S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

JAMES HENDRICK, Plaintiff-Appellant,	UNPUBLISHED May 24, 2007
v	No. 275318 Montcalm Circuit Court LC No. 06-007975-NI
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellee.	

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition for defendant pursuant to MCR 2.116(C)(10) in this insurance coverage dispute. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I

Plaintiff was injured in a car accident during the course of his employment when an uninsured driver failed to stop at an intersection and struck the company truck plaintiff was driving. The uninsured driver was killed, and plaintiff suffered severe injuries. Plaintiff received workers' compensation benefits and subsequently filed this action against defendant, his personal no-fault insurer, seeking uninsured motorist benefits. Plaintiff's complaint sought recovery for both noneconomic losses and economic losses in excess of no-fault benefits.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), arguing that uninsured motorist coverage was excluded under plaintiff's policy because the coverage would benefit the workers' compensation insurance carrier. The policy provision at issue stated:

> THERE IS NO COVERAGE:
>
> * * *

3. TO THE EXTENT IT BENEFITS:

a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY.

Defendant argued that, pursuant to MCL 418.827(5) of the Worker's Disability Compensation Act (WDCA),[1] and *Eddington Estate v Eppert Oil Co*, 441 Mich 200; 490 NW2d 872 (1992), an employer or a worker's compensation insurance carrier may seek reimbursement from the entire amount of the third-party tort recovery, regardless whether the damages are classified as economic or noneconomic. Accordingly, coverage was precluded under plaintiff's policy because any payment to plaintiff under the uninsured motorist provision would benefit the workers' compensation carrier.

The trial court agreed with defendant. The court granted defendant's motion for summary disposition without a hearing, concluding:

> MCL 418.827 provides that the Workers' Compensation carrier may recoup monies paid under the Workers' Compensation Act from *any recovery against a third party resulting from personal injuries or death.* Under *Eddington Estate*[, *supra*,] this language was determined to be clear and unambiguous, thereby removing any need to look beyond its ordinary meaning in giving it effect. No distinction is made by either the no[-]fault or the above statute or by the parties' contract of insurance between economic or non-economic, insured or uninsured benefits. Accordingly, the uninsured motor vehicle coverage is not available to plaintiff by the terms of the parties' contract of insurance because coverage thereby would benefit the Workers' Compensation or disability benefits insurance company. This court is obligated to enforce the terms of the parties' contract. [Emphasis in original.]

II

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Willis v Deerfield Twp*, 257 Mich App 541, 548; 669 NW2d 279 (2003). Because the trial court relied in part on documentary evidence outside the pleadings, our review is properly considered under the standard for a motion under MCR 2.116(C)(10). *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id*. at 30-31.

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[1] MCL 418.101 *et seq.*

III

The third-party tortfeasor provision of the WDCA, MCL 418.827, provides a method whereby an employer or insurer can be reimbursed for compensation benefits paid to an injured employee, where such injury resulted from negligence of some other person. *Gamble v American Asbestos Products Co*, 381 Mich 105; 159 NW2d 839 (1968); *Hearns v Ujkaj*, 180 Mich App 363, 367; 446 NW2d 657 (1989). MCL 418.827(5) grants employers and carriers a lien on any third-party recovery for the same injury covered by workers' compensations benefits. *Taylor v Second Injury Fund*, 234 Mich App 1, 16; 592 NW2d 103 (1999).

MCL 418.827(5) provides:

> In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his or her dependents or personal representative would be entitled to recover *in an action in tort*. *Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to date of recovery* and the balance shall immediately be paid to the employee or his or her dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits. [Emphasis added.]

Under this provision, "an employer or worker's compensation insurance carrier that has paid benefits to an injured employee is entitled . . . to reimbursement from any recovery that the employee obtains *in a third-party tort action*." *In re Worker's Compensation Lien*, 231 Mich App 556, 558-559; 591 NW2d 221 (1998) (emphasis added).

In *Eddington Estate*, *id*. at 204, the Supreme Court considered "the extent to which an employer, or workers' compensation carrier, is entitled to seek reimbursement from a third-party tort recovery obtained as a result of the death of an employee." The plaintiff argued that MCL 418.827(5) should be interpreted to provide reimbursement "only to the extent that the third-party tort recovery duplicates damages compensable under the WDCA." *Eddington Estate*, *supra* at 209. However, the Court observed that MCL 418.827(5) clearly and unambiguously states that an employer or workers' compensation insurance carrier "is to be reimbursed from '*any recovery*' against a third party for '*any amounts*' paid or payable to the employee under the WDCA as of the date of the recovery." *Eddington Estate*, *supra* at 209 (citations and quotations omitted; emphasis added). Consistent with the statutory language, the Court found that "*any third-party tort recovery for damages* obtained as a result of the death of the employee is available to the employer or compensation carrier for reimbursement to the extent compensation benefits have been paid or are payable to the date of recovery and are a credit for future compensation obligations." *Id.* at 216.

Plaintiff contends that the trial court erred in deciding this case on the basis of MCL 418.827(5) and *Eddington Estate*, *supra*. We agree.

Eddington Estate involved an issue of third-party tort recovery governed solely by the WDCA. This case, however, involves a workers' compensation carrier's reimbursement rights where the no-fault act is also operative. The authority governing these distinct circumstances is not compatible:

> When an employee is injured in a motor vehicle accident in the course of his employment, his entitlement to compensation for his injuries, from all sources, is governed by the workers' compensation act *and* the no-fault act. His rights and entitlements under each act are affected by his being injured under circumstances which make him subject to the provisions of the other.
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> Under the workers' compensation act the employee is entitled to statutory compensation and may also seek to enforce the legal liability of a third party.[2] But, by operation of the no-fault act, that legal liability is limited.
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> Under the no-fault act he is entitled to no-fault benefits.[3] But, once the liability of the no-fault insurer is determined, that liability is reduced by the amount of workers' compensation benefits paid or payable because of the injury.[4]
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> [2] MCL 418.827; MSA 17.237(827).
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> [3] MCL 500.3135; MSA 24.13135.
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> [4] *Mathis v Interstate Motor Freight System*, 408 Mich 164; 289 NW2d 708 (1980); MCL 500.3109; MSA 24.13109.
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> [*Great American Ins Co v Queen*, 410 Mich 73, 86; 300 NW2d 895 (1980).]

Thus, when an employee is injured in an automobile accident during the course of employment, his entitlement to compensation for injuries suffered in the accident is governed by both the WDCA and the no-fault act, MCL 500.3101 *et seq*. *Specht v Citizens Ins Co of America*, 234 Mich App 292, 295; 593 NW2d 670 (1999). The numerous cases addressing questions of workers' compensation reimbursement in the context of automobile accidents and no-fault law leave little doubt that the trial court's decision in this case must be reversed.[2] Our brief review of the case law indicates that the analysis in *Eddington Estate* is simply inapplicable in this case, particularly on the basis cited by the trial court.[3] In fact, this Court has held that "MCL 418.827(5) . . . is unconstitutional as applied to employees injured in automobile accidents where tort recovery is limited by MCL 500.3135 . . . ." *Reliance Ins Co v Messina Trucking, Inc*, 83 Mich App 159, 165; 268 NW2d 328 (1978).

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[2] See, e.g., *Mathis v Interstate Motor Freight System,* 408 Mich 164; 289 NW2d 708 (1980); *Park v American Cas Ins Co*, 219 Mich App 62; 555 NW2d 720 (1996); *Hearns*, *supra*.

[3] We are somewhat perplexed by the parties' failure to differentiate between the two separate lines of case law, those involving solely the WDCA and those involving the WDCA and the no-fault act, which may explain the erroneous result below.

Plaintiff argues that this case must be decided under *Queen*, *supra*, because a workers' compensation insurer's right to reimbursement when a person is injured in an automobile accident in the course of his employment is limited to economic damages, and the insurer is not entitled to reimbursement for noneconomic damages. In *Queen,* the Supreme Court addressed the interplay between the WDCA and the no–fault act. The plaintiff was injured in an automobile accident in the course of his employment. He received workers' compensation benefits from his employer's workers' compensation insurance carrier and also sought no-fault benefits from his employer's no-fault insurer. He later recovered settlement proceeds in the amount of $18,500 from the third-party tortfeasors. The workers' compensation insurer then filed suit against the plaintiff and the third-party tortfeasors, claiming a lien on the settlement proceeds pursuant to the reimbursement provision of the WDCA, MCL 418.827. The trial court granted summary disposition in favor of the defendants. *Queen, supra* at 88-89.

On appeal, the Supreme Court recognized that when an employee is injured in an automobile accident in the course of his employment, workers' compensation benefits substitute for no-fault benefits to the extent that workers' compensation benefits are duplicative of no-fault benefits otherwise payable to the employee. *Queen, supra* at 95-97. The Court thus held that "the payment of workers' compensation benefits which do not substitute for no-fault benefits, because they exceed no-fault benefits in amount or duration, gives rise to a right to reimbursement from third-party tort recoveries . . . ." *Id.* at 97. Because the worker's compensation insurer in *Queen* sought reimbursement "for payments which substituted for no-fault benefits otherwise payable," it was not entitled to reimbursement. *Id.* at 85.

In *Hearns*, *supra* at 367, this Court recognized and applied the holding in *Queen*. This Court stated that "[a] workers' compensation carrier is not entitled to reimbursement for payments which substitute for no-fault benefits." However, "[t]o the extent that payment of workers' compensation benefits exceeds the no-fault benefits which are otherwise payable, the workers' compensation carrier is entitled to a lien against an injured employee's third-party recovery for reimbursement of the excess." *Id.* at 367-368. See also *Specht*, *supra* at 295.

Because this case involves the interplay of workers' compensation and no-fault benefits, the trial court erred in relying solely on *Eddington Estate*, and failing to acknowledge *Queen* and the particular legal principles applicable when an employee is injured in an automobile accident during the course of employment. In this circumstance, worker's compensation benefits may be considered a substitute for no-fault benefits. *Queen*, *supra* at 87-88, 96-97.

Defendant contends that if *Eddington* is inapplicable, then this case involves issues of first impression because the claim is based on uninsured motorist coverage. However, defendant does not acknowledge the longstanding case law addressing worker's compensation reimbursement with respect to no-fault coverage. Moreover, this is not the first case addressing uninsured motorist coverage in the context of workers' compensation benefits and no-fault insurance. See, e.g., *Park v American Cas Ins Co*, 219 Mich App 62; 555 NW2d 720 (1996).

In *Park*, this Court addressed a setoff clause in an uninsured motorist provision requiring deduction of social security disability benefits and workers' compensation benefits. *Id*. at 69. Although the specific setoff clause in *Park* differs from the policy clause at issue here, the decision is instructive with respect to the relationship between no-fault benefits generally and

uninsured motorist coverage in the context of reimbursement for workers' compensation benefits:

> A purpose of the no-fault act is to provide a contractual right of action against one's own insurer for wage-loss and medical expenses arising from a motor vehicle accident. A tort action for noneconomic and excessive loss was preserved in cases of severe loss. *Bradley v Mid-Century Ins Co,* 409 Mich 1, 62; 294 NW2d 141 (1980). A thorough discussion of the relationship between no-fault benefits and uninsured benefits was provided in *Bradley, id.* at 62-63, and is worth repeating:
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> > "The Legislature has thus divided an injured person's loss into two categories—loss for which the no-fault insurer is liable and loss for which the tortfeasor is liable. No-fault insurance provides security for the first type; uninsured motorist coverage, which presupposes that the insured is entitled to recovery under the tort system, provides security for the second type—it is offered to protect against being left with a worthless claim against an uninsured motorist.
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> > "One who has purchased uninsured motorist coverage would not expect to collect twice for the same economic loss and the insurer prevents this from happening through the set-off clause. But neither would he expect to have his uninsured motorist coverage reduced or eliminated altogether because of other coverage he has purchased. He would expect, even in the face of the set-off clause, that amounts paid by the insurer for economic loss would not reduce the amount payable for non-economic or excess economic loss.
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> > "In providing insurance against the uninsured motorist, the insurer promises the insured that his right of action for greater than threshold injuries will not be worthless if the tortfeasor turns out to be uninsured.
> >
> > "If the tortfeasor is insured or otherwise collectible, the insurer paying no-fault benefits has a statutory right to reimbursement for benefits theretofore paid by it only out of a recovery for those economic losses. So, too, if the insurer contracts to make good for an uninsured motorist—coverage complementary and supplementary to the basic no-fault policy and standing in the place of third-party residual liability insurance—the insurer and the insured should have corresponding rights relative to amounts recoverable under an uninsured motorist endorsement; the insurer should be permitted a set-off only to the extent a recovery duplicates benefits it has already paid." [*Park*, *supra* at 69-70, FITZGERALD, P.J. (footnote omitted).]

Although Judge CORRIGAN, writing for the majority on the issue of the setoff clause, disagreed with Judge FITZGERALD'S conclusion that the setoff clause at issue was contrary to public policy, she likewise relied on the distinctions set forth in *Bradley*. *Park*, *supra* at 74 (CORRIGAN, J., concurring in part and dissenting in part). She noted, however, that the issue whether workers' compensation and social security disability benefits are economic losses that

an insurer is entitled to set off from uninsured motorist coverage as a matter of public policy had not been addressed by a Michigan court. *Id*. at 72-73.

Regardless whether defendant is correct that the specific issues presented in this case are ones of first impression, existing case law has sufficiently addressed this area of law to conclude that *Eddington* does not govern the circumstances of this case. This case does not merely involve recovery against a third-party tortfeasor under the WDCA, and thus, cases addressing MCL 418.827 are inapposite.

The above authority indicates that any workers' compensation reimbursement in this case would be limited in scope and, thus, the policy exclusion may be inapplicable to plaintiff's uninsured motorist claim. However, we decline to render an opinion in this regard. Given the nuances of this area of law,[4] it is incumbent upon the parties to appropriately argue the merits of their claims in the proper legal context, for decision by the trial court in the first instance.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff

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[4] See 33 ALR 5th 587, *Right of employer or workers' compensation carrier to lien against, or reimbursement out of, uninsured or underinsured motorist proceeds payable to employee injured by third party*; 31 ALR 5th 116, *Uninsured and underinsured motorist coverage: validity, construction, and effect of policy provision purporting to reduce coverage by amount paid or payable under workers' compensation law*.