STATE OF MICHIGAN

COURT OF APPEALS

TACCARA KENNEDY, Plaintiff-Appellant,	UNPUBLISHED February 20, 2007
v	No. 259453 Wayne Circuit Court
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellee.	LC No. 04-400795-NF ON REMAND

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition in favor of defendant on the ground that her no-fault claim was barred by the statute of limitations. This case comes to us on remand from our Supreme Court. *Kennedy v State Farm Mutual Automobile Ins Co*, unpublished order of the Supreme Court, entered October 31, 2006 (Docket No. 131206). In lieu of granting leave to appeal, our Supreme Court vacated the April 6, 2006 opinion of this Court and remanded for reconsideration in light of its decision in *Cameron v Auto Club Ins Ass'n*, 476 Mich 55; 718 NW2d 784 (2006). Because we are unable to determine whether during the year preceding the filing of plaintiff's complaint damages are recoverable in accordance with our Supreme Court's holding in *Cameron*, 476 Mich 58, we affirm in part, reverse in part, and remand.

In our previous opinion in this matter, we set out the facts as follows:

> On February 27, 1997, plaintiff, who was seated on the hood of a vehicle owned by her aunt, fell and struck her head as the vehicle began to move. The vehicle was not insured and no police report was made. Plaintiff was fourteen years of age at the time of the accident. On March 1, 2001, plaintiff filed an application for benefits with the Assigned Claims Facility claiming a closed head injury from the accident. Defendant was subsequently assigned plaintiff's claim and did not pay any benefits. Plaintiff filed suit on January 9, 2004. Defendant thereafter moved for . . . summary disposition on the ground that the statute of limitations had expired. [*Kennedy v State Farm Mutual Automobile Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 2006 (Docket No. 259453).]

The trial court granted summary disposition in accordance with this Court's holding in *Cameron v Auto Club Ins Ass'n*, 263 Mich App 95; 687 NW2d 354 (2004).

Then bound by this Court's opinion in *Cameron, supra*, we affirmed the trial court's grant of summary disposition holding that plaintiff could not rely on the saving provision, MCL 600.5851, to preserve her claim in this no-fault case. *Kennedy, supra*. Subsequently, having granted leave to appeal in *Cameron v Auto Club Ins Ass'n*, 472 Mich 899; 696 NW2d 707 (2005), our Supreme Court affirmed in part and vacated in part this Court's holding in *Cameron*. *Cameron v Auto Club Ins Ass'n*, 476 Mich 55; 718 NW2d 784 (2006). As a result of its decision in *Cameron*, in lieu of granting leave to appeal in the case at bar, our Supreme Court vacated our April 6, 2006 opinion and remanded the case for our reconsideration in light of its decision in *Cameron, supra*, 476 Mich 55.

In *Cameron*, Daniel Cameron, a minor, was involved in a bicycle accident in 1996 leaving him with a closed head injury resulting in a cognitive disorder. When Daniel was aged 16, in 2002, his parents filed suit on his behalf seeking no-fault benefits for attendant care rendered to Daniel from August 1996 to August 1999. *Cameron, supra*, 476 Mich 59. Our Supreme Court concluded that "the minority/insanity tolling provision in MCL 600.5851(1) does not apply to the one-year-back rule in MCL 500.3145(1)," and thus "[d]amages are only allowed for one year back from the date the lawsuit is filed." *Cameron, supra*, 476 Mich at 63-64. Applying this rule of law, our Supreme Court specifically held that "[b]ecause we conclude that MCL 600.5851(1) cannot toll the one-year-back rule, and all damages sought here were for more than one year back, no damages could be recovered and that disposes of this matter." *Id*., at 58. Further, the Supreme Court found that "it was dicta for the Court of Appeals to address the effect of MCL 600.5851(1) on the statute of limitations in MCL 500.3145(1) and we vacate that portion of its ruling . . . ." *Id*.

In this case, although plaintiff's injuries occurred on February 27, 1997 when she was fourteen years of age, she did not file a claim until January 9, 2004. In her complaint, plaintiff seeks damages for accident related injuries including attendant care services, replacement services, and future medical treatment without date restrictions. The one-year-back rule of MCL 500.3145 bars plaintiff from recovering benefits payable under the no-fault act for accidental bodily injury for any portion of a loss that occurred more than one year before the action was commenced. *Cameron, supra*, 476 Mich at 63-64. Therefore, the only recoverable damages would be those incurred by plaintiff during January 9, 2003 and January 9, 2004, the year directly preceding the filing of plaintiff's complaint.

Guided by our Supreme Court's decision in *Cameron*, on our own motion pursuant to MCR 7.216(A)(9), we ordered the parties "to file with this Court evidence of any claims that may exist between January 9, 2003 and January 9, 2004," as well as supplemental briefing. *Kennedy v State Farm Mutual Automobile Ins Co*, unpublished order of the Court of Appeals, entered December 22, 2006 (Docket No. 259453). While both parties responded as ordered, we are unable to determine from the evidence submitted whether plaintiff incurred allowable charges for reasonably necessary products, services, and accommodations for her care, recovery,

or rehabilitation during the year prior to the filing of her complaint. MCL 500.3107(1) and MCL 500.3157.[1] Due to the fact that we cannot determine if "damages could be recovered" by plaintiff in this action, this case is nearly identical to *Cameron, supra*, 476 Mich at 58. Without the factual predicate established that plaintiff actually suffered identifiable damages during the year prior to the filing of her complaint, like *Cameron*, it would be "dicta for us to address the effect of MCL 600.5851(1) on the statute of limitations in MCL 500.3145(1)," and therefore we decline to do so. *Id.* As such, in accordance with our Supreme Court's holding in *Cameron*, we affirm the trial court's summary disposition order with respect to plaintiff's claims incurred prior to January 9, 2003, reverse the trial court's summary disposition order with respect to those possible claims plaintiff may have incurred within one year preceding the filing of plaintiff's complaint, and remand the cause of action to the trial court for further proceedings and analysis consistent with this opinion and *Cameron, supra*, 476 Mich at 58, 72.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio

[1] In the supplemental materials provided, plaintiff's mother suggests that she provided attendant care services. However, defendant characterized the services provided as either expired replacement services or not medically supported care services.