

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN INSURANCE COMPANY,

Plaintiff-Appellee,

v

NATIONAL LIABILITY & FIRE INSURANCE,

Defendant-Appellant.

UNPUBLISHED
February 14, 2012

No. 301980
Oakland Circuit Court
LC No. 09-104725-NF

Before: SERVITTO, P.J., and TALBOT and K. F. KELLY, JJ.

PER CURIAM.

National Liability & Fire Insurance (“National”) appeals the grant of partial summary disposition in favor of Michigan Insurance Company (“Michigan”) and the denial of summary disposition to National, in this dispute regarding insurer priority for the payment of Michigan No-Fault Personal Protection Insurance Benefits (“PIP”). We reverse and remand.

The underlying insurance claim involved a pedestrian, Lawrence Stubbe, being struck and injured by a motor vehicle insured by Michigan. Michigan paid PIP benefits for Stubbe’s injuries in excess of \$700,000. At the time of the accident, Stubbe did not personally own a vehicle and was residing at Quality AFC Homes, Inc. (“Quality”). Quality is a home licensed by the state of Michigan to provide adult foster care. At the time of Stubbe’s injury, Quality and the vehicle it owned were insured by National.

Michigan sought declaratory relief in circuit court alleging National was in higher priority to pay Stubbe’s PIP benefits. Specifically, Michigan contended that Stubbe was a “ward” of Quality and, therefore, a “family member” within the meaning of National’s automobile policy. National contested summary disposition arguing that, as a corporation, Quality was incapable of having a ward or any type of family member. National further asserted that Stubbe, based on his level of functioning, was not a “ward” of Quality. The trial court granted partial summary disposition in favor of Michigan and denied summary disposition to National based on its determination that Stubbe qualified as a ward of Quality, which, despite its corporate status, was capable of having a ward. Having found National to be higher in priority, the trial court ordered National to reimburse Michigan for all PIP benefits paid.

While National raises several issues on appeal, our initial and primary consideration is whether the trial court properly granted partial summary disposition to Michigan based on its factual determination that Stubbe was a ward of Quality for the purpose of determining the

priority of insurer for payment of PIP benefits. “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.”¹

The “[d]istribution of loss among personal protection insurers” is governed by statute, which provides, in relevant part:

(1) Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) Insurers of owners or registrants of motor vehicles involved in the accident.

(b) Insurers of operators of motor vehicles involved in the accident.²

Those persons “entitled to personal protection or personal injury benefits” is defined by statute, in pertinent part, as “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.”³ Thus, the question becomes which insurer has the responsibility or priority for payment of PIP benefits.

Of significance, is the wording of National’s insurance policy with Quality. In this policy, an “insured” refers to “[y]ou or any family member.” According to the policy “you” refers to Quality as the “Named Insured.” The term “family member” is further defined within the policy as “a person related to you by blood, marriage, or adoption who is a resident of your household, including a *ward* or foster child.”⁴ In this matter, the parties primarily dispute whether, as determined by the trial court, Stubbe had the status of “ward” for purposes of this insurance policy and the subsequent assignment of priority of insurer for payment as it is clear that Stubbe was not related by to Quality by “blood, marriage, or adoption” and was not a “foster child.”

We note that the relevant statutory provision provides for a PIP policy to be applicable to “the person named in the policy, the person’s spouse, and a relative of either domiciled in the same household.” This language is not determinative in this instance, as nothing precludes an insurer, such as National, from extending PIP benefits to a broader range of individuals.⁵ Using

¹ *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

² MCL 500.3115.

³ MCL 500.3114(1).

⁴ Emphasis added.

⁵ *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 418; 668 NW2d 199 (2003) (“[I]f a clause in an insurance policy is clear and does not contravene public policy, it must be enforced as written.”)

the language of National's policy with Quality, coverage is available based on the policy's definition of a family member as "including a ward." The operative question is whether Stubbe qualifies for this status.

The parties did contest Stubbe's status as a "ward" of Quality. Michigan asserted Stubbe was a ward of Quality because he had various medical conditions and lived in an adult foster care home that provided a certain level of care and supervision. National argued that Stubbe was not a ward of Quality because he required very little care or attention and was highly independent in his daily functioning and did not have a conservator or guardian appointed. Based on the evidence presented, the trial court made the factual determination that Stubbe was a ward of Quality "because they provided him with care, meals, transportation, objectives and rules, and disciplined him when he violated those rules."

We acknowledge, as an initial premise, that the common or accepted definition of the term "ward" is an individual "under the protection or tutelage of a person,"⁶ and that, based on prior rulings by this Court, that a corporation is capable of having a ward.⁷ The problem that arises is the factual determination of whether, in the circumstances of this case, Stubbe as a resident of the group home had the status of a ward. To make such a determination it is "necessary to examine the factual context of the case."⁸ The initial inquiry or focus is on the type and extent of control that is exercised by the foster care home over an individual resident.⁹ In this case, whether Stubbe had the status of a ward with Quality comprised a genuine issue of material fact. Because a trial court is precluded from determining facts or assessing credibility on motions for summary disposition,¹⁰ there existed a genuine issue of material fact making the grant of summary disposition improper. "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."¹¹

Based on our determination that the grant of summary disposition was improper, we need not address the additional issues raised on appeal.

⁶ *Hartman v Ins Co of North America*, 106 Mich App 731, 739; 308 NW2d 625 (1981), quoting *Webster's Third New Int'l Dictionary* (1965).

⁷ *United States Fidelity & Guaranty Co v Citizens Ins Co*, 241 Mich App 83, 88-89; 613 NW2d 740 (2000).

⁸ *Hartman*, 106 Mich App at 739.

⁹ *Id.*; *United States Fidelity & Guaranty Co*, 241 Mich App at 88-89.

¹⁰ *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

¹¹ *West*, 469 Mich at 183.

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

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Kirsten Frank Kelly