STATE OF MICHIGAN

COURT OF APPEALS

CHARLES MORRIS,

Plaintiff-Appellant,

v

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant-Appellee,

and

AAA OF MICHIGAN,

Defendant.

UNPUBLISHED
April 21, 2011

No. 296343
Wayne Circuit Court
LC No. 08-121147-CK

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

Plaintiff Charles Morris appeals of right from the circuit court order granting defendant Blue Cross and Blue Shield of Michigan's motion for summary disposition, and dismissing plaintiff's first amended complaint.[1] We affirm.

According to plaintiff's first amended complaint, he was involved in a motorcycle/automobile accident in August 2007, wherein he sustained accidental bodily injuries that allowed him to recover benefits under the Michigan no-fault act, MCL 500.3101 *et seq*. It is undisputed that plaintiff's medical bills were paid for pursuant to an uncoordinated no-fault policy of insurance issued by defendant AAA of Michigan.

Because of plaintiff's employment with Corrigan Moving and Storage Company, he was also covered by a health insurance policy issued by Blue Cross. Although AAA covered the full extent of the medical costs incurred as a result of plaintiff's medical care, plaintiff believed that he was entitled to receive that same amount of coverage from Blue Cross, pursuant to the terms of the Blue Cross policy and Michigan law. As a result, plaintiff brought suit against both AAA

[1] Defendant AAA of Michigan is not involved in this appeal.

and Blue Cross, alleging breach of contract. Specifically, plaintiff alleged that Blue Cross breached the contract by failing to reimburse plaintiff for the medical care liabilities incurred in his treatment, as well as by requiring plaintiff to pay COBRA payments and his failure to continue benefits under the contract.

Blue Cross subsequently filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's breach of contract claim with respect to payment of an amount equal to the cost of the medical care provided to him (and paid for by AAA) was foreclosed by the terms of the contract and Michigan law. At the hearing on defendant's motion, the trial court held that Blue Cross did not violate the terms of the contract and was not otherwise obligated to pay plaintiff an amount equal to that already paid by AAA for his medical services. This appeal followed.[2]

Because the trial court based its decision on the contract between plaintiff and Blue Cross, a document which was not attached to the pleadings, we review the decision as though it was specifically granted under MCR 2.116(C)(10). A motion under this subrule tests the factual sufficiency of the case, *Corley v Detroit Bd of Education*, 470 Mich 274, 278; 681 NW2d 342 (2004). In responding to a properly supported motion filed by the defendant, a plaintiff must come forward with affidavits, depositions, admissions, or any other admissible evidence to show that a genuine issue of material fact exists warranting a trial. *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 973 (2006). If the plaintiff fails to bring forward such evidence creating a genuine issue of material fact, the motion must be granted.

We conclude that the trial court properly granted Blue Cross's motion for summary disposition. Because the material facts are undisputed, and the law regarding priority under these facts is straightforward, the only real question is the meaning of the contract between the parties. For example, there is no dispute that plaintiff was covered by the AAA no-fault insurance policy at the time of the accident, that the AAA no-fault policy was uncoordinated, and that as a result, under the no-fault act, AAA was the first in-priority no-fault carrier for providing benefits on plaintiff's behalf. MCL 500.3114(5). And, there is no dispute that AAA had fulfilled that obligation by making payments on behalf of plaintiff prior to initiation of this lawsuit.

Hence, as we noted, the only real question is whether plaintiff is entitled to "double dip" under the contract with Blue Cross by having Blue Cross pay plaintiff the same amount that AAA paid to cover his medical services. As plaintiff correctly points out, when two policies are

---

[2]It was after the trial court entered an order granting Blue Cross's motion for summary disposition when plaintiff filed the first amended complaint adding additional breach of contract allegations against Blue Cross with respect to COBRA payments and continued benefits. That claim was apparently resolved between the parties which is reflected in a January 26, 2010, stipulation and order for dismissal. The issues related to those allegations contained in that portion of the first amended complaint are not at issue in this appeal.

both uncoordinated, the general rule is that a "double recovery" is not precluded. *Smith v Physicians Health Plan*, 444 Mich 743, 752; 514 NW2d 150 (1994), citing *Haefle v Meijer, Inc*, 165 Mich App 485; 418 NW2d 900 (1987). Here, both policies were uncoordinated. Although Blue Cross opines that the coordination provision in the contract applies to this case, by its plain words the coordination provision is limited to other health plans, not to private no-fault insurance policies. See *Haefle*, 165 Mich App at 499. However, even if they both are uncoordinated policies, that does not preclude another provision in the contract from precluding a double recovery.

Blue Cross argues that this is the situation presented here, and cites at least five separate provisions within the contact that it argues show an intention between the parties not to have Blue Cross pay for medical costs covered by another insurance company. In reviewing those provisions, we conclude that at least one of those warranted summary disposition in Blue Cross's favor, and so therefore we need not discuss the other provisions.

In particular, § 6.1 of the contract between plaintiff and Blue Cross indicates that Blue Cross will not pay for care and services "for which you legally do not have to pay or for which you would not have been charged if you did not have coverage under this certificate." In considering this language, we are ever mindful that "[t]he fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement." *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007).

The clause "for which you legally do not have to pay" is written in the present tense. Thus, we look to the factual situation at the time the complaint was filed, and from that we know that plaintiff did not legally have to pay anything. It is undisputed that before the complaint was filed AAA had paid the outstanding medical bills incurred for plaintiff's treatment. Consequently, when plaintiff sued Blue Cross to enforce the contract, the exclusionary clause applied because plaintiff and Blue Cross contractually agreed that Blue Cross would not pay for services which "you [plaintiff] legally do not have to pay." This clause is clear and unambiguous, and enforcement of the terms required the trial court to grant Blue Cross's motion for summary disposition on this issue.

Affirmed.

Having prevailed in full, defendant may tax costs. MCR 7.219(A).

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Christopher M. Murray