STATE OF MICHIGAN

COURT OF APPEALS

WARREN CHIROPRACTIC & REHAB CLINIC, P.C.,	UNPUBLISHED November 8, 2012
Plaintiff-Appellant,	
v	No. 303919 Wayne Circuit Court
HOME-OWNERS INSURANCE COMPANY,	LC No. 10-005224-NF
Defendant-Appellee.	

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. On appeal, plaintiff argues that it is entitled to no-fault benefits for chiropractic services notwithstanding amendments made to the no-fault act effective January 5, 2010. We affirm in part, reverse in part, and remand this case for further proceedings.

Plaintiff is a provider of chiropractic services and is seeking, under the no-fault insurance act, MCL 500.3101 *et seq*., payment for services provided to defendant's insured. Plaintiff first argues that the trial court improperly retroactively applied MCL 500.3107b(b), as amended on January 5, 2010, to prohibit reimbursement for chiropractic services provided before January 5, 2010. Plaintiff never raised the issue of retroactive application of the statute with the trial court. This issue is unpreserved. *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

This Court need not review an issue that was not addressed by the trial court. *Heydon v MediaOne of Southeast Mich, Inc*, 275 Mich App 267, 278; 739 NW2d 373 (2007). "Nevertheless, this Court may review issues not raised below if a miscarriage of justice will result from a failure to pass on them, or if the question is one of law and all the facts necessary for its resolution have been presented, or where necessary for a proper determination of the case." *Id*. (internal citations and quotation marks omitted). Plaintiff's issue is a pure question of law for which all the facts necessary for its resolution have been presented, and we elect to review it. This Court reviews issues of statutory interpretation de novo. *Boyle v General Motors Corp*, 468 Mich 226, 229; 661 NW2d 557 (2003).

The parties and the trial court agreed that before the amendment of MCL 500.3107b, plaintiff's charges would have been governed by *Hofmann v Auto Club Ins Ass'n*, 211 Mich App

55; 535 NW2d 529 (1995), which looked to the statutory definition of chiropractic service found in the public health code at MCL 333.16401. MCL 500.3107b(b), as amended on January 5, 2010, provides: "Reimbursement or coverage for expenses within personal protection insurance coverage under section 3107 is not required for . . . [a] practice of chiropractic service, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009." MCL 333.16401 was amended with an expanded definition of chiropractic service on January 5, 2010. The trial court concluded that the amended version of MCL 500.3107b(b), including the earlier version of MCL 333.16401, applied to all of plaintiff's claim and dismissed the entire claim, including the portion pertaining to charges occurring before January 5, 2010.

A statutory amendment ordinarily has prospective application absent a clear contrary intention by the Legislature. *Brewer v A D Transp Express, Inc*, 486 Mich 50, 55-56; 782 NW2d 475 (2010). Defendant argues that there is an exception when the amendment is clarifying an "uncertainty" and resolves a controversy surrounding its meaning. Defendant contends that there has been a longstanding controversy surrounding the question of which chiropractic services should be covered by the no-fault act.

We note, however, that the exception to which defendant refers contemplates remedial statutory amendments that "neither create new rights nor destroy, enlarge, or diminish existing rights . . . ." *Id*. at 57 (internal citation and quotation marks omitted). In this case, the amendment changed the definition of which chiropractic services may be covered by the no-fault act. This is not a mere remedy of the statutory language, but a substantive change of law.

Moreover, defendant's contention of a controversy describes disagreements regarding the policy of chiropractic coverage under the no-fault act. Defendant itself notes that a remedial statute, for purposes of retroactivity, seeks to resolve a controversy "regarding [the] meaning" of the statute, not regarding the policy conclusions underlying the statute. We conclude that there is no basis for concluding that the statute in question should apply retroactively; defendant misapprehends the "remedial or procedural" exception to the general rule against retroactivity of statutory amendments.

Thus, the trial court erred when it dismissed plaintiff's complaint in its entirety on the basis that MCL 500.3107b(b), as amended, applies. Defendant argues on appeal, however, that the trial court nevertheless reached the right result because the treatments provided by plaintiff were not reimbursable under *Hofmann*. Defendant acknowledges that the trial court did not reach this question. This question involves evidentiary analyses, and the trial court must resolve it on remand.

Plaintiff next argues that, contrary to the trial court's conclusion, the amended version of MCL 500.3107b(b) must be read to incorporate the amended version of MCL 333.16401. This issue is also unpreserved but we elect to review it because it is a question of law for which all the necessary facts have been presented. *Heydon*, 275 Mich App at 278.

This Court's primary goal when considering statutory language is to give effect to the intent of the Legislature. *Alvan Motor Freight, Inc v Dep't of Treasury*, 281 Mich App 35, 39;

761 NW2d 269 (2008). If the statutory language is unambiguous, no judicial construction is required and the plain meaning of the language must be applied. *Id*. Further,

> the terms of statutory provisions having a common purpose should be read *in pari materia*. The object of this rule is to give effect to the legislative purpose as found in statutes on a particular subject. Conflicting provisions of a statute must be read together to produce an harmonious whole and to reconcile any inconsistencies wherever possible. [*World Book v Revenue Div*, 459 Mich 403, 416; 590 NW2d 293 (1999) (internal citations omitted).]

As noted, MCL 500.3107b(b) provides: "Reimbursement or coverage for expenses within personal protection insurance coverage under section 3107 is not required for . . . [a] practice of chiropractic service, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009." The current version of MCL 333.16401, as amended on January 5, 2010, provides, in pertinent part:

> (e) "Practice of chiropractic" means that discipline within the healing arts that deals with the human nervous system and the musculoskeletal system and their interrelationship with other body systems. Practice of chiropractic includes the following:
>
> > (*i*) The diagnosis of human conditions and disorders of the human musculoskeletal and nervous systems as they relate to subluxations, misalignments, and joint dysfunctions. These diagnoses shall be for the purpose of detecting and correcting those conditions and disorders or offering advice to seek treatment from other health professionals in order to restore and maintain health.
> >
> > (*ii*) The evaluation of conditions or symptoms related to subluxations, misalignments, and joint dysfunction through any of the following:
> >
> > > (A) Physical examination.
> > >
> > > (B) The taking and reviewing of patient health information.
> > >
> > > (C) The performance, ordering, or use of tests. The performance, ordering, or use of tests in the practice of chiropractic is regulated by rules promulgated under section 16423.
> > >
> > > (D) The performance, ordering, or use of x-ray.
> > >
> > > (E) The performance, ordering, or use of tests that were allowed under section 16423 as of December 1, 2009.
> >
> > (*iii*) The chiropractic adjustment of subluxations, misalignments, and joint dysfunction and the treatment of related bones and tissues for the establishment of neural integrity and structural stability.

> (*iv*) The use of physical measures, analytical instruments, nutritional advice, rehabilitative exercise, and adjustment apparatus regulated by rules promulgated under section 16423. [MCL 333.16401(1).]

The current version of the statute also sets forth numerous actions that are not to be considered "[t]he practice of chiropractic." MCL 333.16401(2).

On January 1, 2009, MCL 333.16401 read, in pertinent part:

> (b) "Practice of chiropractic" means that discipline within the healing arts which deals with the human nervous system and its relationship to the spinal column and its interrelationship with other body systems. Practice of chiropractic includes the following:
>
> > (*i*) Diagnosis, including spinal analysis, to determine the existence of spinal subluxations or misalignments that produce nerve interference, indicating the necessity for chiropractic care.
> >
> > (*ii*) A chiropractic adjustment of spinal subluxations or misalignments and related bones and tissues for the establishment of neural integrity utilizing the inherent recuperative powers of the body for restoration and maintenance of health.
> >
> > (*iii*) The use of analytical instruments, nutritional advice, rehabilitative exercise and adjustment apparatus regulated by rules promulgated by the board pursuant to section 16423, and the use of x-ray machines in the examination of patients for the purpose of locating spinal subluxations or misaligned vertebrae of the human spine. The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, or the dispensing or prescribing of drugs or medicine.

MCL 500.3107b(b) is part of the no-fault act and governs coverage of chiropractic services. MCL 333.16401 is part of the public health code and defines which services a licensed chiropractor may and may not provide. Both statutes were amended as part of a larger legislative effort, effective January 5, 2010. Plaintiff argues that it is particularly significant that MCL 500.3107b(b) expressly refers to the text of MCL 333.16401 as part of its definition of covered services.

However, we observe that MCL 500.3107b(b) refers to the text of MCL 333.16401 *as that statute existed* on January 1, 2009. The text of MCL 500.3107b(b) is plain and must be enforced as written. *Alvan Motor Freight*, 281 Mich App at 39. The Legislature clearly

intended for reimbursement of chiropractic services to be limited by the definition of chiropractic practice as it existed on January 1, 2009.[1]

Plaintiff also argues that the January 1, 2009, version of MCL 333.16401 no longer exists because it has been superseded entirely by the amended version. However, as noted above, the reference in MCL 500.3107b(b) is to the text of MCL 333.16401 at a moment in time. Plaintiff's argument regarding the present meaning of MCL 333.16401 is unavailing. The trial court did not err in its reading of MCL 500.3107b(b).

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

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter
/s/ Christopher M. Murray

[1] As defendant points out in its brief, this scheme enacted by the Legislature may have been a compromise reached after a longstanding dispute concerning the proper scope of chiropractic.