

STATE OF MICHIGAN
COURT OF APPEALS

NORMA KAKISH and RAJAIE KAKISH,

Plaintiffs-Appellees,

v

DOMINION OF CANADA GENERAL
INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
September 28, 2006

No. 260963
Ingham Circuit Court
LC No. 04-000809-NI

ON REMAND

Before: Fitzgerald, P.J., and O’Connell and Kelly, JJ.

PER CURIAM.

On December 29, 2005, this Court issued an opinion affirming in part and reversing in part the trial court order denying defendant’s motion for summary disposition in this action for no-fault insurance benefits and for unidentified motorist insurance benefits. Plaintiff Norma Kakish is a Canadian resident, defendant is her automobile insurer, and the automobile incident¹ occurred in Ingham County. This Court determined that the trial court erred by exercising personal jurisdiction over defendant with regard to the claim for unidentified motorist benefits. Based on that conclusion, we did not reach defendant’s alternative argument that the insurance contract required that plaintiff’s² claim for unidentified motorist benefits be brought in an Ontario Court. As to the no-fault benefits claim, we found that the trial court did not err in denying defendant’s motion to dismiss on the basis forum non conveniens where defendant did not show that plaintiff’s choice of forum was seriously inconvenient or that the trial court abused its discretion in retaining jurisdiction.

Plaintiff applied for leave to appeal in the Supreme Court. In a July 31, 2006, order, the Court remanded the case to this Court for “consideration of the issues whether the Ingham Circuit Court could exercise ancillary jurisdiction over plaintiff’s claim for

¹ Plaintiff tried to avoid an unidentified car that started to merge into her lane of traffic and, as a result, she lost control of her vehicle and hit a tree.

² Given the derivative nature of plaintiff Rajae Kakish’s claim for loss of consortium, the term “plaintiff” refers to Norma Kakish only.

uninsured/unidentified motorist benefits and whether the applicable insurance contract required plaintiffs to bring any lawsuit in an Ontario Court.” We again find that the trial court erred by exercising personal jurisdiction over defendant with regard to the claim for unidentified motorist benefits.

A court must have jurisdiction over a case or controversy before it may assert jurisdiction over ancillary claims. *Peacock v Thomas*, 516 US 349, 354; 116 S Ct 862; 133 L Ed 2d 817 (1996). A court may exercise ancillary jurisdiction (1) to permit disposition by a single court of claims that are factually interdependent, or (2) to enable a court to manage its proceedings, vindicate its authority, and effectuate its decrees. *Id.* Ancillary jurisdiction should attach where: (1) the ancillary matter arises from the same transaction that was the basis of the main proceeding or is an integral part of the main matter; (2) the ancillary matter can be determined without a substantial new fact-finding proceeding; (3) determination of the ancillary matter through an ancillary order would not deprive a party of a substantial procedural or substantive right; and (4) the ancillary matter must be settled to protect the integrity of the main proceeding or to insure that the disposition in the main proceeding will not be frustrated. *People v Young (On Remand)*, 220 Mich App 420, 435; 559 NW2d 670 (1996).

Defendant acknowledged that the first two elements were met, but argued that the last two elements were not. As to the third element, it asserted that under the contract it had a substantial right to have the matter heard in an Ontario court.³ The fourth element is dispositive. There is no requirement that an ancillary uninsured motorist claim be decided with a no-fault claim to protect the integrity of the proceeding or to insure that the disposition will not be frustrated. As we previously observed, unidentified/uninsured motorist benefits are purely contractual and not governed by Michigan’s no-fault act. Although it may be more convenient to litigate both claims in Michigan, plaintiff has not shown how her no-fault claim would be undermined by the trial court’s failure to decide the unidentified motorist claim.

The second issue posited by the Supreme Court is whether the insurance contract required plaintiffs to bring any lawsuit in an Ontario court. The applicable portion of the contract, 5.6.3, states:

The matter may be decided in a lawsuit brought against us by you or other insured persons in an Ontario court. If so, we have the right to ask the court to decide who is legally responsible and the amount of compensation owing, unless another Ontario court has already done so in an action that was defended.

The circuit court found that the language of section 5.6.3 is permissive, and the use of the word “may” denoted discretion. Thus, the court concluded that plaintiff may file her suit in Ontario court, but there was nothing in the policy suggesting that Ontario courts have exclusive jurisdiction. Defendant has not identified any mandatory language in the policy that requires that any action be filed in Ontario. But despite the absence of language mandating that any lawsuit

³ This element is addressed in the second issue identified by the Supreme Court.

be filed in Ontario, the issue is moot where Michigan courts do not have ancillary jurisdiction over the unidentified motorist claim.

Reversed and remanded for entry of an order granting summary disposition of plaintiff's claim for unidentified motorist benefits. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Kirsten Frank Kelly