and subject to the limitations period in MCL 500.3145."

In the present case, plaintiff alleged that prior case law imposing the one-year limitations period on recovery actions was distinguishable because it did not involve the question of whether recovery was based on mistaken payment. The *Titan* case definitively resolved this question in favor of defendant. Accordingly, the trial court erred in granting summary disposition in favor of plaintiff.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Karen M. Fort Hood