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STATE OF MICHIGAN

COURT OF APPEALS

IDA CANNON,

Plaintiff-Appellee,

v

FARM BUREAU INSURANCE COMPANY,

Defendant-Appellant,

and

ALYSIA ANN SANDERS,

Defendant.

UNPUBLISHED
February 21, 2019

No. 342173
Oakland Circuit Court
LC No. 2016-155879-NF

Before: GLEICHER, P.J., and K. F. KELLY and LETICA, JJ.

PER CURIAM.

Farm Bureau Insurance Company discovered that Ida Cannon's caregivers filed fraudulent claims for attendant care, case management, and replacement services and stopped paying her first-party no-fault benefits. Cannon sued Farm Bureau. The circuit court summarily dismissed Cannon's claim for additional attendant care, case management, and replacement services. However, the court denied Farm Bureau's motion to dismiss Cannon's claims in their entirety.

The circuit court correctly determined that Cannon was not entitled to reimbursement for fraudulent claims for attendant care, case management, and replacement services. As Cannon was not the named insured and there was no evidence presented that *she* committed any fraud, the court correctly determined that the insurance policy's fraud exclusion provision did not void the entire contract; the insurer could not avoid its statutory duty to pay personal protection insurance (PIP) benefits for wage-loss and medical claims (absent evidence of fraud directly relating to those claims). We affirm those rulings in the circuit court's order.

Cannon also sought underinsured (UIM) and uninsured (UM) motorist coverage under the policy. These benefits were solely contractual and the caregivers' indisputable fraud triggered the policy's fraud-exclusion provision. Accordingly, the circuit court erred in denying Farm Bureau's motion to summarily dismiss Cannon's claims for UIM and UM benefits, and we reverse that portion of the court's order.

Farm Bureau presented a valid claim for attorney fees under MCL 500.3148, but the circuit court rejected the request out of hand. We vacate that portion of the court's order and remand for further consideration.

I. BACKGROUND

Cannon was injured in an automobile accident on May 2, 2016, while operating a vehicle owned by Ivy Harp. Because Cannon did not own a vehicle, and was not insured under any family member's no-fault policy, she submitted a claim for PIP benefits to Farm Bureau, the insurer of Harp's vehicle. Cannon was hospitalized from May 2 to May 13. She allegedly sustained injuries to her neck, back, and limbs, and a traumatic brain injury that severely impaired her memory and caused her to suffer nearly constant headaches and migraines. In her application for benefits, Cannon denied receiving any Social Security disability or retirement benefits. She also claimed employment at the time of the accident as an event coordinator for Elite & Fabulous Events, for which she received weekly compensation of $1,500.

Harp is not related to Cannon, but the women referred to each other as sisters throughout their dealings with Farm Bureau. After Cannon's discharge from the hospital, Harp submitted claim forms requesting reimbursement for attendant care services provided to Cannon. The forms indicated that Cannon received 24 hours of attendant care daily, usually 15 hours by Harp, and nine hours by Cannon's daughter, Blakely Williams, or Harp's daughter, Dianna Lewis. Harp's son, Xavier Burns, submitted reimbursement requests for replacement services. Lewis submitted reimbursement requests for case management services, which overlapped with her separate requests for attendant care reimbursement. Farm Bureau discovered that Cannon's claims for attendant care, replacement services, and case management services were fraudulent. Specifically, Harp claimed she provided attendant care services to Cannon while Harp was actually on a 10-day vacation in Aruba. Blakely requested reimbursement for services during the same period. Further, Lewis claimed that she provided attendant care services while she was actually in the hospital giving birth.

As a result of this fraud, Farm Bureau cut off Cannon's benefits. Cannon responded with this suit to recover PIP, UIM, and UM benefits allegedly due under the insurance policy. Farm Bureau moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that Cannon's fraudulent claims triggered the following fraud exclusion in the policy:

> **C. Fraud or Concealment**
>
> The entire policy will be void if, whether before or after a loss, you, any family member, or any insured under this policy has:
>
> 1. Intentionally concealed or misrepresented any material facts or circumstance;

2. engaged in fraudulent conduct; or

3. made any false statements[]

relating to this insurance or to a loss to which the insurance applies.

The circuit court granted Farm Bureau's motion with respect to Cannon's PIP claims for attendant care, replacement, and case management services, but denied the motion with respect to her claims for wage-loss benefits and medical expenses, as well as UM and UIM benefits.

Farm Bureau moved for reconsideration of the court's decision, arguing that the court erred by failing to void Cannon's entire claim pursuant to the fraud exclusion. Farm Bureau also submitted newly discovered evidence that Cannon had been receiving Social Security disability benefits for several years before the accident, and that she did not earn any wages from Elite & Fabulous Events, contrary to the representations in her application for benefits. The circuit court denied Farm Bureau's motion for reconsideration. Both parties filed applications for leave to appeal. This Court granted Farm Bureau's application,[1] but denied Cannon's.[2]

II. EFFECT OF FRAUD EXCLUSION

A. STANDARD OF REVIEW

"A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 474-475; 776 NW2d 398 (2009). Under (C)(10), the circuit court must consider the evidence in the light most favorable to the nonmoving party. *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507; 885 N W2d 861 (2016). Summary disposition is appropriate if the proffered evidence fails to establish a genuine issue of a material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. *Id.* A genuine issue of material fact exists if reasonable minds could differ on an issue. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

"This Court reviews for an abuse of discretion a trial court's ruling on a motion for reconsideration." *Sanders v McLaren-Macomb*, 323 Mich App 254, 264; 916 NW2d 305 (2018). A court abuses its discretion "only when the trial court's decision is outside the range of reasonable and principled outcomes." *Id*. (cleaned up).[3]

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[1] *Cannon v Farm Bureau Ins Co*, unpublished order of the Court of Appeals, entered March 15, 2018 (Docket No. 342173).

[2] *Cannon v Farm Bureau Ins Co*, unpublished order of the Court of Appeals, entered March 15, 2018 (Docket No. 341623).

[3] This opinion uses the new parenthetical (cleaned up) to improve readability without altering the substance of the quotation. The parenthetical indicates that nonsubstantive clutter such as

B. GENERAL PRINCIPLES CONCERNING NO-FAULT COVERAGE AND FRAUD EXCLUSIONS

Farm Bureau argues that the circuit court's refusal to enforce the policy's fraud exclusion to void Cannon's entire claim was an error warranting reconsideration. MCR 2.119(F)(3) requires that a party moving for reconsideration "demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." *Sanders*, 323 Mich App at 264 (cleaned up). The court has "considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Id*. at 264-265 (cleaned up).

The insurer bears the burden of proving that a party's intentional misrepresentation triggered a policy's fraud exclusion. *Nahshal v Fremont Ins Co*, 324 Mich App 696, 720; ___ NW2d ___ (2018). In this case, the applicability of the fraud exclusion raises questions concerning whether it may be applied to statutorily mandated benefits, or whether it is affected by Cannon's status as a non-policyholder, her lack of knowledge of or participation in the fraud, and the existence of genuine issues of material fact whether fraud was perpetrated.

"The Michigan no-fault insurance act requires a no-fault automobile insurer to provide first-party injury protection for certain injuries related to a motor vehicle." *Kemp v Farm Bureau Gen Ins Co of Mich*, 500 Mich 245, 252; 901 NW2d 534 (2017) (cleaned up); MCL 500.3105(1). "Because 'PIP benefits are mandated by statute under the no fault act, . . . the statute is the "rule book" for deciding the issues involved in questions regarding awarding those benefits.' " *Bazzi v Sentinel Ins Co*, 502 Mich 390, 399; 919 NW2d 20 (2018), quoting *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 524-525; 502 NW2d 310 (1993). "Consequently, automobile insurance contracts are governed by a combination of statutory provisions and the common law of contracts." *Bazzi*, 502 Mich App at 399. "Insurance policies are contracts 'subject to the same contract construction principles that apply to any other species of contract.' " *Id*., quoting *Titan Ins Co v Hyten*, 491 Mich 547, 554; 817 NW2d 562 (2012) (additional citation omitted). "When a provision in an insurance policy is mandated by a statute, the policy and the statute must be construed together as though the statute were part of the policy, and 'the rights and limitations of the coverage are governed by that statute.' " *Bazzi*, 502 Mich at 399, quoting *Titan*, 491 Mich at 554. "In the absence of any applicable statute, however, 'the rights and limitations of the coverage are *entirely contractual* and construed without reference to the statute.' " *Bazzi*, 502 Mich at 399-400, quoting *Titan*, 491 Mich at 554 (emphasis added by *Bazzi*). UM and UIM coverage are not compulsory under the no-fault act. Accordingly, the terms of such coverage are controlled by the language of the contract alone. *Andreson v Progressive Marathon Ins Co*, 322 Mich App 76, 84-85; 910 NW2d 691 (2017).

A no-fault insurance policy "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." MCL 500.3114(1). MCL 500.3114(4) sets an

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brackets, alterations, internal quotation marks, and unimportant citations have been omitted from the quotation. See Metzler, *Cleaning Up Quotations*, 18 J App Pract & Process 143 (2017).

order of priority for injured persons not entitled to benefits under a policy as stated in § 3114(1). Pursuant to MCL 500.3114(4)(a), Cannon was eligible for benefits from "[t]he insurer of the owner or registrant of the vehicle occupied." Farm Bureau's policy definition of "insured" includes "any person using your covered auto, who is not insured for vehicle liability coverage by any other insurance policy . . . ." Because Cannon was permissibly using Harp's vehicle at the time of the accident, and Cannon did not have coverage under any other policy, she was eligible for benefits under the policy issued by Farm Bureau to Harp, pursuant to both the no-fault act and the terms of the policy.

C. CASELAW ADDRESSING NO-FAULT POLICY FRAUD-EXCLUSION PROVISIONS

In *Cohen v Auto Club Ins Ass'n*, 463 Mich 525, 526-527; 620 NW2d 840 (2001), the defendant insurer denied the plaintiff's claim for UM benefits on the ground that she submitted false documentation regarding her wage loss. Our Supreme Court reviewed caselaw holding that a policy exclusion that conflicts with mandatory coverage requirements is void as contrary to public policy, and discussed the application of this caselaw to the case before it, stating:

> In the present case, we believe that the proper application of these principles is evident. Ms. Cohen seeks [UM] benefits. ACIA denied those benefits under a clause that, if applicable to this case, voids the entire policy. Mindful of the great protection that the Legislature and this Court have provided for the no-fault benefits required by statute, *we need not decide today the full extent to which the disputed clause, if applicable, could void the policy. We need only decide whether it can void [UM] coverage*. It can. A contractual provision that plainly governs the facts alleged to exist in this case is enforceable to the extent that it is not contrary to law. [*Id.* at 532 (emphasis added).]

Although *Cohen* suggested that a fraud-exclusion provision might not be enforceable with respect to statutorily mandated PIP benefits, it refrained from deciding that issue.

In *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 423-424; 864 NW2d 609 (2014), the no-fault policy included "a general fraud exclusion, which provided: 'We do not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.' " The plaintiff sought coverage for PIP and UM benefits from the defendant. *Id*. at 421. The plaintiff testified at her deposition that a third car was involved, but the police report stated that only two cars were involved. *Id*. at 421-422. The plaintiff submitted statements supporting her claim for replacement services, but surveillance video for the relevant time period revealed that the plaintiff was able to drive, run errands, bend, and lift. *Id*. at 422. The plaintiff brought an action against the defendant insurer to recover PIP and UM benefits, and the plaintiff's physicians intervened to recover PIP benefits for the medical services they provided. *Id*. The defendant moved for summary disposition, arguing that the plaintiff was precluded from obtaining PIP and UM benefits because she falsely represented that a third vehicle was involved. The defendant also argued that the intervening plaintiffs "stood in the shoes of plaintiff"; therefore, the plaintiff's fraudulent representations precluded the medical providers from recovering PIP benefits, and the absence of a third vehicle precluded payment of UM benefits. *Id*. The circuit

court granted the defendant's motion for summary disposition under MCR 2.116(C)(10) with respect to the intervening plaintiffs' claims.

On appeal, this Court held that the plain language of the fraud exclusion barred the plaintiff and intervening plaintiffs from recovering benefits. This Court further held that "[b]ecause intervening plaintiffs stood in the shoes of the named insured, if plaintiff cannot recover benefits, neither can intervening plaintiffs." *Id*. at 424. This Court set forth the following requirements for proving fraud in an insurance claim:

> To void a policy because the insured has wilfully misrepresented a material fact, an insurer must show that (1) the misrepresentation was material, (2) that it was false, (3) that the insured knew that it was false at the time it was made or that it was made recklessly, without any knowledge of its truth, and (4) that the insured made the material misrepresentation with the intention that the insurer would act upon it. A statement is material if it is reasonably relevant to the insurer's investigation of a claim. [*Bahri*, 308 Mich App at 424-425 (cleaned up).]

This Court held that the plaintiff presented fraudulent statements to substantiate her claim for replacement services. She sought reimbursement for services that were performed before the accident, and surveillance videos revealed that she was physically able to perform chores for which she sought assistance. *Id*. at 425-426. This Court concluded that the defendant was entitled to summary disposition because "[r]easonable minds could not differ in light of this clear evidence that plaintiff made fraudulent representations for purposes of recovering PIP benefits." *Id*. at 426.

In *Shelton v Auto-Owners Ins Co*, 318 Mich App 648; 899 NW2d 744 (2017), the plaintiff was injured as a passenger in a motor vehicle accident. The plaintiff was not covered by a no-fault policy; consequently, she applied for PIP benefits for replacement services and medical expenses pursuant to a policy the defendant issued to the vehicle's owner. *Id*. at 651. The defendant argued that the plaintiff was not entitled to PIP benefits because she made fraudulent representations in support of her claim for replacement services. *Id*. at 651-652. Relying on *Bahri*, the defendant argued that the policy exclusion for fraud applied to the plaintiff "despite the fact that she is not a policyholder . . . [.]" This Court concluded that *Bahri* was distinguishable because in that case, the plaintiff was the policyholder. *Shelton*, 318 Mich App at 652. In *Shelton*, by contrast, the plaintiff's benefits were governed not by the policy language, but by statute. *Id*. at 653. This Court remarked that the plaintiff was not "an individual named in defendant's policy, a spouse of the person named in the policy, or a relative of either the person named in defendant's policy or his spouse." *Id*. at 654. The Court analyzed the no-fault priority statute, MCL 500.3114, and concluded:

> Under Subsection 1 of the no-fault priority statute, "a [PIP] policy . . . *applies* to . . . the person named in the policy, the person's spouse, and a relative of either domiciled in the same household . . . ." MCL 500.3114(1) (emphasis added). Shelton is not an individual named in defendant's policy, a spouse of the person named in the policy, or a relative of either the person named in defendant's policy or his spouse. Therefore, pursuant to the statute, defendant's policy does

not "apply" to Shelton. Rather, Shelton received no-fault benefits pursuant to Subsection 4, which reads:

> Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim [PIP] 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. [MCL 500.3114(4).]

Subsection (4) does not state that the owner or operator's insurance policy "applies" to the passenger's claim for benefits, and its text, unlike that of Subsection (1), omits any mention of a [PIP] *policy,* instead providing that the injured person is to "claim [PIP] benefits from insurers," beginning with "[t]he insurer of the owner or registrant of the vehicle occupied." MCL 500.3114(4)(a). [*Shelton*, 318 Mich App at 654-655 (emphasis in original).]

This Court further distinguished *Bahri* on the ground that "questions of fact exist as to whether Shelton made material misrepresentations, and if so, whether they were made with the intent to defraud defendant." *Shelton*, 318 Mich App at 656. This Court rejected the defendant's argument "that we should depart from the statute as a matter of public policy," because if the claimant filed suit, "the burden is on the claimant to prove that he or she is entitled to his or her claimed benefits, a burden that is highly unlikely to be met if the fact-finder concludes that the claim is fraudulent." *Id*. at 655.

After this Court granted Farm Bureau's application in this case, this Court decided *Meemic Ins Co v Fortson*, 324 Mich App 467; ___ NW2d ___ (2018), lv pending. In *Meemic*, a two-judge majority recognized an "innocent-third-party" exception to this Court's decision in *Bahri*. In *Meemic*, this Court addressed the "innocent third party rule" in the context of applying a fraud exclusion to deny benefits to an injured party who was not responsible for the submission of fraudulent claims. In *Meemic*, the defendants were insured under a no-fault policy issued by the plaintiff. The defendants' son, Justin, suffered a traumatic brain injury while riding on the hood of a vehicle. The defendants submitted requests for reimbursement for attendant care services provided to Justin, in which they represented that they provided 24-hour daily supervision and other attendant care necessitated by Justin's severe brain injury. The plaintiff's investigation revealed that Justin was frequently away from his parents' supervision, including spending time in jail and in an inpatient substance-abuse treatment facility. The plaintiff terminated the son's no-fault benefits and brought suit against the defendants to recover fraudulent claims. The defendants counter-sued for breach of the insurance policy. *Meemic*, 324 Mich App at 472.

This Court concluded that the fraud exclusion was not applicable as to Justin because he was entitled to no-fault benefits from the plaintiff, his parents' insurer, pursuant to the statutory

mandatory coverage and priority provisions in MCL 500.3114(1).[4] This Court noted that if Justin "were not an 'insured person' as defined by the policy, he would be statutorily entitled to benefits under his parents' no-fault policy by virtue of the fact that he is a relative of his parents and was domiciled with them." *Meemic*, 324 Mich App at 478. "In other words, if the policy did not define a resident relative as an 'insured person,' then Meemic would be required *by statute* to pay Justin benefits and would be unable to terminate his coverage because of fraud committed by a policyholder with regard to his claim." *Id*. (emphasis in the original). This Court rejected the plaintiff's argument that the policy language conferring insured status on Justin took precedence over the mandatory coverage status, and subjected Justin to termination of benefits based on the policy's fraud-exclusion provision, notwithstanding that Justin was not the individual who perpetrated the fraud. *Id*. at 478. This Court stated:

> Under Meemic's logic, by duplicating statutory benefits in a no-fault policy, an insurer can avoid paying no-fault benefits to an injured claimant if someone other than the claimant commits fraud and triggers a fraud-exclusion clause that allows the policy to be voided. We do not agree that the statutory provisions can be so easily avoided. "An insurer who elects to provide automobile insurance is liable to pay no-fault benefits subject to the provisions of the [no-fault] act." *Lewis v Farmers Ins Exch*, 315 Mich App 202, 209; 888 NW2d 916 (2016) (quotation marks and citation omitted; brackets in original). Contractual provisions in an insurance policy that conflict with statutes are invalid. *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 261; 819 NW2d 68 (2012). Because MCL 500.3114(1) mandates coverage for a resident relative domiciled with a policyholder, the fraud-exclusion provision, as applied to Justin's claim, is invalid because it conflicts with Justin's statutory right to receive benefits under MCL 500.3114(1). And, as explained earlier, his statutory right to receive benefits under the no-fault act was triggered because his parents had a validly procured no-fault policy in place at the time of the motor-vehicle incident. See *Bazzi*[*v Sentinel Ins Co*], 315 Mich App [763,] 774[; 891 NW2d 13 (2016)]. [*Meemic*, 324 Mich App at 478-479.]

This Court in *Meemic* further concluded that if the fraud exclusion were valid, the defendants' fraud was insufficient to trigger it "because, at the time they committed fraud, they were no longer 'insured persons' under the policy." *Id*. at 479. This Court explained that the plaintiff terminated the policy on July 29, 2010, thus ending the defendants' status as insured persons as defined in the policy. Because the fraud was committed after the policy was cancelled, the fraud was irrelevant for purposes of triggering the fraud exclusion. The cancellation of the policy did not affect Justin's claim, however, because his claim was made before the policy was cancelled. *Id*. at 479-480. This Court reversed the circuit court's order granting summary disposition for the plaintiff insurer. *Id*. at 484.

[4] This Court stated that Justin was an innocent third party because there was no evidence that he participated in or even benefitted from his parents' fraud. *Meemic*, 324 Mich App at 475.

In *Meemic*, this Court addressed the plaintiff's argument "that it would be illogical to allow [the defendants] to escape their obligations under the policy—in this case an obligation not to commit fraud—while simultaneously mandating that Meemic continue to provide benefits under the policy." *Id*. at 483. This Court rejected this argument, stating:

> If [the defendants] had made a claim under the policy before it was terminated, then their obligations under the policy would continue *with respect to their claim*, and Meemic's obligations with respect to that claim would also continue. Because [the defendants'] obligations would continue under such a scenario, if they committed fraud the policy's fraud-exclusion clause would apply. See *Bahri*, 308 Mich App at 424-426 (stating that when an insured claimant commits fraud in connection with his or her claim the insurer may use a fraud-exclusion clause to deny benefits under the policy). Here, however, because we are obligated to enforce the terms of the contract as they are stated in the contract, we conclude that at the time they committed fraud, [the defendants] were not insured persons under the policy. Consequently, their fraud did not trigger the fraud-exclusion clause, so Meemic cannot use it to void the policy and deny Justin's claim. [*Meemic*, 324 Mich App at 483-484.]

We derive the following principles of law from the authorities discussed above. First, PIP benefits are statutorily mandated and cannot be abridged by contract. *Bazzi*, 502 Mich at 399. Second, UM and UIM coverage is not statutorily mandated, and therefore, such coverage is controlled by the language of the insurance policy. *Cohen*, 463 Mich at 532; *Andreson*, 322 Mich App at 84-85. Third, a medical or healthcare provider, although innocent of fraud, may be denied compensation for services based on an insured's fraudulent representations for purposes of obtaining replacement services benefits. *Bahri*, 308 Mich App at 424-426. The medical or healthcare provider stands in the shoes of the named insured for purposes of entitlement to benefits, and therefore, cannot recover benefits that the insured is not permitted to recover. *Id*. at 424. In *Bahri*, the plaintiff was both the policyholder and the insured party. *Id*. at 421. *Bahri* sets forth the elements that must be proved to invoke a fraud exclusion in a policy. *Id*. at 424-425. Fourth, an insured who is not a party to the no-fault policy, but who is eligible for benefits pursuant to the no-fault statutory priority provision, MCL 500.3114, is not subject to the policy's fraud exclusion. *Shelton*, 318 Mich App at 654-656. In *Shelton*, the non-party claiming PIP benefits under MCL 500.3114 was also the individual who submitted the fraudulent claim for replacement services. *Shelton*, 318 Mich App at 651-652. Fifth, a person who is entitled to coverage under MCL 500.3114(1) (member of policyholder's family and household) does not lose his or her statutory right to PIP benefits on the basis of fraudulent claims submitted by the policyholder. *Meemic*, 324 Mich App at 467.

D. APPLICATION OF PRINCIPLES TO PLAINTIFF'S CLAIM

Under *Meemic*, fraud perpetrated by Harp and other caregivers does not deprive Cannon of her statutory right to PIP benefits. Cannon is eligible for benefits under the terms of the policy, but she also is entitled to benefits under the priority statute, MCL 500.3114(4). Therefore, her statutory entitlement to benefits cannot be abridged by the terms of the policy based on Harp's fraud. Indeed, pursuant to *Shelton*, 318 Mich App at 654-656, Cannon's claims cannot be voided in full even if she participated in the fraud, because she was not a party to the

insurance contract. Farm Bureau cannot void Cannon's entire claim pursuant to the fraud exclusion in the policy. *Bahri* is distinguishable from this case because in *Bahri* there is no indication that the plaintiff insured, who submitted the fraudulent claim, was a person other than the holder of the policy entitling her to benefits.

Farm Bureau can, of course, challenge the sufficiency and credibility of Cannon's entitlement to recover benefits, and can offer its own evidence to justify denial of recovery. But Farm Bureau cannot rely on the fraud exclusion to fully void Cannon's claims. Accordingly, the circuit court did not commit a palpable error by denying Farm Bureau's motion for summary disposition or denying its motion for reconsideration as to voiding Cannon's claims for PIP coverage.

However, Farm Bureau would be entitled to judgment as a matter of law with respect to Cannon's claims for UIM and UM coverage if the insured, "any family member," or "any insured" intentionally concealed or misrepresented material facts, engaged in fraudulent conduct, or made any false statements. *Bahri*, 308 Mich App at 428. These categories of claims are governed by the policy language. *Andreson*, 322 Mich App at 84-85. The policy states that the entire policy will be void if "*any insured*" intentionally concealed or misrepresented material facts, engaged in fraudulent conduct, or made false statements.

There is no material question of fact that Harp and Cannon were insureds under the policy. Lewis and Blakely are family members of insureds. There also is no genuine issue of material fact that Harp was in Aruba from May 24 to June 1, 2016. This fact is documented by the flight reservations and Harp's Facebook postings. Harp submitted a reimbursement request for 15 hours of services for every day of this period and later claimed she took Cannon to Aruba with her. Blakely submitted a reimbursement request for nine hours of services every day of this period and denied any knowledge of Cannon's trip to Aruba. Harp submitted both requests to Farm Bureau, along with a note stating that she and Blakely began to provide attendant care on May 13, 2016, the day Cannon was discharged from the hospital. Accordingly, there is no genuine issue of material fact that either Harp or Blakely submitted a false reimbursement claim for attendant care services offered to Cannon from May 23 to June 1, 2016. There also was no genuine issue of fact that Lewis gave birth on September 3, 2016. Lewis's attempt to reconcile this fact with her claim for services for this date was objectively false because she provided three conflicting explanations—Lewis attended to Cannon while she gave birth, Lewis attended to Cannon before she went to the hospital, and Lewis's husband offered services in her place. Thus, Harp, Blakely, Lewis, and possibly Cannon made material representations as to the provision of attendant care services with knowledge that the statements were false, with the intent that Farm Bureau would pay for reimbursement. These misrepresentations are sufficient to trigger the broad fraud-exclusion provision in the policy, thereby precluding Cannon's claims for contractual UM and UIM benefits.

We are not persuaded that Farm Bureau has demonstrated the absence of genuine issues of material fact with respect to its remaining assertions of fraudulent submissions. "The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10)." *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013). "[W]hen the truth of a material factual assertion depends on the credibility of a witness,

a genuine factual issue exists and summary disposition may not be granted." *Auto Club Ins Ass'n v State Auto Mut Ins Co*, 258 Mich App 328, 335-336; 671 NW2d 132 (2003).

Farm Bureau argues that the deposition testimony of Ronald Williams, Cannon's son, disproves Blakely's submission for attendant care services and Burns's submission for replacement services. Ronald testified that Blakely did not return to Michigan in time to provide attendant care services to Cannon in May and June 2016, and Ronald denied seeing Burns perform chores for Cannon. However, Ronald admitted that he is not close with his mother and was not well-informed of her circumstances. A trier of fact could find that Ronald's statements were erroneous, and did not demonstrate that there was no genuine issue of material fact regarding when Blakely returned to Michigan. In addition, Ronald's testimony that he did not see Burns doing chores at Cannon's house did not necessarily establish that Burns's claims were false. Burns testified that he came to Cannon's house on weekends to perform chores while he was enrolled in law school, and the credibility of that testimony was for the trier of fact to resolve. This evidence involves conflicting statements among witnesses, and therefore precludes summary disposition. *Pioneer State Mut Ins Co*, 301 Mich App at 377; *Auto Club Ins Ass'n*, 258 Mich App at 335-336. Similarly, Harp's testimony that Blakely learned of the accident "probably a couple of weeks" after the accident was too imprecise to establish a fixed date of Blakely's arrival. However, the fraudulent submissions by Harp or Blakely and Lewis are sufficient to trigger the fraud exclusion independent of this other evidence of alleged fraud.

In its motion for reconsideration, Farm Bureau submitted evidence that it obtained after its motion for summary disposition. Cannon was not permitted to file a response to the motion for reconsideration, MCR 2.119(F)(2); therefore, she has not had an opportunity to respond to this evidence. We acknowledge that the SSA and IRS exhibits appear to disprove Cannon's representations that she was not receiving disability benefits and that she was employed and earning an income before the accident. This evidence would appear to preclude or substantially limit Cannon's recovery for lost wages. However, Farm Bureau did not submit this evidence in support of its summary disposition motion. Accordingly, it is premature to determine at this juncture that Farm Bureau is entitled to summary disposition with respect to Cannon's PIP claim for wage loss.

Farm Bureau also argues that evidence that Cannon traveled to Louisiana in 2017 disproves her claims regarding the extent of her injuries. Blakely and Lewis both testified that Cannon traveled to Louisiana by plane. Testimony merely indicating that Cannon made a plane trip does not allow any inferences to be made regarding the extent of her injuries or her recovery.

In sum, the fraud exclusion in the insurance policy cannot operate to void Cannon's claim to statutory PIP benefits. *Meemic*, 324 Mich App 467. The circuit court therefore correctly denied Farm Bureau's motion for summary disposition with respect to Cannon's claims for PIP benefits other than attendant care, replacement, and case management services. On remand, however, Farm Bureau may offer its new evidence, obtained after the court decided its first motion for summary disposition, in a renewed motion with respect to Cannon's remaining claims for PIP benefits. In addition, the fraud exclusion can apply to void non-mandatory coverage for UM and UIM benefits. *Cohen*, 463 Mich at 532; *Andreson*, 322 Mich App at 84-85. Farm Bureau established that there was no genuine issue of material fact that Harp and/or Lewis submitted fraudulent documentation of attendant care services provided to Cannon.

Accordingly, the circuit court erred by denying Farm Bureau's motion for summary disposition with respect to UM and UIM benefits and we reverse in that regard.

III. ATTORNEY FEES

Farm Bureau argues that the circuit court erred by denying its request for attorney fees under MCL 500.3148(2). We review this decision for an abuse of discretion. *Gentris v State Farm Mut Auto Ins Co*, 297 Mich App 354, 361; 824 NW2d 609 (2012).

MCL 500.3148(2) provides:

> An insurer may be allowed by a court an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation. To the extent that personal or property protection insurance benefits are then due or thereafter come due to the claimant because of loss resulting from the injury on which the claim is based, such a fee may be treated as an offset against such benefits; also, judgment may be entered against the claimant for any amount of a fee awarded against him and not offset in this way or otherwise paid.

Although a court's decision whether to award statutory attorney fees is discretionary, the court must make findings regarding whether a claim is fraudulent, excessive, or unreasonable, and those findings "must be able to survive review under the clearly-erroneous standard." *Gentris*, 297 Mich App at 361-362.

In this case, the circuit court cited *Gentris* for the proposition that it had discretion whether to award attorney fees, and it recognized its obligation to make findings that must be able to survive review under the clearly erroneous standard. However, the extent of the court's reasoning for denying attorney fees was its statement that "[h]aving considered the evidence, the Court does not find that it rises to the level required by MCL § 500.3148(2)." The court did not indicate what evidence it considered or otherwise explain why it did not find the evidence sufficient to support an award of attorney fees, notwithstanding its determination that Cannon's claims for attendant care, case management, and replacement services were barred because they were based on false statements. In sum, the court did not make any findings or otherwise explain the factual basis for its decision sufficient to enable review under the clearly erroneous standard.

We have concluded that the circuit court erred by denying Farm Bureau's motion for summary disposition with respect to Cannon's claims for UM and UIM benefits, but did not err by denying the insurer's motion for dismissal of Cannon's claims for PIP benefits for claims other than attendant care, replacement, and case management services. A proper analysis of Cannon's claims is also impacted by this Court's decision in *Meemic*, which was decided after the circuit court decided this matter and limited the application of *Bahri*, the case on which Farm Bureau primarily relied in these proceedings. We have also concluded that Farm Bureau's evidence of fraud was not as widespread as the insurer represents. In addition, Farm Bureau has submitted new evidence suggesting that Cannon misrepresented her receipt of disability benefits and her employment status before the accident. This evidence was not obtained until after Farm

Bureau's motion for summary disposition was decided, and we have concluded that Farm Bureau should be afforded an opportunity to present the evidence in an appropriate motion on remand.

Under these circumstances, and given the circuit court's failure to make sufficient findings in support of its denial of attorney fees, it would be premature for us to determine whether Cannon's claims are "fraudulent or so excessive as to have no reasonable foundation." Rather, we vacate that portion of the circuit court's order denying Farm Bureau's request for attorney fees and remand for reconsideration of this issue in light of further proceedings on remand, and for appropriate factual findings regarding fraud, excessiveness, and reasonableness.

We affirm in part, reverse in part, and vacate in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. As neither party prevailed in full, neither may tax costs pursuant to MCR 7.219.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Anica Letica