STATE OF MICHIGAN

COURT OF APPEALS

CARLOS R. COLEMAN,

Plaintiff,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

HARTFORD INSURANCE COMPANY,

Third-Party Defendant-Appellant.

UNPUBLISHED
August 13, 2020

No. 348960
Wayne Circuit Court
LC No. 18-002736-NF

Before: RONAYNE KRAUSE, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Third-party defendant, The Hartford Insurance Company (Hartford) appeals as of right from the trial court's order for entry of judgment in favor of third-party plaintiff, Progressive Michigan Insurance Company (Progressive), and challenges the trial court's order denying its motion for summary disposition and granting summary disposition in favor of Progressive under MCR 2.116(I)(2) (opposing party, rather than moving party, entitled to immediate judgment). We affirm.

On March 16, 2017, Carlos Coleman (Coleman) was driving his wife's vehicle when he was involved a motor vehicle accident. Coleman's wife, Heather Walker-Coleman (Heather), maintained a no-fault insurance policy with Progressive, with Coleman as a listed driver on the policy. At the time of the accident, Coleman was residing with his mother-in-law, Margie Walker, at a home located on Newburg Road, in Carleton, Michigan. Coleman's mother-in-law maintained a no-fault insurance policy with Hartford.

After the accident, Progressive paid personal injury protection insurance (PIP) benefits to Coleman until July 3, 2017, when his benefits were terminated. Progressive filed a third-party complaint against Hartford asserting that both insurers were of the same order of priority under the no-fault act, MCL 500.3101 *et seq*. Because Progressive and Hartford are insurers in the same order of priority, Progressive claimed it was entitled to recoupment from Hartford for one-half of the benefits Progressive paid to Coleman.

Hartford filed a motion for summary disposition under MCR 2.116(C)(10). In its motion for summary disposition, Hartford conceded that Coleman resided with his mother-in-law at the time of the accident and admitted that "[b]ecause Coleman testified he was domiciled with his mother-in-law at the time of the accident, and not his spouse, The Hartford would be the insurer of highest priority for payment of PIP benefits to Coleman pursuant to MCL 500.3114(1)." However, Hartford asserted that Progressive's claim was for subrogation and, therefore, Progressive's claim was barred by the one-year statute of limitation period of MCL 500.3145(1).

Progressive opposed Hartford's motion for summary disposition, and requested summary disposition in its favor under MCR 2.116(C)(8), MCR 2.116(C)(10), and MCR 2.116(I)(2), arguing Progressive and Hartford are insurers in the same order of priority. Hartford responded arguing that Hartford and Progressive are not in the same order of priority because Coleman was domiciled with Heather at the time of the accident.

The trial court found, as a matter of law, that Coleman was domiciled with his mother-in-law at the time of the accident. Coleman's license was registered at his mother-in-law's house, and he kept his furniture and clothes there full time. Coleman also had his own room at his mother-in-law's home. Therefore, Progressive and Hartford are insurers in the same order of priority. The trial court also found there was no genuine issue of fact that Progressive's cause of action is one for recoupment, not subrogation, and, therefore, subject to the six-year statute of limitations of MCL 600.5813.

On appeal, Hartford initially argues the trial court erred when it granted Progressive's motion for summary disposition because Coleman was not domiciled with his mother-in-law at the time of the accident and, therefore, Hartford and Progressive are not in equal priority. This argument is without merit.

Statutory interpretation is a question of law that this Court reviews de novo. *Paige v City of Sterling Hts*, 476 Mich 495, 504; 720 NW2d 219 (2006). This Court also reviews de novo a trial court's decision to grant or deny summary disposition. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). In this case, Progressive filed a brief in opposition to Hartford's motion for summary disposition and requested summary disposition in its favor under MCR 2.116(C)(8), MCR 2.116(C)(10), and MCR 2.116(I)(2). The trial court entered an order denying Hartford's motion for summary disposition and summary disposition in favor of Progressive under MCR 2.116(I)(2). "If, after careful review of the evidence, it appears to the trial court that there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2)." *Lockwood v Twp of Ellington*, 323 Mich App 392, 401; 917 NW2d 413 (2018).

As an initial matter, the issue of where Coleman was domiciled at the time of the accident is not properly before this Court. In its motion for summary disposition, Hartford conceded that Coleman resided with his mother-in-law at the time of the accident and admitted that "[b]ecause Coleman testified he was domiciled with his mother-in-law at the time of the accident, and not his spouse, The Hartford would be the insurer of highest priority for payment of PIP benefits to Coleman pursuant to MCL 500.3114(1)." However, Hartford asserted that Progressive's claim is one of subrogation and, therefore, Progressive's claim is barred by the one-year statute of limitation of MCL 500.3145(1). Progressive opposed Hartford's motion for summary disposition and requested summary disposition in its favor under MCR 2.116(C)(8), MCR 2.116(C)(10), and MCR 2.116(I)(2), arguing Progressive and Hartford are insurers in the same order of priority. Therefore, Progressive argued it was entitled to a statutory right of recoupment under MCL 500.3115(2) from Hartford for a portion of the PIP benefits Progressive paid to Coleman. In response, Hartford denied that Hartford and Progressive were in the same order of priority because Coleman was domiciled with his wife at the time of the accident.

"Reply briefs must be confined to rebuttal of the arguments in the nonmoving party or parties' brief. . . ." MCR 2.116(G)(1)(a)(iii). In its motion for summary disposition, Hartford conceded that Coleman was domiciled with his mother-in-law. Progressive did not raise the issue of domicile in its brief in opposition to Hartford's motion for summary disposition. Hartford first raised the issue of domicile in its reply brief, which is not permitted under MCR 2.116(G)(1)(a)(iii). Therefore, the issue of domicile is not properly before this Court. MCR 2.116(G)(1)(a)(iii). Accordingly, Progressive and Hartford are insurers in the same order of priority.

Next, Hartford argues that MCL 500.3115(2) does not provide a statutory right for recoupment between no-fault insurers of equal priority. This argument is without merit. MCL 500.3115(2) states:

> When 2 or more insurers are in the same order of priority to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among such insurers.

This Court follows the rules of statutory construction and must discern and give effect to the Legislature's intent. *Aroma Wines & Equip Inc v Columbian Distribution Servs Inc*, 497 Mich 337, 345; 871 NW2d 136 (2015). "The language of the statute is the most reliable evidence of that intent, and we enforce the clear and unambiguous language of the statute as written." *Id*. at 345-346. Therefore, "[e]ffect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory." *Id*. (quotation marks and citation omitted). "If the language is clear and unambiguous, we assume the Legislature intended its plain meaning, and the statute is enforced as written." *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 279; 705 NW2d 136 (2005).

Hartford argues that "reading MCL 500.3115(2) in the context of the entirety of MCL 500.3115 makes clear that MCL 500.3115(2) was *only* intended by the Legislature to apply to insurers equal in priority with respect to *pedestrian* versus motor vehicle accidents." This

argument is unconvincing because the plain language of the statute specifically provides a statutory right for recoupment between no-fault insurers of equal priority. "The language of the statute is the most reliable evidence of that intent, and we enforce the clear and unambiguous language of the statute as written." *Aroma Wines & Equip Inc*, 497 Mich at 345-346. Indeed, in *Titan Ins Co v Farmer's Ins Exchange*, 241 Mich App 258, 262; 615 NW2d 774 (2000), this Court examined the language of MCL 500.3115(2), and stated: "[w]e turn first to the language of subsection 3115(2) and note that it provides a specific right of partial recoupment by one no-fault insurer of PIP benefits paid by another no-fault insurer of the same order of priority, independent of an accident victim's right to payment of PIP benefits." As discussed, Hartford and Progressive are insurers in the same order of priority for purposes of payment of PIP benefits to Coleman because at the time of the accident, Coleman was domiciled with his mother-in-law. Therefore, MCL 500.3115(2) provides Progressive with a statutory right for recoupment from Hartford because of their equal priority status.

Hartford argues that even if it is an insurer of equal priority with Progressive, Progressive's claim for recoupment of PIP benefits paid to Coleman is one of common-law subrogation and, therefore, barred by the one-year statute of limitation of MCL 500.3145(1). This argument is also without merit.

MCL 500.3145(1) states:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.

In *Titan Ins Co*, 241 Mich App at 260-261, the plaintiff, a no-fault insurer, sought recoupment of benefits paid to the insured from the defendant, a no-fault insurer in the same order of priority as the plaintiff. The defendant asserted that the plaintiff's claim for recoupment was barred by the one-year statute of limitation in MCL 500.3145. *Id*. This Court disagreed, stating:

> While we recognize that plaintiff's claim falls within the no-fault act, we disagree with defendant that because plaintiff seeks reimbursement under the act, its claim automatically falls within the period of limitation provided for in subsection 3145(1). We turn first to the language of subsection 3115(2) and note that it provides a specific right of partial recoupment by one no-fault insurer of PIP benefits paid by another no-fault insurer of the same order of priority, independent of an accident victim's right to payment of PIP benefits. Thus, this case is distinguishable from those in which an insurer's right to recovery or reimbursement from another insurer was found to be subrogated to the insured's right to recovery and therefore subject to the period of limitation in § 3145. [*Id*. at 261-262.]

This Court found that claims for recoupment of no-fault benefits from another insurer, in the same order of priority, are subject to the six-year statute of limitations period provided for in MCL

600.5813. *Id*. at 263. Therefore, Hartford is subject to the six-year limitation period, and received sufficient notice of Progressive's claim because Progressive brought its recoupment claim within six years of the accident.

Progressive has a statutory right to partial recoupment of no-fault benefits from Hartford because Progressive and Hartford are insurers of equal priority. MCL 500.3115(2). Therefore, Progressive's claim is "distinguishable from those in which an insurer's right to recovery or reimbursement from another insurer was found to be subrogated to the insured's right to recovery and therefore subject to the period of limitations in § 3145." *Titan Ins Co*, 241 Mich App at 261-262. Based on rulings of this Court, Progressive's claim is subject to the six-year statute of limitations period provided for in MCL 600.5813. *Id*. at 263. Coleman was involved in the accident on March 16, 2017. On September 12, 2018, Progressive filed a motion for leave to file a third-party complaint against Hartford. Because Progressive brought its claim for recoupment of no-fault benefits paid to Coleman within six-years, Progressive's claim is not barred.

Affirmed. Progressive may tax costs.

/s/ Amy Ronayne Krause
/s/ David H. Sawyer
/s/ Mark T. Boonstra