STATE OF MICHIGAN

COURT OF APPEALS

SCOTT BEAUDETTE,

Plaintiff-Appellee,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant/Cross-Plaintiff-Appellee,

and

FARMERS INSURANCE EXCHANGE,

Defendant/Cross-Defendant-Appellant.

UNPUBLISHED
May 10, 2011

No. 295939
Wayne Circuit Court
LC No. 07-726900-NF

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Defendant/cross-defendant, Farmers Insurance Exchange, appeals as of right the trial court's judgment in favor of defendant/cross-plaintiff, Auto-Owners Insurance Company, and plaintiff, Scott Beaudette. Farmers also challenges the trial court's earlier orders denying it's motion for summary disposition and granting summary disposition to Auto-Owners under MCR 2.116(I)(2). We affirm.

I. FACTS AND PROCEDURAL HISTORY

A. UNDERLYING FACTS

This insurance dispute arises out of an automobile accident that occurred at approximately 1:45 a.m. on October 11, 2006, in Washtenaw County. Scott Beaudette was driving his 1992 Cadillac westbound on a two-lane road when he crossed into the eastbound lane and collided with a Ford F-150, purportedly driven by an intoxicated driver. Scott Beaudette suffered severe injuries, including brain trauma. On behalf of Scott Beaudette, his mother, Jennifer Beaudette, submitted an application for personal protection insurance (PIP) benefits with Auto-Owners. Although the Cadillac was titled solely in Scott Beaudette's name, Jennifer Beaudette insured the vehicle through an Auto-Owners policy in her name only.

Auto-Owners initially approved the application and paid benefits to Scott Beaudette. However, in a later letter, Auto-Owners indicated that it had approved Scott Beaudette's application based on the erroneous belief that Scott Beaudette resided with Jennifer Beaudette at the time of the accident. Auto-Owners stated that because Scott Beaudette did not in fact reside with Jennifer Beaudette, it was not required to pay his PIP benefits. Accordingly, Auto-Owners referred Scott Beaudette to the Assigned Claims Facility.[1] Scott Beaudette filed a claim for PIP benefits with the Assigned Claims Facility, which denied his claim, stating that an owner "of an uninsured motor vehicle or motorcycle involved in an accident is not eligible for benefits."

B. SCOTT BEAUDETTE'S COMPLAINT AND AUTO-OWNERS' CROSS-COMPLAINT

Scott Beaudette filed a complaint against Auto-Owners and the Assigned Claims Facility, alleging breach of contract and seeking declaratory relief regarding the applicability of the no-fault insurance act,[2] the amount of benefits owed to him, and the amount of any reimbursement owed to Auto-Owners.

Auto-Owners filed a cross-complaint against the Assigned Claims Facility, alleging that the Assigned Claims Facility was required to pay Scott Beaudette's claims because no other insurer had priority over the Assigned Claims Facility. Auto-Owners sought to recoup $593,877.71 in no-fault benefits that it paid to Scott Beaudette. The Assigned Claims Facility assigned Scott Beaudette's claim to Farmers, and Farmers was substituted in this action in place of the Assigned Claims Facility.[3]

C. FARMERS' MOTION FOR SUMMARY DISPOSITION

Farmers moved for summary disposition pursuant to MCR 2.116(C)(10). It argued that MCL 500.3113(b) precluded Scott Beaudette from collecting PIP benefits because he owned the Cadillac and failed to properly insure the vehicle in his name. Farmers recognized that although Auto-Owners admitted insuring the vehicle in Jennifer Beaudette's name, it nevertheless determined that Scott Beaudette was not entitled to PIP benefits under its policy. Farmers argued that if Scott Beaudette was not entitled to PIP benefits from Auto-Owners, then he failed to satisfy the requirements of MCL 500.3101. Alternatively, Farmers argued that Scott Beaudette was entitled to PIP benefits from Auto-Owners because Auto-Owners was Scott Beaudette's insurer pursuant to the plain language of the policy.

In response, Auto-Owners argued that this case presented a simple priority issue and that Farmers was required to pay Scott Beaudette's PIP benefits pursuant to MCL 500.3114, the

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[1] MCL 500.3172 allows a person to obtain PIP benefits through the Assigned Claims Facility if no insurance is applicable or can be identified or ascertained, or if other insurance is inadequate.

[2] MCL 500.3101 *et seq.*

[3] MCL 500.3174 and MCL 500.3175 allow the Assigned Claims Facility to assign claims to insurers based on the amount of business that an insurer conducts in Michigan.

priority statute. Auto-Owners contended that Scott Beaudette was not driving an uninsured vehicle and that it was not necessary for him to obtain his own policy when Jennifer Beaudette had already done so. Auto-Owners further argued that Scott Beaudette did not reside with Jennifer Beaudette. According to Auto-Owners, Scott Beaudette had not resided in Jennifer Beaudette's home for several years, instead he lived with a friend in a trailer where he received his mail, and his driver's license reflected the trailer's address. Moreover, Scott Beaudette had no intention of residing with his mother; rather, he intended to reside with his girlfriend in an apartment for which he signed a lease shortly before the accident. Thus, Auto-Owners claimed, Scott Beaudette was not entitled to PIP benefits as a resident relative of Jennifer Beaudette, and the priority statute required Farmers, as the Assigned Claims Facility's assignee, to pay benefits. Finally, Auto-Owners argued that the language of its policy did not require it to pay benefits to Scott Beaudette.

The trial court denied Farmers' motion without hearing oral argument. Relying on *Iqbal v Bristol West Ins Group*,[4] the trial court determined that MCL 500.3113(b) did not preclude Scott Beaudette from recovering PIP benefits because the Cadillac was insured, albeit by Jennifer Beaudette's policy. The trial court also determined that there was no genuine issue of material fact that Scott Beaudette did not reside with Jennifer Beaudette and was therefore not entitled to recover benefits from Auto-Owners as her resident relative. Finally, the trial court determined that there existed a question of fact regarding whether Scott Beaudette was nevertheless an insured under Jennifer Beaudette's policy. The trial court stated that it had to examine the language of the Auto-Owners policy to decide the issue, but pointed out that the parties failed to provide it with a complete copy of the policy.

D. FARMERS' MOTION FOR RECONSIDERATION

Farmers moved for reconsideration, arguing that summary disposition in its favor was proper because Auto-Owners admitted that Scott Beaudette was insured through Jennifer Beaudette's policy since the policy contained no exceptions to coverage. Farmers also argued that there was no question of fact that Scott Beaudette was insured through Auto-Owners based on the policy's plain language. Farmers attached a complete copy of the policy to its motion for the trial court's consideration.

In response, Auto-Owners denied admitting that Scott Beaudette was insured under Jennifer Beaudette's policy and argued that the policy did not contain a definition of "insured" that included Scott Beaudette. Auto-Owners contended that this Court had previously interpreted the same policy language in a different case and rejected Farmers' argument. Thus, Auto-Owners argued that summary disposition in its favor was appropriate.

The trial court granted reconsideration and granted summary disposition for Auto-Owners under MCR 2.116(I)(2). The trial court determined that, based on the Auto-Owners

[4] *Iqbal v Bristol West Ins Group*, 278 Mich App 31; 748 NW2d 574 (2008).

policy language and *Dobbelaere v Auto-Owners Ins Co*,[5] Scott Beaudette was not an insured under the policy. The trial court also rejected Farmers' argument that Auto-Owners admitted that Scott Beaudette was its insured and opined that Farmers misinterpreted Auto-Owners' answer to requests for admission in this regard.

E. SCOTT BEAUDETTE'S MOTION FOR ATTORNEY FEES

Scott Beaudette moved for no-fault attorney fees, arguing that he was entitled to attorney fees incurred at least since this Court decided *Iqbal*. Scott Beaudette contended that, after *Iqbal* was decided, Farmers had no legal basis for claiming that he was not entitled to PIP benefits and the dispute shifted from a coverage dispute to a priority dispute. Scott Beaudette argued that MCL 500.3172(3)(b) required Farmers to pay benefits and thereafter resolve the priority dispute with Auto-Owners. Scott Beaudette then moved for entry of judgment.

In response to Scott Beaudette's motion for attorney fees, Farmers argued that the statutory language pertaining to assigned claims did not prevent an insurer from investigating a claimant's eligibility for benefits. Farmers argued that MCL 500.3172 requires a claimant to be eligible for benefits and that it had no obligation to pay benefits before determining whether Scott Beaudette was eligible. Farmers further argued that the trial court must deny Scott Beaudette's motion because he presented no evidence showing that benefits were overdue, his claim involved a legitimate question of statutory interpretation, and there remained outstanding questions of fact regarding whether he was entitled to benefits under the Auto-Owners policy.

F. AUTO-OWNERS' MOTION FOR PARTIAL SUMMARY DISPOSITION

Auto-Owners moved for partial summary disposition, arguing that, pursuant to the trial court's orders denying summary disposition for Farmers and granting summary disposition for Auto-Owners, it was entitled to reimbursement of the benefits that it paid to Scott Beaudette. Relying on the affidavit of Glenn Schneider, Auto-Owners' claims representative, Auto-Owners contended that it paid Scott Beaudette a total of $635,081.75 in PIP benefits.

In response, Farmers argued that it had the right to review bills that Scott Beaudette submitted to determine if the charges were reasonable. Relying on the affidavit of Mary LaClair, Farmers' special claim representative, Farmers contended that it was able to verify only $513,715.09 of the total amount that Auto-Owners paid to Scott Beaudette. After reviewing Auto-Owners' payment log and documentation, LaClair was unable to find support for any wage loss claims paid. Farmers also contended that Auto-Owners' payment log included payments for items not compensable, such as attorney fees, adjustment costs, and bill review costs.

The trial court entered a written order granting Auto-Owners' motion. The trial court determined that there was no genuine issue of material fact that Farmers was obligated to reimburse the no-fault benefits that Auto-Owners paid to Scott Beaudette and that Farmers was

[5] *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527; 740 NW2d 503 (2007).

required to pay all future benefits owed to Scott Beaudette. Regarding Farmers' argument that it was entitled to review Scott Beaudette's claims, the trial court opined that Auto-Owners already reviewed the claims and determined that they were reasonable. The trial court stated that Farmers relinquished its opportunity to review the claims and that allowing a "double review" would defeat the purpose of the no-fault act to provide prompt payment for losses. The trial court entered a judgment in favor of Auto-Owners in the amount of $632,188.14, the amount of benefits that it had paid to Scott Beaudette. The trial court also granted Scott Beaudette's motions for entry of judgment and for no-fault attorney fees incurred after this Court's publication of *Iqbal*. The trial court rejected Farmers' arguments that no benefits were overdue and that Scott Beaudette's claim involved a question of fact and a legitimate question of statutory interpretation.

Farmers now appeals.

II. SCOTT BEAUDETTE'S ENTITLEMENT TO PIP BENEFITS

A. STANDARD OF REVIEW

Farmers argues that the trial court erroneously determined that Scott Beaudette was entitled to collect no-fault PIP benefits and that Farmers was responsible for paying such benefits.

This Court reviews de novo a trial court's ruling on a motion for summary disposition.[6] 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.[7] 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.[8] The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial.[9] A "trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law."[10]

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[6] *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006).

[7] *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002).

[8] *Id*. at 30-31.

[9] *Id*. at 31.

[10] *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

B. "INSURED" UNDER THE POLICY LANGUAGE

Farmers argues that the trial court erroneously determined that Scott Beaudette is not an "insured" under the language of the Auto-Owners insurance policy. In asserting this argument, Farmers relies on the statutory priority provision set forth in MCL 500.3114(4), which provides:

> (4) . . . [A] person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied.

Farmers contends that because Scott Beaudette was both the owner and operator of the vehicle, he was an "insured" under the Auto-Owners policy and, therefore, Auto-Owners was required to pay his PIP benefits.

This Court has interpreted MCL 500.3114(4) and opined that courts must look to the language of an insurance contract to determine whether a person is insured under a policy.[11] In *Dobbelaere v Auto-Owners Ins Co*,[12] this Court examined policy language identical to that at issue in this appeal. In *Dobbelaere*, David Jones II was driving an uninsured vehicle that his father owned when the plaintiff's decedent was ejected from the car and died.[13] The plaintiff sought survivor's loss PIP benefits under an Auto-Owners policy issued to Jones's mother.[14] Neither Jones nor his father was a named insured under the policy, and the issue presented was whether Auto-Owners was either person's "insurer" within the meaning of MCL 500.3114(4)(a) and (b).[15] This Court determined:

> [T]he policy at issue here does not define who is an insured for purposes of the no-fault endorsement, and we are unable to discover anything in the plain language of the policy's declaration or general verbiage to indicate an intent by the parties to that contract to render either [Jones's father] or David Jones II a contractual insured. Thus, we conclude that the trial court erred by denying [Auto-Owners's] motion for summary disposition because it was not the "insurer"

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[11] *Amerisure Ins Co v Coleman*, 274 Mich App 432, 435-436; 733 NW2d 93 (2007).

[12] *Dobbelaere*, 275 Mich App at 534.

[13] *Id.* at 528.

[14] *Id.* at 528-529.

[15] *Id.* at 531.

> of either [Jones's father] or David Jones II within the meaning of MCL 500.3114(4)(a) and (b).[16]

Similarly, the policy in this case[17] fails to indicate an intent by Jennifer Beaudette and Auto-Owners to render Scott Beaudette an "insured."

Farmers also relies on the "coverage" provision, which provides, in relevant part:

> [W]e will pay personal injury protection benefits to or on behalf of an injured person for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle[.][18]

But this Court previously rejected this argument, stating:

> Amerisure argues that, even if MCL 500.3114(4) is inapplicable, Auto-Owners must provide available PIP benefits to [Michael] Anthony by virtue of the wording in the Auto-Owners policy. For example, Amerisure points to a section of the policy indicating that Auto-Owners will pay "personal injury protection benefits to or on behalf of an injured person for accidental bodily injury arising out of the . . . use of a motor vehicle. . . ." Amerisure contends that this language plainly applies to Anthony's injuries because he was injured in connection with the Ford Explorer insured in the Auto-Owners policy. Amerisure's argument is untenable. Indeed, there is simply no authority for the proposition that the insurer of a *vehicle* involved in an accident must pay PIP benefits under the circumstances present in the instant case, when no named insureds were involved in the accident.[19]

Therefore, Farmers' argument lacks merit.

Farmers also relies on *Amerisure Ins Co v Coleman*,[20] in which this Court held that the driver of the uninsured vehicle, although not a "named insured," was an "insured" of the no-fault policy issued to his wife. The policy language in that case, however, was different from that at issue in this case and in *Dobbelaere*. In *Coleman*, the policy insured not only the named insured, but also the named insured's "spouse if a resident of the same household." In addition, the

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[16] *Id.* at 534 (internal citation omitted).

[17] Farmers concedes that the *Dobbelaere* policy contained the same policy language as that at issue in this appeal.

[18] Emphasis omitted.

[19] *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 15-16; 684 NW2d 391 (2004) (emphasis in original).

[20] *Coleman*, 247 Mich App at 433-434, 436-437.

policy defined "insured" as "[y]ou [that is, the named insured] or any family member."[21] Thus, Farmers' reliance on *Coleman* is misplaced.

Farmers further argues that Auto-Owners admitted that Scott Beaudette was insured under its policy. In asserting this argument, Farmers misinterprets Auto-Owners's response to a discovery request for admission. The request was as follows:

> 3. Do you admit that there is no provision in the no-fault policy issued by Auto-Owners to Jennifer Beaudette which would exclude Scott Beaudette from no-fault benefits for the accident of October 11, 2006?

Auto-Owners replied:

> It is admitted that the policy of insurance issued by Auto-Owners Insurance Company to Jennifer Beaudette did not contain language which would permit Auto-Owners to exclude no fault damages to Scott Beaudette. However, based upon the order of priorities set forth in the no[-]fault statute, specifically MCL 500.3114(4)(a), Auto-Owners was not in the order of priority to pay benefits to Mr. Beaudette under the policy issued to his mother, Jennifer Beaudette.

Contrary to Farmers' argument, Auto-Owners did not admit that Scott Beaudette was its insured. Rather, it admitted that although no policy language excluded coverage for Scott Beaudette, it was not Scott Beaudette's insurer within the meaning of MCL 500.3114(4)(a) and therefore did not have priority to provide PIP benefits to him. Accordingly, Farmers' argument lacks merit and Scott Beaudette was not an "insured" under the Auto-Owners policy.

C. DETERMINATION REGARDING RESIDENCE

Farmers argues that the trial court erred by determining, as a matter of law, that Scott Beaudette did not reside with Jennifer Beaudette at the time of the accident. Farmers relies on MCL 500.3114(1) in support of its argument that Auto-Owners was required to pay Scott Beaudette's PIP benefits as a resident relative of Jennifer Beaudette. MCL 500.3114(1) states, in relevant part:

> Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, *and a relative of either domiciled in the same household*, if the injury arises from a motor vehicle accident.[22]

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[21] *Id.* at 436.

[22] Emphasis added.

Initially, we note that this issue is not preserved for this Court's review because Farmers did not raise it in the trial court. Nevertheless, "[t]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented."[23] Because this issue involves a question of law regarding which the facts necessary for its resolution have been presented, we will address the issue. Our review of unpreserved issues is limited to plain error affecting substantial rights.[24]

Generally, a determination involving a person's domicile is a question of fact, but when the underlying facts are not in dispute, it is a question of law for the court.[25] The underlying facts pertaining to Scott Beaudette's domicile are not in dispute. Rather, the parties dispute only the legal conclusion derived from the facts. Thus, the trial court properly resolved this issue as a matter of law.

"Several factors should be considered in determining domicile, and these factors should be weighed or balanced with each other because no one factor is determinative."[26] In *Workman v DAIIE*, the Court articulated several factors to consider, including:

> (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household.[27]

"These four factors do not make a comprehensive and exclusive list; they are merely '[a]mong the relevant factors' to be considered."[28]

> Accordingly, this Court has identified the following additional factors to consider when identifying the domicile of an individual:

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[23] *Nuculovic v Hill*, 287 Mich App 58, 63; 783 NW2d 124 (2010).

[24] *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

[25] *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002).

[26] *Id.*

[27] *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979) (internal citations omitted).

[28] *Cervantes v Farm Bureau Gen Ins Co of Michigan*, 272 Mich App 410, 415; 726 NW2d 73 (2006), quoting *Workman*, 404 Mich at 496 (brackets in original).

> (1) the person's mailing address;
>
> (2) whether the person maintains possessions at the insured's home;
>
> (3) whether the insured's address appears on the person's driver's license and other documents;
>
> (4) whether a bedroom is maintained for the person at the insured's home; and
>
> (5) whether the person is dependent upon the insured for financial support or assistance.[29]

The trial court considered the above factors and properly determined that Scott Beaudette did not reside with Jennifer Beaudette at the time of the accident. The evidence showed that Jennifer Beaudette asked Scott Beaudette to move out of her home when he was 18 years old because she had two younger children to raise. He did so, and returned to Jennifer Beaudette's home only periodically when his housing leases expired and he had nowhere else to go. In April 2006, he moved into a trailer in Ann Arbor with some friends. He stayed there a few nights each week because it was close to his employer. When he was not at the trailer, he was either at Jennifer Beaudette's or his girlfriend's home. He paid $250 each month in rent for the trailer and kept his belongings both there and at Jennifer Beaudette's residence. Most of Scott Beaudette's mail was sent to Jennifer Beaudette's home, and Scott Beaudette's dog resided at both Jennifer Beaudette's home and Scott Beaudette's trailer. The traffic crash report reflected the trailer's address, which Scott Beaudette also listed as his address in the application for title to the vehicle.

The day before the accident, Scott Beaudette and his girlfriend signed a lease for a townhome. When Scott Beaudette was released from the hospital, he immediately began living in the townhome. He moved items there from both the trailer and Jennifer Beaudette's house. Jennifer Beaudette testified that after Scott Beaudette signed the townhome lease, she did not expect him to move back in with her for any reason. She did not support Scott Beaudette, and he was financially independent.

Thus, the evidence shows that Scott Beaudette did not intend to reside with Jennifer Beaudette either permanently or indefinitely. Rather, he "came and went as he pleased[.]" He moved out of Jennifer Beaudette's home years before the accident and returned only when his housing lease expired and he needed a place to stay. Further, he signed a lease with his girlfriend for a townhome in which they intended to reside together. Thus, balancing the factors relevant to determining domicile, the trial court properly concluded that Scott Beaudette did not reside with Jennifer Beaudette at the time of the accident. Scott Beaudette was therefore not entitled to PIP

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[29] *Cervantes*, 272 Mich App at 415.

benefits from Auto-Owners because he was not a resident relative of Jennifer Beaudette under MCL 500.3114(1).

D. MCL 500.3113(b)

Farmers finally argues that MCL 500.3113(b) precludes Scott Beaudette's collection of PIP benefits. That provision states:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
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> * * *
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> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

MCL 500.3101 requires an owner or registrant of a vehicle to "maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance."

Here, it is undisputed that Scott Beaudette owned the 1992 Cadillac involved in the accident and did not personally obtain insurance on the vehicle. Rather, Scott Beaudette's mother, Jennifer Beaudette, insured the vehicle through her Auto-Owners no-fault policy.

This Court addressed a similar situation in *Iqbal*, where the plaintiff was involved in an automobile accident while driving his brother's BMW that the defendant Auto Club Insurance Association of Michigan insured.[30] Although the plaintiff's brother held title to the vehicle, the plaintiff had his own set of keys to the car and used it at his will without asking permission.[31] At the time of the accident, the plaintiff lived with his sister, who owned a vehicle that the defendant Bristol West Insurance Group insured.[32] The plaintiff was injured in the accident and sought PIP benefits.[33] Because he did not hold title to a vehicle, the Assigned Claims Facility assigned his claim to the defendant Citizens Insurance Company of America.[34]

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[30] *Iqbal*, 278 Mich App at 32.

[31] *Id.* at 34.

[32] *Id.*

[33] *Id.* at 33-34.

[34] *Id.* at 32 n 1, 33.

Although the parties in *Iqbal* disputed whether the plaintiff qualified as an "owner" of the BMW because of his free use of the car, this Court determined that that issue was irrelevant to whether he was entitled to collect PIP benefits.[35] In interpreting MCL 500.3113(b), this Court assumed that the plaintiff was an owner of the vehicle, but determined that the phrase "with respect to which the security required by section 3101 . . . was not in effect," modified the preceding reference to a motor vehicle involved in an accident.[36] In other words, this Court determined that MCL 500.3113(b) requires a motor vehicle to be insured, but does not require that the vehicle's owner obtain the insurance coverage.[37] Therefore, this Court held that MCL 500.3113(b) did not preclude the plaintiff's collection of PIP benefits because the BMW was insured, which was the only requirement under the provision. "Stated differently, the security required by MCL 500.3101(1) was in effect for purposes of MCL 500.3113(b) as it related to the BMW."[38]

Applying *Iqbal*'s holding here, MCL 500.3113(b) does not preclude Scott Beaudette's collection of PIP benefits because the Cadillac was insured, and the provision does not require that Scott Beaudette be the person that obtained the coverage. Therefore, under MCL 500.3113(b) and case law interpreting that provision, Scott Beaudette is not precluded from collecting PIP benefits simply because he did not personally maintain insurance on the vehicle.

In sum, the trial court did not err in determining that Scott Beaudette was entitled to collect no-fault PIP benefits from Farmers.

III. REIMBURSEMENT TO AUTO-OWNERS

A. STANDARD OF REVIEW

Farmers contends that the trial court erroneously granted Auto-Owners's motion for partial summary disposition because there are genuine issues of material fact regarding the amount of reimbursement to which Auto-Owners is entitled. This Court reviews de novo a trial court's ruling on a motion for summary disposition.[39]

B. LEGAL STANDARDS

MCL 500.3175(1) provides, in relevant part:

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[35] *Id.* at 37-39.

[36] *Id.* at 39.

[37] *Id.* at 39-40.

[38] *Id.* at 40.

[39] *Coblentz*, 475 Mich at 567.

> An insurer to whom claims have been assigned *shall* make prompt payment of loss in accordance with this act and is *thereupon entitled to reimbursement* by the assigned claims facility for the payments and the established loss adjustment cost . . . .[40]

This Court addressed a similar situation in *Spencer v Citizens Ins Co*,[41] which involved a hit-and-run accident. The plaintiff was injured while assisting a driver whose car was stuck in the snow. After the plaintiff pushed the car backward, the driver accelerated, ran over the plaintiff, and sped away.[42] The plaintiff was not insured through a no-fault insurer at the time of the accident, and the driver and owner of the hit-and-run vehicle were unknown. The Assigned Claims Facility assigned the plaintiff's PIP claim to the defendant Citizens Insurance Company. It was thereafter discovered that the owner of the hit-and-run vehicle was insured through Allstate Insurance Company. Citizens stopped paying the plaintiff's PIP benefits on the basis that Allstate was a higher priority insurer.[43]

On appeal, this Court recognized that the plaintiff was entitled to benefits from the Assigned Claims Facility because he did not have a no-fault insurer, nor did he reside with a relative who had a no-fault insurer.[44] Moreover, although the plaintiff would have been entitled to coverage through the driver's or owner's no-fault insurer, the identities of the owner and driver were unknown.[45] This Court nevertheless held that Citizens was not entitled to stop paying benefits once it was discovered that Allstate insured the owner of the hit-and-run vehicle.[46] This Court reasoned:

> [W]e conclude that an assigned-claim insurer that subsequently ascertains a higher priority insurer cannot thereafter simply refuse to pay the assigned-claim insured party further benefits. First, absolutely no language in the assigned-claims provisions of the no-fault act specifically relieves an insurer to whom the Assigned Claims Facility has assigned a claim of its obligation to pay benefits on the basis that the assigned insurer later discovers another applicable insurer. Absent the Legislature's authorization of this particular relief, we will not simply infer its availability as a matter of logic.[47]

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[40] Emphasis added.

[41] *Spencer v Citizens Ins Co*, 239 Mich App 291, 294; 608 NW2d 113 (2000).

[42] *Id.* at 294-295.

[43] *Id.* at 295.

[44] *Id.* at 302.

[45] *Id.*

[46] *Id.* at 304-305.

[47] *Id.*

C. APPLYING THE LEGAL STANDARDS

Here, Scott Beaudette filed a claim with the Assigned Claims Facility after Auto-Owners discovered that he did not reside with Jennifer Beaudette, and, as such, was not insured through Jennifer Beaudette's Auto-Owners policy. Because no other no-fault insurance policy was applicable, Scott Beaudette's claim with the Assigned Claims Facility was proper. When the Assigned Claims Facility assigned Scott Beaudette's claims to Farmers, Farmers then became liable to promptly pay Scott Beaudette's benefits and could thereafter seek reimbursement if Auto-Owners was determined to have higher priority. Although Farmers initially denied that Scott Beaudette was entitled to PIP benefits, after this Court's decision in *Iqbal*, it became clear that Scott Beaudette was entitled to collect such benefits. Because all that remained at that point was a priority dispute between Farmers and Auto-Owners, Farmers was obligated to pay Scott Beaudette's benefits and attempt to recoup its payments thereafter if it so chose. In other words, as in *Spencer*, Farmers' belief that Auto-Owners was the higher priority insurer did not relieve it of its responsibility to pay. The plain language of MCL 500.3175(1) required Farmers to promptly make payment and seek reimbursement thereafter.

Although Farmers failed to make payments as required under MCL 500.3175(1), it contends that it must now be permitted to review the medical bills that Scott Beaudette submitted to Auto-Owners to determine whether the charges were reasonable. No statutory language supports Farmers' argument. Farmers contends that MCL 500.3107 requires an insurer to pay only reasonable expenses and that, under MCL 500.3142, payment is not due until reasonable proof of loss is provided. In paying benefits, Auto-Owners already examined and adjusted Scott Beaudette's claims, including claims that Farmers refused to pay after our decision in *Iqbal*.[48] Farmers argues that, in determining the amount that it must reimburse Auto-Owners, it has all the same rights and defenses that Auto-Owners had when it paid Scott Beaudette's claims. Farmers fails to cite any authority, however, suggesting that an insurer assigned through the Assigned Claims Facility may refuse to pay benefits, contrary to MCL 500.3175(1), and thereafter review and adjust claims already examined and paid by a different insurer because of the improper refusal.

Further, Farmers argues that its claim representative, Mary LaClair, was unable to verify Auto-Owners's payment of wage loss benefits and that Auto-Owners's payment logs contained entries for items not compensable, such as attorney fees, bill review costs, and adjustment costs. Farmers concedes, however, that the trial court did not include attorney fees as part of the judgment because those fees were not permissible. Moreover, although Farmers claimed that it was unable to verify Auto-Owners's payment of wage loss benefits, it failed to present any evidence supporting this argument. LaClair's affidavit makes no mention of wage loss benefits.

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[48] After *Iqbal* was decided, and approximately eight months after Auto-Owners ceased paying plaintiff PIP benefits, Auto-Owners voluntarily recommenced paying benefits because Farmers refused to do so.

Thus, Farmers failed to produce evidence establishing a genuine issue of material fact in this regard.[49]

The only two remaining expenses that Farmers challenges are bill review costs and adjustment costs. In her affidavit, LaClair maintains that these expenses are not eligible for reimbursement. Farmers, however, fails to cite any legal authority supporting this argument and has therefore abandoned its claim. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for a claim.[50]

IV. ATTORNEY FEES

A. STANDARD OF REVIEW

Farmers argues that the trial court erred by awarding Scott Beaudette attorney fees under MCL 500.3148. We review for clear error a trial court's findings regarding a plaintiff's claim for attorney fees under MCL 500.3148.[51] "A decision is clearly erroneous when 'the reviewing court is left with a definite and firm conviction that a mistake has been made.'"[52] We review for an abuse of discretion a trial court's award of attorney fees.[53] "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes."[54]

B. LEGAL STANDARDS

"The no-fault act provides for an award of reasonable attorney fees to a claimant if the insurer unreasonably refuses to pay [a] claim."[55] MCL 500.3148(1) provides:

> An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

As the Michigan Supreme Court recognized in *Moore*:

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[49] *Rice*, 252 Mich App at 31.

[50] *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

[51] *Ivezaj v Auto Club Ins Ass'n*, 275 Mich App 349, 352-353; 737 NW2d 807 (2007).

[52] *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008), quoting *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

[53] *Tinnin v Farmers Ins Exch*, 287 Mich App 511, 515; 791 NW2d 747 (2010).

[54] *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008).

[55] *Ross*, 481 Mich at 11.

> MCL 500.3148(1) establishes two prerequisites for the award of attorney fees. First, the benefits must be overdue, meaning "not paid within 30 days after [the] insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2). Second, in postjudgment proceedings, the trial court must find that the insurer "unreasonably refused to pay the claim or unreasonably delayed in making proper payment." MCL 500.3148(1). Therefore, assigning the words in MCL 500.3142 and MCL 500.3148 their common and ordinary meaning, "attorney fees are payable only on overdue benefits for which the insurer has unreasonably refused to pay or unreasonably delayed in paying." *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 485; 673 NW2d 739 (2003) (emphasis omitted).[56]

An insurer's refusal or delay in making a no-fault payment gives rise to a rebuttable presumption of unreasonableness.[57] The insurer can rebut the presumption by justifying its refusal or delay.[58] "A delay in making payments [or refusal to make payments] 'is not unreasonable if it is based on a legitimate question of statutory construction, constitutional law, or factual uncertainty.'"[59]

C. APPLYING THE STANDARDS

Farmers contends that its refusal to pay PIP benefits was reasonable as a matter of law because it was based on a legitimate question of statutory interpretation. Farmers argues that there was an issue regarding whether Scott Beaudette was entitled PIP benefits from any insurer because he owned the Cadillac and did not maintain insurance on it as required by MCL 500.3101(1). As previously discussed, it is irrelevant that Scott Beaudette did not personally maintain insurance on the vehicle, and it was sufficient that the vehicle was insured, regardless of who maintained the insurance.[60] Farmers' attempts to distinguish *Iqbal* from this case are unavailing. Therefore, the only question that remained after *Iqbal* was which insurer was responsible for paying benefits.

"The purpose of the no-fault act's attorney fee penalty provision is to ensure prompt payment to the insured."[61] In accordance with this purpose, "when the only question is which of

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[56] *Moore*, 482 Mich at 517 (brackets in original).

[57] *Ivezaj*, 275 Mich App at 353.

[58] *Id.*

[59] *Id.*, quoting *Attard v Citizens Ins Co of America*, 237 Mich App 311, 317; 602 NW2d 633 (1999).

[60] *Iqbal*, 478 Mich App at 39-40, 46.

[61] *Ross*, 481 Mich at 11.

two insurers will pay, it is unreasonable for an insurer to refuse payment of benefits."[62] "A dispute of priority among insurers will not excuse the delay in making timely payment."[63] Thus, after *Iqbal* established that Scott Beaudette was entitled to PIP benefits, Farmers was required to pay such benefits and could not legally refuse payment based on its theory that Auto-Owners was first in priority.

Farmers also argues that the trial court's attorney fee award must be reversed because there was no finding that PIP benefits were overdue. "Generally, 'benefits are payable as loss accrues.'"[64] Loss "accrues" when the "allowable expense, work loss or survivors' loss is incurred."[65] "[B]enefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained."[66] Therefore, based on the statutory language, there need not be a "finding" that benefits were overdue in order to award attorney fees under MCL 500.3148.

Auto-Owners suspended Scott Beaudette's PIP benefits on October 4, 2007, and Scott Beaudette filed his complaint on October 9, 2007. Contrary to MCL 500.3175(1), Farmers refused to pay benefits after Scott Beaudette's claims were assigned to it through the Assigned Claims Facility. Farmers' refusal continued after this Court decided *Iqbal* on February 14, 2008, and after the trial court entered its April 14, 2009, order granting summary disposition for Auto-Owners and determining that Auto-Owners was not responsible for Scott Beaudette's benefits. Auto-Owners's payment log shows that, because of Farmers' refusal to pay, Auto-Owners resumed paying Scott Beaudette's benefits eight months after terminating them. Thus, the evidence shows that benefits were overdue because Farmers refused to pay them within 30 days after Scott Beaudette submitted his claims. As such, the trial court did not abuse its discretion by granting Scott Beaudette's motion for attorney fees under MCL 500.3148.

We affirm.

/s/ Kurtis T. Wilder
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

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[62] *Regents of Univ of Mich v State Farm Mut Ins Co*, 250 Mich App 719, 737; 650 NW2d 129 (2002).

[63] *Bloemsma v Auto Club Ins Ass'n*, 174 Mich App 692, 697; 436 NW2d 442 (1989).

[64] *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 484; 673 NW2d 739 (2003), quoting MCL 500.3142(2).

[65] MCL 500.3110(4).

[66] MCL 500.3142(2).