STATE OF MICHIGAN

COURT OF APPEALS

CLARK EDWARD WILLIAMS, Plaintiff-Appellee,	UNPUBLISHED October 3, 2006
v	No. 260422 Washtenaw Circuit Court
GREAT LAKES CASUALTY INSURANCE COMPANY, Defendant-Appellant.	LC No. 04-000041-NF

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

PER CURIAM.

Defendant appeals as of right the trial court's denial of its motion for a directed verdict as well as the trial court's award of attorney fees requested by plaintiff. We affirm.

Plaintiff sustained injuries in an accident with a car while riding his motorcycle. As the insurer of the driver of the car, defendant assumed responsibility for plaintiff's first-party no-fault personal injury protection benefits. Plaintiff sued defendant seeking payment of certain accident-related medical bills. Defendant moved for a directed verdict, and the trial court ruled that while plaintiff did not have a claim against defendant for those bills on which some payment had been made, plaintiff could proceed to trial for those bills on which defendant had not paid anything. The jury returned a verdict in favor of plaintiff and the trial court granted plaintiff's motion for attorney fees. Defendant appeals as of right the trial court's denial of its motion for a directed verdict as well as its award of attorney fees requested by plaintiff.

We review de novo a trial court's decision on a motion for a directed verdict, viewing the evidence in the light most favorable to the nonmoving party. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003). We recognize the unique opportunity of the jury and the trial judge to observe witnesses and the fact-finder's responsibility to determine the credibility and weight of the testimony. *Id*. If reasonable jurors could honestly have reached different conclusions, we may not substitute our judgment for that of the jury. *Id*.

An insurer is liable only for those medical expenses that constitute a reasonable charge for a particular product or service. *McGill v Automobile Ass'n of Michigan*, 207 Mich App 402, 405; 526 NW2d 12 (1994); MCL 500.3107(1)(a)[1]. And medical care providers are prohibited by law from charging more than a reasonable fee. *McGill*, *supra* at 405; MCL 500.3157[2]. When an insurer fails to pay an insured's expenses under MCL 500.3107(1)(a), the insured has a cause of action against the insurer for breach of contract. *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 581-582; 543 NW2d 42 (1995). However, when an insurer makes partial payment of an insured's expenses and disputes the reasonableness of certain charges, the insured does not have a claim. *Id*. Defendant now argues that because it disputed the reasonableness of certain charges, the trial court erred in denying its motion for a directed verdict. However, the trial court only allowed the jury to consider those bills on which there were factual issues in dispute regarding whether defendant had made any payment at all.

At trial, plaintiff presented the testimony of the person in charge of his account at the hospital where he received the majority of his treatment. The testimony indicated that bills had been sent to defendant which had not been paid, and that an audit revealed that none of the unpaid bills were duplicates of bills already paid. Defendant presented the testimony of a claims adjuster, who averred that defendant had paid every bill at issue at trial, and that bills that appeared to be unpaid were merely duplicate submissions that had already been reviewed and paid. However, the only proof of payment offered into evidence was the claims adjuster's log. The claims adjuster indicated that explanation of benefits forms documenting that the bills at issue were paid were in the trunk of her car outside the courthouse, but the forms were never retrieved and offered into evidence. The claims adjuster also testified that while cancelled checks showing payment would prove that the bills at issue had already been paid, they were located at the home office and had not been requested. Viewing the evidence in the light most favorable to plaintiff, the trial court did not err in denying defendant's motion for a directed verdict where reasonable jurors could have honestly reached different conclusions regarding whether defendant had paid the bills at issue.

Defendant next argues that the trial court erred in awarding plaintiff attorney fees under MCL 500.3148(1), which provides: "[a]n attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or

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[1] "[P]ersonal protection insurance benefits are payable for . . . [a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."

[2] "A physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury, may charge a reasonable amount for the products, services and accommodations rendered. The charge shall not exceed the amount the person or institution customarily charges for like products, services and accommodations in cases not involving insurance."

unreasonably delayed in making proper payment." Personal protection insurance benefits are considered overdue if "not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2).

We review for clear error a trial court's decision to award attorney fees under MCL 500.3148(1). *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 628; 550 NW2d 580 (1996). That is, a trial court's finding of an unreasonable refusal to pay benefits will not be reversed on appeal unless the finding is clearly erroneous. *Attard v Citizen Ins Co*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999). A finding is clearly erroneous when, although there is evidence to support it, a reviewing court is left with the definite and firm conviction that a mistake has been made. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000). "If the insurer's refusal . . . [to] pay[] is the product of a legitimate question of statutory construction, constitutional law, or a bona fide factual uncertainty, the refusal or delay will not be found unreasonable under MCL 500.3148(1)." *Beach*, *supra* at 629. "Where such a . . . refusal exists, however, a rebuttable presumption arises and the insurer has the burden of justifying the refusal . . . ." *Id.*

Defendant argues that the trial court erred in failing to make a determination that its denial of benefits was unreasonable. However, while the trial court did not make an explicit finding that defendant unreasonably refused to pay plaintiff's benefits, the record reveals that it adopted the jury's finding that defendant unreasonably failed to make any payment whatsoever on certain bills that were due and owing. Further, defendant did not come forward with evidence to overcome the rebuttable presumption that its failure to pay benefits was reasonable or to justify its refusal of benefits. Evidence exists to support the jury's conclusion that defendant unreasonably refused to pay plaintiff's benefits, and because we are not left with a definite and firm conviction that a mistake has been made, we uphold the trial court's adoption of the jury's determination.

Defendant also argues that the trial court erred in awarding attorney fees where plaintiff did not prevail on all of the claims brought in his complaint. This issue has not been preserved for appeal because defendant has not cited any authority in support of its position. *Thomas v McGinnis*, 239 Mich App 636, 649; 609 NW2d 222 (2000). Moreover, the trial court specifically found that plaintiff prevailed on every claim that was submitted to the jury, and there is nothing in MCL 500.3148(1) that conditions an award of attorney fees on the insured prevailing on all claims brought in a complaint.

Defendant next argues that the trial court erred in failing to hold an evidentiary hearing on the reasonableness of the attorney fees requested by plaintiff. "Where . . . the party opposing the taxation of costs challenges the reasonableness of the fee requested, the trial court should inquire into the services actually rendered before approving the bill of costs." *Miller v Meijer, Inc*, 219 Mich App 476, 479; 556 NW2d 890 (1996). "The trial court should normally hold an evidentiary hearing when the opposing party challenges the reasonableness of a fee request." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). However, in instances where the trial court does not hold an evidentiary hearing, but the parties

create a sufficient record to review the issue and the trial court fully explains the reasons for its decision, it is not error to award attorney fees without holding an evidentiary hearing. *Id*. See also *Giannetti Bros Constr Co v City of Pontiac*, 175 Mich App 442, 450; 438 NW2d 313 (1989)[3].

Here, the record reveals that in its written response to plaintiff's request for attorney fees, defendant made a general challenge to the amount of the fees requested, and made a passing reference to a request for an evidentiary hearing on the matter. Further, at the hearing on plaintiff's request, plaintiff submitted three affidavits in support of the reasonableness of the attorney fees requested. The record of the hearing also reveals that counsel for plaintiff and defendant discussed the reasonableness of the attorney fees requested. However, at no point during the pendency of the proceedings did defendant lodge specific objections to the detailed itemization provided by plaintiff in support of his request for attorney fees. The trial court specifically commented that it found the hourly rate charged by plaintiff's counsel to be reasonable, that it "looked in great detail at . . . [the] billing records in terms of the amount of time spent" and found those to be reasonable, and that it found the other requested fees to be reasonable as well. "In view of the parties' briefing of the issue, the voluminous record before the trial court, and the trial court's familiarity with the circumstances of the case," the trial court did not err in awarding plaintiff's requested attorney fees without holding an evidentiary hearing on the matter. *Id*.

We affirm.

/s/ Karen M. Fort Hood
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio

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[3] We note that this case is distinguishable from two cases cited in *Head*, *supra* at 113: *B & B Investment Group v Gitler*, 229 Mich App 1, 15-17; 581 NW2d 17 (1998) and *Petterman v Haverhill Farms, Inc*, 125 Mich App 30; 335 NW2d 710 (1983). In *B & B*, *supra* at 17, this Court remanded for an evidentiary hearing to determine the reasonableness of the attorney fees awarded because the defense counsel had objected to both the number of hours expended as well as the hourly rate, the trial court had not inquired as to the reasonableness of the fee request, and the trial court had ordered payment of attorney fees without any basis for that award being placed on the record. In *Petterman*, *supra* at 33, "this Court remanded for an evidentiary hearing regarding the reasonableness of the attorney fee as a result of the trial court having accepted an itemized bill for attorney fees on its face without actually considering the issue of reasonableness." *B & B*, *supra* at 16-17.

Moreover, the only case cited by defendant in support of its argument, *Miller*, *supra* at 479-480, relies on caselaw that does not have precedential value, MCR 7.215(J)(1), *Wilson v Gen Motors Corp*, 183 Mich App 21, 42-43; 454 NW2d 405 (1990), and *Howard v Canteen Corp*, 192 Mich App 427, 438-439; 481 NW2d 718 (1992), overruled in *Rafferty v Markovitz*, 461 Mich 265, 273 n 6; 602 NW2d 367 (1999).