STATE OF MICHIGAN

COURT OF APPEALS

BEST CARE REHABILITATION, INC., Plaintiff-Appellee,	UNPUBLISHED March 20, 2007
v	No. 272395 Wayne Circuit Court
ALLSTATE INSURANCE COMPANY, Defendant-Appellant.	LC No. 05-527836-NO

Before: Markey, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

This case presents the question of whether the form of plaintiff Best Care Rehabilitation, Inc.'s, (Best Care) business organization permits defendant Allstate Insurance Company, (Allstate), to deny otherwise lawful no-fault charges for physical therapy services Best Care provided to Allstate's insured. The trial court answered "no" and granted Best Care's motion for summary disposition. This Court has also answered this question "no" in a recent published opinion. *Miller v Allstate Ins Co*, 272 Mich App 284; 726 NW2d 54 (2006). Allstate asserts *Miller* was wrongly decided and requests this Court to declare it is following *Miller* only because it must do so. MCR 7.215(J)(2). We affirm.

Eugene Bradley was injured in an automobile accident. Allstate was Bradley's no-fault insurer. Bradley's treating physician referred him to Best Care for physical therapy. There is no dispute that a licensed physical therapist at Best Care provided Bradley reasonable and necessary therapy services. There is also no dispute that Best Care is incorporated only under the Business Corporation Act (BCA), MCL 450.1101 *et seq*., and not under the Professional Service Corporation Act (PSCA), MCL 450.221 *et seq*. Tariq Mahmud incorporated Best Care and is its sole shareholder. Mahmud is not a licensed physical therapist.

Allstate denied Best Care's no-fault claim on the bases that (1) the therapy was not lawfully rendered under MCL 500.3157 and (2) violated the Public Health Code because of alleged illegal "fee splitting" under MCL 333.16221(d)(ii). Plaintiff filed suit and the trial court heard its motion for summary disposition on July 7, 2006. The trial court granted plaintiff's motion. The court distinguished *Cherry v State Farm Mut Automobile Ins Co*, 195 Mich App 316, 320; 489 NW2d 788 (1992). The *Cherry* Court held treatment services furnished by an unlicensed provider were not "lawfully rendered" under MCL 500.3157 because the nurse in that case who had provided the acupuncture treatment was not licensed to do so. The trial court was not convinced that physical therapy was a "learned profession" requiring incorporation under the

PSCA. Further, the trial court reasoned that a licensed caregiver provided the services and to deny payment would defeat the purpose of the no-fault act. The trial court also reasoned that the alleged "technical" violation should not defeat a liberal construction of the no-fault act regarding first-party benefits. The trial court concluded the services were lawfully rendered because they were provided by a licensed physical therapist.

We review de novo a trial court's ruling granting or denying summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A trial court properly grants the motion when the proffered evidence fails to establish any genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*.

This Court also reviews de novo issues of statutory interpretation. *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 14; 684 NW2d 391 (2004). Our primary task when interpreting a statute is to ascertain and give effect to the intent of the Legislature. *Id*.

> An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature. To do so, we begin with an examination of the language of the statute. If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. [*Roberts v Mecosta County General Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002) (citations omitted).]

When reading a statute, this Court must "consider both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999) (citation omitted). Further, whenever possible, this Court must accord meaning to every phrase, clause, and word in the statute. *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004).

Allstate argues that because a person must be licensed to engage in physical therapy, MCL 333.17820, that vocation falls within the catchall definition of "professional service" under MCL 450.222(c). Also, because a corporation providing physical therapy may be formed under the PSCA, the BCA requires it to be formed under that act. MCL 450.1251(1). In addition, Allstate argues that Best Care could not legally be formed as a PSC because all shareholders of a corporation practicing physical therapy must be licensed physical therapists. MCL 450.222(b); MCL 450.224(2), (3). Allstate concludes its argument by asserting that because Best Care is not a lawful corporation, it cannot lawfully render treatment within the meaning of MCL § 500.3157. We need not analyze the merits of Allstate's claims because *Miller* controls.

Allstate rests its denial of Best Care's claim on MCL 500.3157, which provides:

> 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.

In *Miller*, like the present case, Allstate contested paying PT Works, Inc., a corporation providing physical therapy services, asserting that PT Works did not lawfully render physical therapy services because it was incorporated under the BCA instead of the PSCA. *Miller, supra* at 286. This Court disagreed, focusing on the phrase "lawfully rendering treatment" in MCL 500.3157. The *Miller* Court reasoned that

> MCL 500.3157, by its plain and unambiguous language, requires that the *treatment* itself be lawfully rendered. Reference to the terms "rendering" and "treatment" clearly places the focus on the act of actually engaging in the performance of services, here conducting physical therapy sessions, rather than on some underlying corporate formation issues that have nothing to do with the rendering of treatment. A clinic or institution is lawfully rendering treatment when licensed employees are caring for, and providing services and treatment to, patients despite the possible existence of corporate defects irrelevant to treatment. [*Miller, supra* at 287.]

The *Miller* Court further opined:

> The licensing of an individual, such as a doctor, dentist, chiropractor, or physical therapist, who personally provides services to a client or patient, has a direct correlation to the rendering of treatment. The connection between the rendering of treatment and the manner in which PT Works was incorporated and the nature of the incorporation is too attenuated to make the physical therapy provided to Miller an unlawfully rendered service. [*Miller, supra* at 288.]

Like the trial court in the present case, the *Miller* Court distinguished *Cherry, supra*, because the "acupuncture services were directly provided to the injured party by a nurse who was not licensed to perform acupuncture. This Court found that only a licensed physician could administer acupuncture under the law." *Miller, supra* at 287, citing *Cherry, supra* at 320.

We conclude that *Miller* applies and affirm the trial court. Because a licensed physical therapist provided the physical therapy treatments to Bradley, they were "lawfully render[ed] treatment" under MCL 500.3157. *Miller, supra* 287-288. Whether Best Care is a lawfully formed corporation is immaterial.

Allstate also argues that it legitimately denied Best Care's claims because the later engaged in "fee splitting" contrary to MCL 333.16222l(d)(ii), which defines "[d]ividing fees for referral of patients" as an unethical business practice under the Public Health Code. Allstate

contends that *Spect Imaging, Inc v Allstate Ins Co*, 246 Mich App 568, 581; 633 NW2d 461 (2001) holds "that a physician who violated the Public Health Code's prohibition on self-referrals 'is unable to recover expenses under the no-fault act." The same result, Allstate argues, should apply to unlawful "fee splitting;" consequently, it properly denied payment under MCL 500.3157. We disagree.

Allstate's argument on this issue lacks merit. The allegation of "fee splitting," even if true, is more attenuated than Allstate's allegation of illegal corporate form and further renders *Miller* controlling. See *Miller, supra* 288. Because Allstate's claim regarding "fee splitting" as a basis for denying payment rests on establishing that Best Care did not "lawfully render[] treatment" under MCL 500.3157, Allstate's argument fails.

In addition, Allstate offers no authority for the proposition that unethical conduct as defined by the Public Health Code may serve as a basis for denying payment of an otherwise reasonable and reasonably necessary expense under the no-fault act. *Spect, supra*, does not stand for the proposition for which Allstate cites it. Rather, the trial court in *Spect* had determined it did not have jurisdiction under the primary jurisdiction doctrine to address the claim of the Auto Club Insurance Association (ACIA) that alleged Public Health Code violations were so extensive that the plaintiff should not be permitted to recover expenses under the no-fault act. This Court disagreed, finding that "ACIA's allegations present a case of 'basic issues of fact and law that the courts address on a regular basis.'" *Spect, supra* at 581. The *Spect* Court did not hold that the alleged misconduct, which included allegations of both self-referral and providing the service at issue by unlicensed individuals, would merit denial of no-fault benefits. *Id*. at 579-581.

Finally, the Public Health Code provides its own mechanism for enforcing the provisions of § 16222l. "The department [1] may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee." MCL 333.16221. Further, the "disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more" of the listed categories of misconduct exist. *Id*. Under § 16226, sanctions for adjudicated violations of § 16222l(d)(ii) include "[r]eprimand, fine, probation, community service, denial, or restitution." MCL 333.16226(1). Thus, the Legislature has provided for possible licensing sanctions if the department after hearings finds one or more violations of § 16222l. The Legislature has not provided that a no-fault insurer may avoid paying an otherwise lawful reasonable and reasonably necessary expense incurred by a person injured in an automobile

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[1] By MCL 333.16104(2), the Legislature designated the "department" as the department of commerce. But by Executive Order 1996-2, MCL 445.2001, the department of commerce was renamed the department of consumer and industry services. Further executive order transferred the authority, powers, duties, functions, and responsibilities with respect to Parts 161 to 188 of the Public Health Code, MCL 333.16101 to 333.18838, from the department of consumer and industry services to the department of community health. See Executive Order No. 2003-18, MCL 445.2011.

accident if the service provider has committed unrelated misconduct under the provisions of the Public Health Code.

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy