

STATE OF MICHIGAN
COURT OF APPEALS

BRENT HARRIS,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant/Third-Party Plaintiff-
Appellee,

and

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Third-Party Defendant/Appellee.

UNPUBLISHED
December 27, 2011

No. 300256
Oakland Circuit Court
LC No. 2009-102219-NF

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order denying plaintiff's motion for summary disposition and granting summary disposition in favor of Blue Cross Blue Shield of Michigan (BCBSM) with respect to plaintiff's claims and the third-party claims of defendant Auto Club Insurance Association (ACIA).¹ The court also granted ACIA's motion for summary disposition with respect to plaintiff's claims against it, pursuant to MCR 2.116(I)(2). On appeal plaintiff only challenges the trial court's order dismissing his claims against Blue Cross. We reverse the trial court's order insofar that it granted summary disposition to BCBSM, and affirm the denial of plaintiff's motion for summary disposition and the dismissal of ACIA, and remand for further proceedings.²

¹ ACIA did not file an appeal in this case, and so does not challenge the trial court's order dismissing its third-party claims against Blue Cross.

² From the record presented it is undisputed that ACIA has paid all outstanding medical bills, and continues to do so. Plaintiff's counsel appeared to concede as much at oral argument before this Court.

The pertinent facts are not disputed. On July 1, 2008, plaintiff was injured when the motorcycle he was riding was hit by a vehicle insured by ACIA. Plaintiff also had a health insurance contract (also known as a “certificate”) with BCBSM. ACIA acknowledges that its policy is an uncoordinated policy that provides full coverage for plaintiff’s medical expenses.³ ACIA has paid those expenses. The parties dispute whether the BCBSM certificate coordinates with the no-fault policy.

The trial court determined that the BCBSM certificate coordinated benefits with the no-fault policy and, therefore, ACIA was liable for payment of plaintiff’s medical expenses. Accordingly, the court granted summary disposition to BCBSM with respect to both plaintiff’s and ACIA’s claims against BCBSM and denied plaintiff’s motion for summary disposition. The court also granted summary disposition to ACIA on plaintiff’s claims against it.

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court also reviews de novo the proper interpretation of a contract. *Flint v Chrisdom Props, Ltd*, 283 Mich App 494, 498-499; 770 NW2d 888 (2009).

An insurance policy is treated like other contracts. *Smith v Physicians Health Plan, Inc*, 444 Mich 743, 759; 514 NW2d 150 (1994). If contractual language is clear and unambiguous, its meaning is a question of law, and courts must interpret and enforce the contract as written. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 111; 595 NW2d 832 (1999). Although BCBSM contends that plaintiff is seeking a “windfall” by obtaining duplicative payment of his medical expenses from two sources, the availability of double recovery for a person entitled to benefits from two contracts depends on the specific contracts. Both *Shanafelt v Allstate Ins Co*, 217 Mich App 625; 552 NW2d 671 (1996), and *Bombalski v Auto Club Ins Ass’n*, 247 Mich App 536; 637 NW2d 251 (2001), establish that recovery of benefits for medical expenses from two different policies is available and depends on the particular policies. The Supreme Court has recognized this possibility as well, stating, “[i]t is when both the no-fault automobile insurance and the health insurance are uncoordinated policies that multiple recovery is possible for the insured.” *Smith*, 444 Mich at 752.

The trial court was persuaded by BCBSM’s argument that it was not liable to pay plaintiff’s medical expenses because of certain provisions in its policy. Two of these provisions are similar in referring to benefits paid by other plans. The contract states:

**PHYSICIAN AND OTHER PROFESSIONAL SERVICES THAT
ARE NOT PAYABLE**

³ An “uncoordinated” no-fault policy means that “the no-fault automobile insurance would pay benefits regardless of whatever other insurance the insured may have.” *Smith v Physicians Health Plan, Inc*, 444 Mich 743, 747; 514 NW2d 150 (1994).

The following services are not payable:

- Services covered under any other Blue Cross or Blue Shield contract or under any other health care benefits plan.

The contract also states:

Coordination of Benefits

We will coordinate the benefits payable under this certificate pursuant to the Coordination of Benefits Act, Public Act No. 64 of 1984 (starting at MCLA 550.251). To the extent that the services covered under this certificate are also covered and payable under another group health care plan, we will combine our payment with that of the other plan to pay the maximum amount we would routinely pay for the covered services.

We conclude that BCBSM's reliance on these provisions is misplaced. We note that the Coordination of Benefits Act does not include a no-fault insurer among the defined entities with which the health care providers will coordinate or a mechanism for coordination. Although the benefits available under no-fault policies include payment of medical expenses, a no-fault policy is not a "group health care plan," *Haefele v Meijer, Inc*, 165 Mich App 485, 498; 418 NW2d 900 (1987), remanded on other grounds⁴ 431 Mich 853 (1988), or a "health care benefits plan." BCBSM relies on *Primax Recoveries v State Farm Mut*, 147 F Supp 2d 775 (ED Mich, 2001), but that decision is not persuasive because the policy at issue there included a specific provision indicating that the coverage was coordinated with no-fault insurance coverage.

A third provision on which BCBSM here relies states:

Care and Services That Are Not Payable

We do not pay for the following care and services:

- Those 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 *Shanafelt*, 217 Mich App at 637-638, and *Bombalski*, 247 Mich App at 542-543, this Court examined the meaning of the term "incurred" in MCL 500.3107(1) and considered the no-fault insurer's contention that the plaintiff did not "incur[]" expenses that were paid by the health care insurer. In *Shanafelt*, this Court explained:

⁴ The Supreme Court remanded the case to this Court to consider issues concerning the applicability of the Employee Retirement Income Security Act (ERISA), 29 USC 1144. The parties do not contend that ERISA has any bearing on the issues in the present case.

The primary definition of the word ‘incur’ is ‘to become liable for.’ *Random House Webster’s College Dictionary* (1995). Obviously, plaintiff became liable for her medical expenses when she accepted medical treatment. *The fact that plaintiff had contracted with a health insurance company to compensate her for her medical expenses, or to pay directly the health care provider on her behalf, does not alter the fact that she was obligated to pay those expenses.* Therefore, one may not reasonably maintain that plaintiff did not incur expenses. [*Shanafelt*, 217 Mich App at 638 (Emphasis added).]

In *Bombalski*, this Court further observed that “liable” is defined as “[r]esponsible or answerable in law; legally obligated.” *Bombalski*, 247 Mich App at 543, quoting Black’s Law Dictionary (7th ed). This Court explained that when providers accept a discounted rate as full payment because of a contractual agreement with the health care insurer, the insured has “incurred” only the discounted amount.⁵ See also *Williams v AAA Mich*, 250 Mich App 249, 268-269; 646 NW2d 476 (2002) (the plaintiff did not incur the full amounts billed, but only the lesser amount that the provider accepted as full payment from BCBSM).

BCBSM argues that *Shanafelt* and *Bombalski* are inapposite because they address when charges are “incurred” for purposes of the no-fault act, whereas the present case depends on the language of the BCBSM policy. However, this distinction, while factually accurate, is not legally significant because the Court defined “incurred” as being synonymous with legally obligated to pay. The pertinent phrase in this case is, “We do not pay for . . . care and services . . . for which you legally do not have to pay” The rationale of *Shanafelt* and *Bombalski*, i.e., that a party receiving services has a legal obligation to pay for them when rendered and incurs the expense even if the expense is paid by an insurer, is applicable here, although the phrase and context are different. When plaintiff received the care and services, he legally had to pay for them. The care and services that are not payable provision refers to health care products and services for which the plaintiff never incurred an obligation to pay. An example of such a situation is the one where the employer requires and pays for a medical product and service for its employee like a preventative medical screening. As this Court observed in *Shanafelt*, 217 Mich App at 638, “[t]he fact that plaintiff had contracted with a health insurance company to compensate [him] for [his] medical expenses, or to pay directly the health care provider on [his] behalf, does not alter the fact that [he] was obligated to pay those expenses.” BCBSM’s contention that plaintiff was not obligated to pay his medical expenses because ACIA paid them on his behalf is incompatible with *Shanafelt*.

The final provision on which BCBSM relies concerns reimbursement and states:

Other Coverage

⁵ Cf. *Duckworth v Continental Nat’l Indemnity Co*, 268 Mich App 129, 134; 706 NW2d 215 (2005) (determining that the plaintiff did not incur medical expenses that were fully paid by Ontario Health Insurance Plan because of the unique features of the plan that distinguished it from ordinary private health insurance).

In certain cases, we may have paid for health care services for you or your covered dependents that should have been paid by another person, insurance company or organization. In these cases:

- You grant us a lien or right of reimbursement on any money or other valuable consideration you or your covered dependents or representatives receive through a judgment, settlement, or otherwise. . . .

* * *

- You must do whatever is necessary to help us recover the money we paid to treat the injury that caused you to claim damages for personal injury.

* * *

- You agree to cooperate with us in our efforts to recover money we paid on behalf of you or your dependents.

BCBSM argues that “even if BCBSM had paid all of [plaintiff’s] medical expenses, BCBSM would have been entitled to reimbursement when [ACIA] paid [plaintiff’s] benefits, and [plaintiff] would have been required to cooperate with BCBSM in seeking reimbursement.” The provision addresses the insured’s obligation to cooperate with BCBSM in recovering payments from another source. It does purport to define when BCBSM is liable or not liable for making the payments in the first instance. But, BCBSM’s interpretation is far too broad. BCBSM ignores its own obligation to pay and by wrongfully denying payment at the inception hopes to create an escape from its obligations. The instant clause, “that should have been paid by another person, insurance company or organization”, is directed at those kinds of tort actions wherein the plaintiff may recover both economic and non-economic damages. This is so because you cannot separate this clause from the instructions that follow. The contract provides,

In these cases:

- You grant us a lien or right of reimbursement on any money or other valuable consideration you or your covered dependents or representatives receive through a judgment, settlement, or otherwise. . . .

* * *

- You must do whatever is necessary to help us recover the money we paid to treat the injury that caused you to claim damages for personal injury.

The recovery to which BCBSM refers is a recovery from a judgment or settlement for a claim for personal injury damages. The plaintiff’s benefits from ACIA do not arise by virtue of a claim for personal injuries resulting in a judgment or settlement for damages for personal injury.

For the foregoing reasons, we conclude that the trial court erred in determining that the BCBSM certificate coordinated with the no-fault policy. Accordingly, the trial court's grant of summary disposition to BCBSM, which was premised on its flawed interpretation of the BCBSM policy, is reversed. However, we affirm the trial court's denial of plaintiff's motion for summary disposition because a determination that the BCBSM contract does not coordinate with no-fault insurance does not resolve the claims and reimbursements between the parties.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio