# STATE OF MICHIGAN

# COURT OF APPEALS

VICTOR OLIVER,

Plaintiff,

and

ZMC PHARMACY, LLC,

Intervening-Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

UNPUBLISHED
September 17, 2020

No. 351422
Wayne Circuit Court
LC No. 17-011284-NF

Before: RIORDAN, P.J., and O'BRIEN and SWARTZLE, JJ.

PER CURIAM.

Defendant, Farmers Insurance Exchange ("Farmers"), appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(10). Unlike where multiple no-fault insurers dispute liability, this dispute involves a no-fault insurer, a medical insurer, and a provider. Because the operative statute creates a coordination scheme, not a priority scheme, and because federal law does not preempt this statute (unlike in *Batts v Titan Ins Co*, 322 Mich App 278, 287; 911 NW2d 486 (2017)), we reverse and remand for entry of summary disposition in defendant's favor.

## I. BACKGROUND

Plaintiff, Victor Oliver, was involved in a motor-vehicle accident while operating an uninsured vehicle that he did not own. Oliver suffered injuries that required medical treatment, and his claim for personal-protection-insurance ("PIP") benefits was assigned to the Michigan Assigned Claims Plan which, in turn, assigned the claim to Farmers. The parties have not identified any other auto insurer that would be liable to pay PIP benefits to Oliver.

Oliver filed this lawsuit against the assigned claims plan, alleging that he was entitled to PIP benefits that had been unreasonably denied. Subsequently, Oliver amended his complaint to

substitute Farmers as defendant, in place of the assigned claims plan. Intervening plaintiff, ZMC Pharmacy, LLC, later sought and received permission to intervene in the lawsuit, alleging that it had provided reasonably necessary medical services to Oliver and that he had assigned ZMC the right to seek recovery for the costs of the services rendered. Specifically, ZMC alleged that it had provided Oliver over $21,000 in prescription medications and that Farmers had unreasonably refused to pay its bill for the cost of those medications. After facilitative mediation, Oliver and Farmers settled their dispute, and the trial court entered a stipulated order dismissing with prejudice Oliver's own claims against Farmers. Only ZMC's assigned claims against Farmers remain at issue on appeal.

Farmers moved for summary disposition of ZMC's claims under MCR 2.116(C)(10). Farmers argued that, under MCL 500.3172(2), a no-fault insurer assigned to provide PIP benefits to an assigned insured is not liable for medical expenses that would be otherwise payable by the assigned insured's health-insurance policy. Farmers pointed to Oliver's deposition testimony that he was covered by his mother's health-insurance policy issued by Blue Cross Blue Shield. Farmers argued that, as a no-fault insurer assigned to handle a PIP claim by the assigned claims plan, it was only secondary for the payment of any medical expenses under MCL 500.3172(2), and that it was not required to pay for medical services for which coverage was available to Oliver through Blue Cross.

In response, ZMC argued that it was not required to submit a claim for the cost of Oliver's prescriptions to Blue Cross. ZMC argued, instead, that Farmers was required to pay its bill and that Farmers, in turn, had the opportunity to seek potential reimbursement from Blue Cross. ZMC relied heavily on this Court's decisions in *Spencer v Citizens Ins Co*, 239 Mich App 291; 608 NW2d 113 (2000), and *Batts*, 322 Mich App 278, to support its argument that an assigned no-fault insurer had an absolute obligation to pay PIP benefits, even when another benefit source covering the same loss was available to the assigned insured. The trial court agreed with ZMC's position and denied Farmers' motion for summary disposition, relying on this Court's decision in *Batts*.

Farmers filed a motion for reconsideration of the trial court's order denying its motion for summary disposition of ZMC's claims. Farmers provided documentation that Blue Cross had paid in excess of $240,000 for Oliver's post-accident medical care, including some invoices submitted by ZMC. Farmers also pointed out that plaintiff's mother worked for a Michigan municipality, and that her employer-provided healthcare plan through Blue Cross was, therefore, not an ERISA plan. Farmers argued that the trial court committed palpable error by construing MCL 500.3172(2) as a priority statute and applying priority precedent. Farmers further argued that MCL 500.3172(2) is a coordination statute because it coordinates the liability of an assigned-claims-plan insurer with other available sources of payment that do not arise from no-fault insurance. The trial court denied Farmers' motion for reconsideration, concluding that it was untimely filed. The parties later stipulated to the dismissal with prejudice of ZMC's action against Farmers, preserving Farmers' right to appeal the trial court's orders denying summary disposition and reconsideration.

This appeal followed.

## II. ANALYSIS

This Court reviews de novo a trial court's decision under MCR 2.116(C)(10) in determining whether the moving party is entitled to judgment as a matter of law. *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012). Resolution of the issues presented in this appeal depends on the proper interpretation of MCL 500.3172(2). Statutory interpretation is a question of law that this Court reviews de novo on appeal. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

At issue in this case is the prior language of MCL 500.3172(2).[1] At the time in question, the statute provided:

> (2) Except as otherwise provided in this subsection, personal protection insurance benefits, including benefits arising from accidents occurring before March 29, 1985, payable through the assigned claims plan shall be reduced to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits, to a person claiming personal protection insurance benefits through the assigned claims plan. This subsection only applies if the personal protection insurance benefits are payable through the assigned claims plan because no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. As used in this subsection, "sources" and "benefit sources" do not include the program for medical assistance for the medically indigent under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or insurance under the health insurance for the aged act, title XVIII of the social security act, 42 USC 1395 to 1395kkk-1.

Therefore, under this subsection of the no-fault act, PIP benefits payable through the assigned claims plan "*shall be reduced* to the extent that benefits covering the same loss are available from other sources." MCL 500.3172(2) (emphasis added).

On appeal, Farmers argues that this statutory subsection means that any PIP benefits claimed by Oliver or his assignee must be reduced to the extent that benefits from another source are available to Oliver covering the same loss. Specifically, Farmers argues that its obligation to pay ZMC its billed costs for Oliver's prescription medications is reduced to zero because Oliver

[1] The no-fault act, MCL 500.3101 *et seq*., was substantially amended by 2019 PA 21, effective June 11, 2019. This case was commenced before the amendment and, therefore, it is controlled by the former provisions of the no-fault act. See *Johnson v Pastoriza*, 491 Mich 417, 429; 818 NW2d 279 (2012) (stating that amendments to statutes are presumed to operate prospectively, unless the Legislature clearly manifests the intent for retroactive application). All references to the no-fault act are to the version in effect at the time this action was commenced.

was covered by health insurance through Blue Cross, which provided coverage for prescription medications. Farmers argues that MCL 500.3172(2) is a coordination statute, not a priority statute, and that the trial court erred in treating it as a priority statute. Farmers further argues that in all other scenarios where no-fault benefits are coordinated, the no-fault insurer is not liable for payment unless the expense is not covered by the other available benefit source, and the injured person or his providers used reasonable efforts to seek payment from the other benefit source before seeking payment from the no-fault insurer. Farmers maintains that, in this case, ZMC did not seek payment from Blue Cross for the cost of Oliver's prescription medications before seeking payment of that cost from Farmers. Accordingly, Farmers argues that it is not liable for payment of benefits for Oliver that are covered by Blue Cross.

This Court has unequivocally held that MCL 500.3172(2) is a coordination statute. " '[B]enefits through the assigned claims carrier are coordinated under MCL 500.3172(2).' " *George v Allstate Ins Co*, 329 Mich App 448, 451; 942 NW2d 628 (2019), quoting *Batts*, 322 Mich App at 282. Because it is a coordination statute, "under MCL 500.3172(2), an insurer providing benefits under the assigned-claims plan is generally entitled to a setoff for *any other benefits* covering the same loss that are received by or on behalf of the injured party. The only statutory exception to the right to a setoff is if the benefits covering the loss are received under either Medicare or Medicaid." *Id*. at 452 (emphasis in original).

ZMC argues that, regardless of whether the costs of Oliver's prescription medications are covered by his Blue Cross health-insurance policy, Farmers was statutorily required to pay ZMC's bills and subsequently seek reimbursement from Blue Cross. In support of its argument, ZMC relies heavily on *Spencer*, 239 Mich App 291, for the proposition that MCL 500.3172(2) does not relieve Farmers of its responsibility to pay PIP benefits, even if another benefit source exists. We conclude that *Spencer* is distinguishable on its facts.

In *Spencer*, the plaintiff was injured by a hit-and-run driver, and the assigned claims plan assigned his claim for PIP benefits to Citizens Insurance Company. Citizens subsequently discovered that the plaintiff had identified and sued the hit-and-run driver, and had recovered $20,000 from the driver's no-fault policy with Allstate Insurance Company. After this discovery, Citizens stopped paying the plaintiff's PIP benefits because it believed that plaintiff had identified a higher-priority no-fault insurer. *Spencer*, 239 Mich App at 295. The plaintiff brought a lawsuit against both Citizens and Allstate, requesting that the trial court ascertain the no-fault insurer responsible for payment of his PIP benefits. *Id*. The plaintiff subsequently moved for summary disposition against Citizens, arguing that it should be required to continue providing plaintiff with PIP benefits and that Citizens could subsequently seek indemnification from Allstate. The trial court granted plaintiff's motion and entered summary disposition against Citizens. *Id*. at 295-296.

The *Spencer* Court described the determinative issue in that case as "whether any provision of the no-fault act permits defendant, the assigned-claim insurer, to cease paying assigned-claim benefits in the event it subsequently discovers a *higher priority insurer*." *Id*. at 304 (emphasis added). The Court concluded that "an assigned-claim insurer that subsequently ascertains a *higher priority insurer* cannot thereafter simply refuse to pay the assigned-claim insured party further benefits." *Id*. at 305 (emphasis added).

ZMC relies on this language to support its argument that Farmers, as the assigned-claims insurer for Oliver's PIP claim, cannot refuse to pay plaintiff's PIP benefits because it discovered that benefits covering the same loss were available from another source. The fault in ZMC's argument is that *Spencer* involved a dispute regarding which of two no-fault insurance carriers was higher in line of priority for payment of the plaintiff's PIP benefits. In that context, the assigned insurer must pay the PIP benefits and seek reimbursement from the higher priority no-fault insurer. *Id*. at 305-306. In contrast, the present case does not involve two no-fault-insurance carriers; the question is how an assigned insurer must proceed when it discovers that benefits covering the same loss are available from another benefit source *other than* a higher priority no-fault insurer. In this case, the other benefits source is a health-insurance carrier, not a no-fault-insurance carrier. *Spencer*, which controls when two no-fault insurers dispute which is the higher priority no-fault insurer, does not control on the present facts and does not mandate a ruling in ZMC's favor.

ZMC also relies heavily on *Batts* for the proposition that, "[u]nder the assigned claims statutory scheme, including MCL 500.3172(3)(b) and MCL 500.3175(1), defendant was required to make prompt payment for plaintiff's losses suffered as a consequence of the motor vehicle accident in accordance with the no-fault act, MCL 500.3101 et seq." *Batts*, 322 Mich App at 285. We conclude that the analysis in *Batts* likewise does not support ZMC's argument.

In *Batts*, a military veteran was riding a motor scooter and was injured by a hit-and-run driver. *Id*. at 281. Because the plaintiff did not have a policy of no-fault insurance available to him in his household, he filed a claim for PIP benefits through the assigned-claims plan, which assigned the claim to Titan Insurance Company. *Id*. Titan refused to pay any of the requested PIP benefits on the ground that the plaintiff was entitled to healthcare benefits through the United States Department of Veterans Affairs (the VA). *Id*. The plaintiff then filed a complaint seeking payment of PIP benefits from Titan, which had refused to pay any costs incurred by the plaintiff for medical, attendant-care, replacement, or transportation services. *Id*.

Titan advanced three reasons for its decision to deny the plaintiff PIP benefits, only one of which is relevant to this case. Titan argued that, under MCL 500.3172(2), benefits through the assigned claims plan are coordinated with a claimant's benefits received from other sources, including healthcare benefits received through the VA. *Id*. at 286. Titan argued that the plaintiff's eligibility to receive healthcare services through the VA constituted a "benefit source" under MCL 500.3172(2), which relieved Titan of its obligation to pay for any medical care or services required by plaintiff for injuries sustained in the motor vehicle accident. *Id*. at 287. Although this Court agreed that MCL 500.3172(2) is a coordination statute, it rejected Titan's argument based on the conflict-preemption doctrine, concluding that federal law preempted this state's no-fault statutes. *Id*. at 282, 288-289. The *Batts* Court concluded that "the VA cannot be deemed a 'benefit source' that relieved defendant of its obligation to pay PIP benefits to plaintiff." *Id*. at 289.

Thus, *Batts* analyzed MCL 500.3172(2) as a coordination statute, not a priority statute. Yet, because the plaintiff in that case was entitled to seek medical services from the VA, and federal law regarding the VA preempted this state's no-fault statutes, this Court ruled that the no-fault insurer was required to pay the plaintiff's claim for PIP benefits. The present case, however, does not involve a veteran who received healthcare services through the VA. Therefore, the

conflict-preemption analysis applied in that case does not apply in this appeal. *Batts* does not support ZMC's argument.

Finally, ZMC argues that Farmers failed to submit proofs that Oliver was actually covered by health insurance through Blue Cross at the time of the accident. ZMC's argument is disingenuous, in that it ignores the documentation submitted by Farmers indicating that Blue Cross had paid in excess of $240,000 for Oliver's post-accident medical care, including some of ZMC's own invoices for services rendered to Oliver. ZMC's argument on this point is without merit.

Under the no-fault act, all PIP benefits payable to Oliver through the assigned claims plan "*shall be reduced* to the extent that benefits covering the same loss are available from other sources," MCL 500.3172(2) (emphasis added), including any health insurance available to Oliver. This case does not involve benefits received under Medicare or Medicaid, or entitlement to receive medical treatment or services through the VA. Furthermore, ZMC does not argue on appeal that the health insurance coverage provided by Blue Cross is an ERISA plan that triggers federal-conflict preemption. The trial court erroneously held that *Batts* required Farmers to pay ZMC's invoice and subsequently seek reimbursement from Blue Cross. Unlike the VA, Blue Cross does constitute a "benefit source" available to Oliver under MCL 500.3172(2), which results in the reduction of benefits payable from Farmers to Oliver and his assignees. Therefore, we reverse the trial court's denial of Farmers' motion for summary disposition and remand for entry of summary disposition in favor of Farmers. Given our resolution of this issue, we need not address Farmers' argument that the trial court improperly denied its motion for reconsideration as untimely.

Reversed and remanded for entry of summary disposition in defendant's favor. Defendant, having prevailed in full, may tax costs under MCR 7.219(F). We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Colleen A. O'Brien
/s/ Brock A. Swartzle