# STATE OF MICHIGAN

# COURT OF APPEALS

In re Conservatorship of DEANNA THERESA CISNEROS.

MARK A. FULLMER, Successor Conservator of DEANNA THERESA CISNEROS, a Protected Person,

Petitioner-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Respondent-Appellant.

UNPUBLISHED
March 21, 2013

No. 298922
St. Clair Probate Court
LC No. 07-110072-CA

ON REMAND

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

PER CURIAM.

This case is before this Court on remand from our Supreme Court for further proceedings in accordance with *Johnson v Recca*, 492 Mich 169; 821 NW2d 520 (2012), and *Douglas v Allstate Ins Co*, 492 Mich 241; 821 NW2d 472 (2012). Upon review of *Johnson* and *Douglas*, we now reverse the trial court's determination that the conservator's expenses at issue were allowable expenses for purposes of claiming coverage under MCL 500.3107(1)(a), and remand for further proceedings.

## I. BASIC FACTS AND PROCEDURAL HISTORY

On November 8, 2000, Deanna Theresa Cisneros suffered significant injuries in an automobile accident and a conservatorship was opened on her behalf. The initial conservator was removed by the probate court and petitioner, Mark A. Fullmer, was appointed as successor conservator. In that capacity, petitioner defended Cisneros in real estate and indebtedness disputes, and also represented Cisneros in an action to recover no-fault insurance benefits. The probate court granted petitioner's reimbursement request in the amount of $11,274 for these

efforts on Cisneros' behalf, finding the fees were qualified allowable expenses under § 500.3107(1)(a) of Michigan's No-Fault Insurance Act, MCL 500.3101 *et seq*. Respondent timely appealed.

In our prior opinion and relying on *In re Carroll*, 292 Mich App 395; 807 NW2d 70 (2011)[1], we affirmed on the grounds that "because the conservatorship was necessary to care for Cisneros as a result of bodily injuries she suffered in an automobile accident and because the reasonable expenses incurred by petitioner in managing Cisneros's business and legal affairs would not have been necessary but for the accident, those expenses were 'allowable expenses' under MCL 500.3107(1)(a)." *In re Cisneros*, unpublished opinion per curiam of the Court of Appeals, issued September 27, 2011 (Docket No. 298922) unpub op at 4. Thus, we rejected respondent's argument that petitioner's claim was one for replacement costs, as opposed to allowable expenses. *Id.*

Respondent sought leave to appeal from the Supreme Court. The latter held the application in abeyance pending its decisions in *Johnson* and *Douglas*. *In re Cisneros*, ___ Mich ___; 810 NW2d 564 (Docket No. 144316, issued April 18, 2012). *Johnson* and *Douglas* were decided on July 30, 2012, after which the Court returned to the instant case, and, in lieu of granting leave to appeal, vacated this Court's judgment and remanded the case to this Court for reconsideration in light of those cases. *In re Cisneros*, 493 Mich 899; 822 NW2d 791 (2012).

## II. STANDARD OF REVIEW

At issue in this case is whether or not expenses incurred by a conservator in the handling of a protected person's purely economic affairs qualify as "allowable expenses" under MCL 500.3107(1)(a). "Whether a cost constitutes an allowable expense under MCL 500.3107(1)(a) is a question of statutory construction, subject to review de novo." *Hoover v Michigan Mut Ins Co*, 281 Mich App 617, 622; 761 NW2d 801 (2008).

## III. ANALYSIS

MCL 500.3107(1)(a) provides the following with respect to payment of personal protection insurance benefits for "allowable expenses":

> (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonable necessary products, services and accommodations for an injured persons care, recovery, or rehabilitation. . . .

[1] Similarly to the instant case, the Supreme Court subsequently vacated this Court's decision in *In re Carroll* and remanded the case for reconsideration in light of *Johnson* and *Douglas*. *In re Carroll*, 493 Mich 899; 822 NW2d 790 (2012).

In *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005), the Michigan Supreme Court provided further explanation as to the meanings of "care," "recovery," and "rehabilitation." Under *Griffith*, "expenses for 'recovery' or 'rehabilitation' are costs expended in order to bring an insured to a condition of health or ability sufficient to resume his preinjury life." *Griffith*, 472 Mich at 535. "Care" is defined as "expenses for those products, services, or accommodations whose provision is necessitated by the injury sustained in the motor vehicle accident." *Id.* As mentioned in *Griffith*,

> it is important to note that the statute does not require compensation for any item that is reasonably necessary to a person's care in general. Instead, the statute specifically limits compensation to charges for products or services that are reasonably necessary "for an *injured person's* care, recovery, or rehabilitation." (Emphasis added.) This context suggests that "care" must be related to the insured's injuries. [*Id.* at 534.]

In *Johnson*, our Supreme Court observed that insurers' liabilities for personal protection insurance (PIP) benefits in connection with certain expenses and losses "are payable for four general categories of expenses and losses: survivor's loss, allowable expenses, work loss, and replacement services." *Johnson*, 492 Mich at 173. Subject to certain limitations, "allowable expenses" consist of "'all reasonable charges incurred for reasonably necessary products, services[,] and accommodations for an injured person's care, recovery, or rehabilitation.'" *Id.* at 174, quoting MCL 500.3107(1)(a). On the other hand, covered "replacement services" are

> "'[e]xpenses not exceeding $20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent.'" *Johnson*, 492 Mich at 174, quoting MCL 500.3107(1)(c).

Instructive is that, among the exceptions to the no-fault act's general abolition of tort liability in connection with motor vehicle accidents, MCL 500.3135(3)(c) specifies damages for allowable expenses, work loss, and survivor's loss, but makes no mention of damages for replacement services. Accordingly, "in a third-party tort action, damages for replacement services are not recoverable pursuant to MCL 500.3135(3)(c)[.]" *Johnson*, 492 Mich at 175-176. The Supreme Court has, after examination, identified no provision of the no-fault act that places replacement services as a subset of allowable expenses for purposes of a third-party tort action. *Id.* at 182-184. It is thus important to distinguish "allowable expenses" from "replacement expenses." *Id.* at 179-184. "Services that were required both before and after the injury, but after the injury can no longer be provided by the injured person himself or herself *because* of the injury, are 'replacement services,' not 'allowable expenses.'" *Id.* at 180 (emphasis in the original).

In *Douglas*, our Supreme Court provided further guidance for present purposes. "'[A]llowable expenses' must be '*for* an injured person's care, recovery, or rehabilitation." *Douglas*, 492 Mich at 247 (adding emphasis and quoting MCL 500.3107(1)[a]). Allowable expenses thus do not include those relating to ordinary household tasks attendant to matters unrelated to the injury. *Douglas*, 492 Mich at 247.

*Johnson* and *Douglas* thus advise that a no-fault insurer's obligation to provide PIP benefits for allowable expenses under MCL 500.3107(1)(a) should not be extended to cover replacement expenses generally, but that the insurer's duty to cover replacement expenses is limited to $20 per day for three years after the accident, as set forth in MCL 500.3107(1)(c).

The conservator's activities at issue here are replacement costs, not allowable expenses. The services for which petitioner sought compensation—promoting Cisneros's interests in connection with real estate disputes, debt disputes, and no-fault insurance benefits—were of a sort that Cisneros would have provided for herself "but for" the limitations that resulted from her injuries. They were not services directed at Cisneros's care, recovery, or rehabilitation as explained by *Johnson* and *Douglas*.

In light of the Supreme Court's clarification of the applicable law in *Johnson* and *Douglas*, we reverse the trial court's judgment awarding PIP benefits under MCL 500.3107(1)(a) covering petitioner's assisting Cisneros with her financial affairs and remand for further proceedings. Fees for such services remain recoverable as replacement expenses, up to $20 a day for three years, under 500.3107(1)(c). The recalculation of coverage owed, taking the latter limitations into account, for these replacement expenses is for the parties and trial court to resolve on remand.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly