STATE OF MICHIGAN

COURT OF APPEALS

AMYRUTH L. COOPER, by her Next Friend, SHARON L. STROZEWSKI, and LORALEE A. COOPER, by her Next Friend, SHARON L. STROZEWSKI,

Plaintiffs-Appellees,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
November 21, 2006

No. 261736
Washtenaw Circuit Court
LC No. 03-000367-NF

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

This case involves plaintiffs' action for personal injury protection (PIP) benefits under the no-fault act, MCL 500.3101 *et seq.* After the trial court denied each of defendant's three motions for summary disposition on the issue of liability, the parties reached an agreement regarding damages for the various time periods at issue in this action. The trial court entered a judgment for plaintiffs in accordance with the parties' agreement, as well as an order approving a partial settlement. Defendant appeals as of right, challenging only its liability for damages incurred more than one year before plaintiffs filed their complaint. We reverse in part and remand for entry of an order of partial summary disposition in favor of defendant.

We review a trial court's decision on a summary disposition motion de novo. *Devillers v Auto Club Ins Ass'n,* 473 Mich 562, 567; 702 NW2d 539 (2005). Issues of statutory construction and other questions of law are also reviewed de novo. *Id.* at 566.

We conclude that our Supreme Court's decision in *Cameron v Auto Club Ins Ass'n,* 476 Mich 55; 718 NW2d 784 (2006), is dispositive of defendant's claim that plaintiffs may not recover PIP benefits relating to any losses incurred more than one year before plaintiffs filed their complaint on April 2, 2003. Under *Cameron, supra* at 62, the minority and insanity tolling provision in MCL 600.5851(1) does not apply to the one-year-back limitation on damages in MCL 500.3145(1). Further, we reject plaintiffs' claim that *Cameron* should be applied prospectively. In general, Supreme Court decisions are applied to pending cases, such as the present one, in which the pertinent issue was raised and preserved, *Devillers, supra* at 586, and we find no indication in *Cameron* that our Supreme Court intended its decision to only apply prospectively. Consistent with *Cameron*, we remand for entry of an order of partial summary

disposition in favor of defendant based on the one-year-back rule for recovery of damages found in MCL 500.3145(1).

In light of this decision, it is unnecessary to address defendant's claim regarding the consequences of the December 14, 1990, settlement agreement signed by plaintiffs' mother, Sharon Strozewski, individually and as a conservator of plaintiffs' estates, nor is it necessary to address defendant's claim that plaintiffs were not proper claimants for no-fault benefits. Additionally, it is not necessary to address the parties' arguments concerning the 1993 amendment of MCL 600.5851(1). Because the one-year-back rule in MCL 500.3145(1) applies to plaintiffs' action, and defendant does not challenge the trial court's judgment with respect to damages arising after April 2, 2002 (one year before plaintiffs' complaint was filed on April 2, 2003), we deem these issues moot.

We next consider plaintiffs' claim of fraud. Because there is no indication that the trial court considered matters beyond the pleadings when determining that plaintiffs' amended complaint stated a common-law action for fraud, we review this matter under MCR 2.116(C)(8). *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998).

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich. 158, 162; 483 N.W.2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. [*Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).]

Although plaintiffs titled their claim as one for fraud, a "[c]ourt is not bound by a plaintiff's choice of labels for her action because this would exalt form over substance." *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). The damages plaintiffs seek here to recover are additional PIP benefits. Plaintiffs alleged that defendant made inadequate attendant care payments for Strozewski, avoided paying case management expenses, failed to pay room and board expenses, and avoided the "lawful payment of no-fault benefits." Under MCL 500.3107(1)(a), allowable expenses include "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."

We conclude that plaintiffs' amended complaint states a no-fault action couched in fraud terms. See *Grant v AAA Michigan Wisconsin, Inc (On Remand)*, ___ Mich App ___ ; ___ NW2d ___ (Docket No. 249720, issued August 24, 2006) (claim labeled under the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, was, in substance, a claim for no-fault benefits). Therefore, we reverse the trial court's order denying defendant's motion for summary disposition

under MCR 2.116(C)(8) and remand for entry of an order of partial summary disposition in favor of defendant with regard to the fraud count.[1]

Affirmed in part, reversed in part, and remanded for entry of an order of partial summary disposition in favor of defendant consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Alton S. Davis

[1] To the extent plaintiffs assert that the fraudulent concealment statute, MCL 600.5855, should apply to this case, we decline to consider this issue because it is insufficiently briefed. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (where a party gives only cursory treatment to an issue, with little or no citation to supporting authority, this Court may deem the issue abandoned).