STATE OF MICHIGAN

COURT OF APPEALS

CAROL KRITZER, Guardian for the Estate of SHAUN JAYNES, and Incapacitated Person, Plaintiff-Appellee,	UNPUBLISHED October 31, 2006
v	No. 259105 Livingston Circuit Court
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellant.	LC No. 03-020210-NF

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

PER CURIAM.

In this action to recover benefits under the Michigan no-fault act, MCL 500.3101 *et seq.*, defendant State Farm Mutual Automobile Insurance Company appeals by leave granted from the trial court order denying its motion for summary disposition. The question presented is whether our Supreme Court's decision in *Cameron v Auto Club Ins Ass'n*, 476 Mich 55; 718 NW2d 784 (2006), applies retroactively to preclude plaintiff Carol Kritzer, guardian of Shaun Jaynes, from recovering personal protection insurance (PIP) benefits[1] for losses incurred more than one year before this action was commenced. We conclude that *Cameron* applies to the instant case, and that, contrary to plaintiff's assertion, such application does not violate plaintiff's constitutional rights. We reverse.

Background Facts and Proceedings

In June 1999, Shaun Jaynes was involved in an automobile accident. At the time, his parents were covered by a no-fault insurance policy issued by defendant. Under the terms of that policy, defendant was obligated to pay certain expenses, including PIP benefits, in the event that Shaun suffered bodily injury in an accident arising out of the ownership, operation, maintenance or use of a motor vehicle. Plaintiff provided required attendant care services to Shaun from

[1] The statutory phrase is "personal protection insurance benefits," but these benefits are also known as "first-party" or "PIP" benefits. *Mckelvie v Auto Club Ins Ass'n*, 459 Mich 42, 44, n 1; 586 NW2d 395 (1998).

February 2000 to March 2002. Defendant refused to pay for this care, allegedly in violation of the applicable no-fault provisions and the insurance contract. Plaintiff filed the instant complaint, on September 16, 2003, seeking payment of the contested benefits.

Defendant moved for summary disposition, pursuant to MCR 2.116(C)(7), challenging the timeliness of plaintiff's complaint under MCL 500.3145(1). That provision limits plaintiff's recovery of PIP benefits to those losses incurred within one year of the filing of the complaint. MCL 500.3145(1). Defendant relied on *Cameron v Auto Club Ins Ass'n*, 263 Mich App 95; 687 NW2d 354 (2004), aff'd in part and vacated in part, 476 Mich 55 (2006) ("*Cameron I*"), in which this Court determined that the saving provision of the Revised Judicature Act (RJA), MCL 600.5851(1), as amended in 1993, applies only to actions filed under the RJA, and therefore, does not toll an action brought under the no-fault act. Plaintiff argued in response that our decision in *Cameron I* was erroneous and should be given only prospective effect, and that it rendered MCL 600.5851(1) unconstitutional on equal protection grounds. The trial court agreed with plaintiff and denied defendant's motion.

Standard of Review

We review the trial court's denial of defendant's motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817(1999). We also review the constitutionality of statues de novo. *Phillips v Mirac, Inc*, 470 Mich 415, 422; 685 NW2d 174 (2004). "Statues are presumed constitutional and we exercise the power to declare a law unconstitutional with extreme caution." *Hatcher v State Farm Mut Automobile Ins Co*, 269 Mich App 596, 600; 712 NW2d 744 (2006).

Analysis

On July 26, 2006, our Supreme Court affirmed our conclusion in *Cameron I* that the saving provision of the RJA, MCL 600.5851(1), does not toll the one-year-back rule set forth in MCL 500.3145(1).[2] *Cameron v Auto Club Ins Ass'n*, 476 Mich 55; 718 NW2d 784 (2006) ("*Cameron II*"). The Court explained:

> By its unambiguous terms, MCL 600.5851(1) concerns when a minor or person suffering from insanity may "make the entry or bring the action." It does not pertain to the damages recoverable once an action has been brought. MCL 600.5851(1) then is irrelevant to the damages-limiting one-year-back provision of MCL 500.3145(1). Thus, to be clear, the minority/insanity tolling provision in MCL 600.5851(1) does not operate to toll the one-year back rule of MCL 500.3145(1). [*Id.*, at 62.]

[2] The Court affirmed our determination that MCL 600.5851(1) does not toll the one-year-back provision in MCL 500.3145(1). The Court vacated that portion of *Cameron I* that addressed whether the 1993 amendments limited applicability of MCL 600.5851(1) to actions for which the applicable statute of limitations is set forth in the RJA, as dicta. *Cameron II, supra* at 58, 64.

Defendant argues that plaintiff's claim for benefits for attendant care services rendered to Shaun from February 2000 to March 2002, is precluded by the one-year-back rule set forth in MCL 500.3145(1). Plaintiff argues that *Cameron I*, and by extension, *Cameron II*,[3] should be applied only prospectively and that, if so applied, her claim is not barred by MCL 500.3145(1). Plaintiff also argues that if MCL 600.5851(1) does not apply to toll the one-year-back rule, it is unconstitutional on equal protection grounds.

The Supreme Court did not indicate in *Cameron II* whether that decision applies retroactively. However, the Court previously explained that, "[t]ypically, our decisions are given retroactive effect, 'applying to pending cases in which a challenge . . . has been raised and preserved.' Prospective application is a departure from this usual rule and is appropriate only in 'exigent circumstances.'" *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 586; 702 NW2d 539 (2005) (citations omitted). Thus, "prospective-only application of [Supreme Court] decisions is generally 'limited to decisions which overrule *clear and uncontradicted* case law.'" *Id.* at 587 (emphasis in original; citation omitted).

In *Devillers*, *supra* at 564, the Court overruled its earlier holding in *Lewis v DAIIE*, 426 Mich 93; 393 NW2d 167 (1986), that the one-year-back rule was tolled, under the judicial tolling doctrine, from the date the claim for benefits was filed until an insurer's formal denial of liability. The Court also held that its ruling was to be given retroactive effect, explaining:

> *Lewis* is an anomaly that, for the first time, engrafted onto the text of § 3145(1) a tolling clause that has absolutely no basis in the text of the statute. *Lewis* itself rests upon case law that consciously and inexplicably departed from decades of precedent holding that contractual and statutory terms relating to insurance are to be enforced according to their plain and unambiguous terms.
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> Thus, *Lewis* cannot be deemed a "clear and uncontradicted" decision that might call for prospective application of our decision in the present case. Much like [*Wayne Co v Hathcock*, 471 Mich 445; 684 NW2d 765 (2004),] our decision here is not a declaration of a new rule, but a return to an earlier rule and a vindication of controlling legal authority — here, the "one-year-back" limitation of MCL 500.3145(1).
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> Accordingly, our decision in this case is to be given retroactive effect as usual and is applicable to all pending cases in which a challenge to *Lewis*'s judicial tolling approach has been raised and preserved. [*Id.* at 587.]

The Court observed that its prior decision in *Lewis* was rendered "purely for policy reasons and in direct contravention of the statutory language at issue." *Id.* at 582. Therefore, the Court did not consider *Lewis* to be "clear and uncontradicted" case law such that overruling that decision

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[3] *Cameron II* was decided after the parties filed their briefs in this Court. Thus, although plaintiff had no opportunity to argue it, her argument regarding the prospective-only application of *Cameron I* applies equally to *Cameron II*.

presented "'exigent circumstances' of the sort warranting the 'extreme measure' of prospective-only application." *Id.* at 586-587.

Analogously, our Supreme Court's decision in *Cameron II* overruled the earlier holding of this Court in *Geiger v Detroit Automobile Inter-Insurance Exch*, 114 Mich App 283; 318 NW2d 833 (1982), on the basis that *Geiger* was decided for policy reasons, based on this Court's perception of the legislative intent, contrary to the clear language of MCL 500.3145(1) and MCL 600.5851(1). *Cameron, supra* at 62-64. Accordingly, like *Lewis*, *Geiger* does not constitute clear and uncontradicted case law, the overruling of which presents exigent circumstances warranting prospective-only application of *Cameron II*. Therefore, we conclude that *Cameron II* applies to all cases, including this one, in which the issue of the applicability of the tolling period of MCL 600.5851(1) to the one-year-back rule of MCL 500.3145(1) has been raised and preserved.

As an alternative argument that *Cameron II* should not apply to the present case, plaintiff relies on *Bryant v Oakpoint Villa Nursing Center, Inc*, 471 Mich 411; 684 NW2d 864 (2004). In *Bryant*, our Supreme Court concluded that two claims pleaded as ordinary negligence actually sounded in medical malpractice and that, under ordinary circumstances, the claims would have been barred by the two-year statute of limitations applicable to medical malpractice claims. *Id.* at 432. Nonetheless, the Supreme Court decided that the "equities of th[e] case" required that the medical malpractice claims proceed to trial because the plaintiffs' failure to comply with the applicable statute of limitations was "the product of an understandable confusion about the legal nature of her claim, rather than a negligent failure to preserve her rights." *Id.* Relying on *Bryant*, plaintiff here argues, essentially, that equity prevents the application of *Cameron II* to the present case because, at the time she filed the present lawsuit, the one-year back rule of MCL 500.3145(1) could be tolled by MCL 600.5851(1).

However, *Bryant, supra*, is distinguishable from the present case. In *Bryant*, there was no controlling statute that prevented the application of equity. *Devillers, supra* at 590-591, n 65. Rather, "the disputed issue in *Bryant*—whether a claim sounds in medical malpractice or ordinary negligence—was controlled by [the Supreme Court's] case law." *Id.* But, in the present case, there is a statute, MCL 500.3145(1), that prevents that application of equity. MCL 500.3145(1) governs the recovery of PIP benefits, and it plainly prohibits recovery of expenses incurred more than one year before the lawsuit was commenced. *Id.* Therefore, we are without authority to say otherwise. *Id.*

Plaintiff argues that the determination that MCL 600.5851(1) does not toll the one-year-back rule renders that provision unconstitutional on equal protection grounds, because it discriminates against minors and insane persons filing claims under the no-fault act. We disagree.

The Equal Protection Clauses of the United States and Michigan Constitutions provide that no person shall be denied the equal protection of the law. US Const, Am XIV; Const 1963, art 1, § 2; *Crego v Coleman*, 463 Mich 248, 258; 615 NW2d 218 (2000). "The essence of the Equal Protection Clauses is that the government not treat persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment." *Id.* However, the Equal Protection Clauses do not prevent disparate treatment based on characteristics that are not arbitrary or invidious. *Id.* at 258-259.

To determine whether legislation violates equal protection, this Court applies one of three tests. *Id.* at 259. If the legislation creates an inherently suspect classification, such as race, ethnicity or national origin, or affects a fundamental interest, the "strict scrutiny" test applies. *Phillips, supra* at 432. Quasi-suspect classifications, such as gender or illegitimacy, are subject to the "substantial relationship" test. *Id.* at 433; *Hatcher, supra* at 603. Social and economic legislation is examined under the traditional "rational basis" test. *Phillips, supra* at 434.[4] MCL 600.5851(1) distinguishes between groups of minors and insane persons based on their cause of action, by tolling the statute of limitations period for certain causes of actions, but not tolling the one-year-back rule limiting the recovery of damages in no-fault actions. Therefore, the appropriate standard for analyzing plaintiff's equal protection claim is the rational basis test.

Under the rational basis test, legislation is presumed to be constitutional and will survive review if the classification scheme is rationally related to a legitimate governmental purpose. *Phillips, supra* at 433; *Hatcher, supra* at 603. "To prevail under this highly deferential standard of review, a challenger must show that the legislation is 'arbitrary and wholly unrelated in a rational way to the objective of the statute.'" *Crego, supra* at 259 (citations omitted). "Rational-basis review does not test the wisdom, need or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Id.* at 260.

As our Supreme Court explained in *Cameron II, supra* at 66-67, the distinction drawn by the Legislature in MCL 600.5851(1) has "several conceivable explanations," including maintaining the affordability of no-fault automobile insurance for Michigan drivers. Controlling no-fault insurance costs is a legitimate government purpose. We cannot say that the classification set forth in MCL 600.5851(1) is arbitrary and completely unrelated in a rational way to this purpose. Therefore, we hold that the trial court erred in concluding that MCL 600.5851(1) is unconstitutional.

We conclude that the Supreme Court's decision in *Cameron II* applies retroactively to all cases, including this one, in which the issue of the applicability of the tolling period of MCL 600.5851(1) to the one-year-back rule of MCL 500.3145(1) has been raised and preserved. We further conclude that MCL 600.5851(1) does not violate plaintiff's right to equal protection. We reverse the trial court's order denying defendant summary disposition and remand this case for entry of an order of summary disposition in favor of defendant. We do not retain jurisdiction.

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

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[4] Plaintiff's argument that heightened scrutiny should be applied to MCL 600.5851(1) is without merit. The statute does not distinguish between those with mental illness and those without, nor between minors and adults. Rather, it distinguishes between no-fault plaintiffs and other plaintiffs. Such classification cannot be compared to those based on race, ethnicity, national origin, gender, or illegitimacy. *Stevenson v Reese*, 239 Mich App 513, 517; 609 NW2d 195 (2000).