STATE OF MICHIGAN

COURT OF APPEALS

BRONSON HEALTH CARE GROUP, INC., Plaintiff-Appellee, v MICHIGAN ASSIGNED CLAIMS PLAN, MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY, and JOHN DOE INSURANCE COMPANY, Defendants-Appellants.	UNPUBLISHED January 17, 2017 No. 330852 Kalamazoo Circuit Court LC No. 2014-000554-CZ

Before: MURPHY, P.J., and METER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendants Michigan Assigned Claims Plan (MACP), Michigan Automobile Insurance Placement Facility (MAIPF), and John Doe Insurance Company (JDIC) appeal as of right from an order granting summary disposition to plaintiff Bronson Health Care Group, Inc.[1] We affirm.

On October 21, 2014, plaintiff, an operator of hospitals and other health-care facilities, filed a complaint alleging that, on October 21, 2013, plaintiff provided medical services—with charges totaling $5,997.23—to Darin Winn after he sustained injuries that same day in a motor vehicle accident.[2] Plaintiff alleged that no insurance applicable to Winn's injuries could be

[1] We note that the parties dispute whether the present appeal is tenable as an appeal of right, in that the trial court's order did not resolve the claim against JDIC, a fictitious entity. Plaintiff contends that an appeal of right is not appropriate at this time. Even assuming, without deciding, that an appeal of right would not be appropriate, we exercise our discretion to hear this appeal. See *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012).

[2] Winn rear-ended another vehicle while driving a 2013 Malibu.

identified, and therefore, on October 10, 2014, it submitted a claim to defendant,[3] but defendant refused to assign the claim, in violation of applicable laws.

Plaintiff set forth three counts in its complaint. In Count I, it alleged that defendant had a clear legal duty to assign the claim to a responsible no-fault carrier or to itself; it requested a writ of mandamus directing defendant "to promptly assign [plaintiff's] [c]laim . . . ." In Count II, plaintiff requested a declaratory judgment that it was entitled to have its claim assigned to a responsible no-fault carrier or to MACP and that it was also entitled to attorney fees regarding the assignment of its claim. In Count III, plaintiff stated that the as-yet unnamed insurer, JDIC, would be the party responsible for the $5,997.23 charge and would be obligated to pay within 30 days of assignment of the claim. Plaintiff stated that if JDIC did not timely pay, it would be responsible for penalty interest and attorney fees; plaintiff requested a total judgment of $54,217 against JDIC.

In its response to plaintiff's request for admissions, defendant alleged that "[t]here is evidence that Liberty Insurance . . . has issued a policy that is applicable to this claim."

On July 23, 2015, plaintiff filed a motion for summary disposition, and a supporting brief, under MCR 2.116(C)(9) and (10). Plaintiff alleged that, a few days before the accident, Winn had repossessed the vehicle from Jennifer Miller; plaintiff stated, "It is undisputed that prior to the accident, Jennifer Miller cancelled the policy of no fault insurance that she previously maintained for the Malibu." Plaintiff attached a document indicating that Winn stated, at the time of treatment, that he had no automobile coverage at the time of the accident. Plaintiff also provided a signed statement of a private investigator, who stated that he made numerous attempts to contact Winn after treatment but could not locate him. Plaintiff also attached a letter to Lakeside Insurance Agency (Lakeside), the insurance agent for Burns Recovery, the repossession business that was Winn's employer; in the letter, plaintiff's attorney stated that he had found no worker's compensation claim related to the accident and requested that Lakeside open a personal protection insurance (PIP) claim for the accident. Plaintiff alleged that this request was denied and that, therefore, it submitted an application for benefits, and supporting documents, to defendant on October 10, 2014. Defendant denied the claim.

Plaintiff alleged in its summary-disposition brief that further information was obtained during discovery. Plaintiff attached a certificate of insurance indicating that Liberty Insurance Underwriters (LIU) had an automobile policy in place with Burns Recovery at the time of the accident; the certificate listed "repossession plate" in the spot for the vehicle identification number.[4] Plaintiff argued that the documents produced did not establish that Winn was in the course or scope of his employment at the time of the accident and also did not establish that Burns Recovery would qualify as the owner or registrant of the 2013 Malibu for purposes of the instant case.

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[3] Although there are three named defendants in this case, the parties refer to a singular "defendant," MACP, and we will follow this convention in the present opinion.

[4] The vehicle had Miller's plate at the time of the accident.

Plaintiff stated that, despite its efforts, it could identify no PIP insurance applicable to the accident and that, therefore, its claim should have been assigned. Plaintiff also stated that even if LIU had a potential obligation to pay, defendant was still obligated to assign the claim to an insurer, which could then enforce indemnification rights against LIU.

On August 21, 2015, defendant filed a response to plaintiff's motion. Defendant attached a police report indicating that the Malibu was being repossessed by Burns Recovery at the time of the accident.[5] Defendant pointed out that the record documents evidenced no attempt by the hospital, at the time of treatment, to ascertain whether, at the time of the accident, Winn had been acting in the scope of his employment or whether his employer had insurance. Defendant also pointed out that plaintiff knew the identity of the insurance agent for Burns Recovery (i.e., Lakeside) and even knew the policy number applicable to the accident, but for some reason did not, in its letter to Lakeside, ask Lakeside to provide the identity of the carrier that issued the policy.[6] Defendant noted that plaintiff could have discovered the LIU policy with a minimal amount of diligence. Defendant also argued that there was at least a question of fact regarding whether the entity, believed to be GM Financial, who repossessed the vehicle from Miller had insurance applicable to the accident.

Defendant stated that it properly declined to assign plaintiff's claim because the claim and documents themselves, particularly the police report, showed the existence of an applicable insurer and because plaintiff failed to exercise due diligence in discovering the existence of applicable insurance.

On August 24, 2015, plaintiff filed a reply brief, stating that defendants had not shown that any insurer for Burns Recovery was responsible for Winn's PIP benefits and also stating that it did exercise due diligence. Plaintiff attached two emails to its reply. In the first, an attorney for plaintiff contacted an agent of Burns Recovery on October 9, 2014, and inquired whether Winn was an employee of Burns Recovery, and acting in the course and scope of his employment, on the date of the accident. The attorney also inquired whether Burns Recovery had no-fault coverage for the vehicle at the time of the accident. In the second email, the agent identified LIU in response, but the email was dated October 23, 2014, two days past plaintiff's filing deadline for having a claim assigned.

The motion hearing took place on August 24, 2015. The trial court ruled for plaintiff, stating, "I'm going to actually grant the motion and order that the claim be assigned. I think under the facts of this case . . . they did provide—I think they were duly diligent." The court stated that the type of case at issue was very fact-specific and that in this particular case, there were "a lot of steps that were taken . . . ." On October 14, 2015, the court issued a written order

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[5] Defendant indicates on appeal that the vehicle was *not* in fact in the process of being repossessed at the time of the accident; the titleholder and registrant, Miller, stated that she had turned the vehicle over several days before the accident.

[6] Plaintiff's attorney represented that he asked a Lakeside agent, during a telephone call, to identify Burns Recovery's no-fault insurer but the agent would not answer him.

granting plaintiff's motion for summary disposition "for the reasons stated on the record." The court ordered defendant to assign plaintiff's claim to a servicing insurer.

On November 4, 2015, defendant filed a motion for reconsideration, which the trial court denied on December 4, 2015. The parties stipulated to a stay of proceedings pending the resolution of the instant appeal.[7]

We review de novo a grant of summary disposition. *Village of Dimondale v Grable*, 240 Mich App 553, 563; 618 NW2d 23 (2000). Although the trial court cited MCR 2.116(C)(9) and (10) in granting summary disposition, it is clear that the parties were relying on evidence outside the pleadings; accordingly, we will review this appeal under MCR 2.116(C)(10). See *Village of Dimondale*, 240 Mich App at 565, and *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 524; 542 NW2d 912 (1995). "A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of a claim." *Butler*, 214 Mich App at 524. "This Court must independently determine, giving the benefit of doubt to the nonmovant, whether the movant would have been entitled to judgment as a matter of law." *Id*. "A court must consider the pleadings as well as affidavits, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party." *Village of Dimondale*, 240 Mich App at 566.

MCL 500.3172(1) states:

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury [or] no personal protection insurance applicable to the injury can be identified . . ..

A healthcare provider may pursue a no-fault claim on its patient's behalf. *Lakeland Neurocare Centers v State Farm Mut Auto Ins Co*, 250 Mich App 35, 37-39; 645 NW2d 59 (2002).

MCL 500.3173a(1) states:

> The Michigan automobile insurance placement facility shall make an initial determination of a claimant's eligibility for benefits under the assigned claims plan and shall deny an obviously ineligible claim. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.

Defendant claims that plaintiff did not provide sufficient information for an initial determination of eligibility. In support of this argument, defendant claims that plaintiff did not adequately explain why it believed that there was no applicable automobile insurance in effect at

[7] Plaintiff filed a motion to dismiss the appeal for lack of jurisdiction, but this Court denied the motion, indicating that the parties could raise the issue of jurisdiction again during the appeal. *Bronson Health Care Grp, Inc v Michigan Assigned Claims Plan*, unpublished order of the Court of Appeals, issued March 2, 2016.

the time of the accident. It further claims that, while plaintiff argues that it did not obtain the name of LIU until after the one-year deadline for filing a claim, "the only reason for this was that it did not ask the information of Burns Recovery's agent until October 9, 2014, when only 12 days remained to assert a claim on Darin Winn's behalf."

We cannot agree with defendant's argument that it was provided with insufficient information. Indeed, plaintiff submitted an application indicating that there was no insurance in effect on the date of the accident and also included, among other things, the police report, which indicated that the vehicle was being repossessed at the time of the accident and which had a blank space in the box for the insurance carrier,[8] and the report of the private investigator, who detailed his unsuccessful attempts to reach Winn. Plaintiff submitted an adequate application; the pertinent question is whether defendant, upon receiving the claim, properly determined that the claim was "obviously ineligible." MCL 500.3173a(1).

We enforce statutes according to their plain language, *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014), and if a statute does not define a term, a dictionary may be consulted to ascertain meaning, see *Allison v AEW Capital Management, LLP*, 481 Mich 419, 427; 751 NW2d 8 (2008). Merriam-Webster's Collegiate Dictionary (2014) defines "obviously" as "in an obvious manner" or "as is plainly evident," and it defines "obvious," in part, as "easily discovered, seen, or understood[.]"

Defendant contends that the claim was obviously ineligible because "Darin Winn was driving the vehicle under suspicious circumstances . . . ." Defendant states, "It is unknown why Winn was driving a repossessed vehicle near his own home fully 11 days after the vehicle was repossessed . . . ." Defendant's argument in this regard is not adequately developed. As noted in *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959):

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.

Defendant does not adequately explain and set forth citations regarding why these alleged "suspicious circumstances" established that it was plainly evident that plaintiff's claim was ineligible. We will not perform an appellant's work for it. *Id*.

Defendant argues that, "because [plaintiff] stands in Winn's shoes and can claim no greater rights that those of Winn himself, the relevant question is not whether [plaintiff] could identify insurance applicable to Winn's injuries, but whether *Winn* could have identified such insurance—or more to the point, whether [plaintiff's] application for benefits . . . included

[8] The report mentioned Lakeside in the "narrative" section, but as noted, Lakeside was the agent, not the carrier.

sufficient evidence to demonstrate that no insurance could be identified by *Winn*." Defendant states, among other things:

> If . . . eligibility could be premised on the provider's inability to identify coverage, as opposed to the patient's inability to do so, we would again be left with two different standards—one for the provider and another for the injured person, potentially leading to conflicting results in which the provider is eligible to claim . . . on behalf of the injured person when the injured person would not be entitled to assert a claim on their own behalf.

Once again, defendant does not support its argument with sufficient authority. At any rate, we do not agree with defendant's argument. Plaintiff was the claimant here, and MCL 500.3172(1) states:

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury [or] no personal protection insurance applicable to the injury can be identified . . ..

Essentially, defendant is attempting to graft words onto this statute by adding the words "by the injured party" after the word "identified." Case law establishes that plaintiff was entitled to make the present claim. See *Lakeland Neurocare Centers v State Farm Mut Auto Ins Co*, 250 Mich App 35, 37-39; 645 NW2d 59 (2002). It is well within the range of possibilities that a healthcare provider might be unable to identify applicable insurance due to the inability to contact or obtain information from an injured person. Defendant's interpretation would lead to unfairness and is not in accord with the statute as written.

Defendant next argues that plaintiff, in investigating possibly applicable insurers for the accident, did not exercise due diligence as required by the written assigned-claims plan. The plan states, at § 5.1(B)(4):

> Due diligence is exercised when the claimant or their representative has investigated and exhausted all avenues of any other available coverage. This may include, but is not limited to, contact attempt with the claimant, the claimant's resident relatives or spouse, the involved vehicle owner(s), the involved vehicle driver and any other actions that the MAIPF deems necessary for the claimant or their representative to determine that the claimant may be entitled to benefits through the MACP.

We cannot agree that plaintiff failed to exercise due diligence. Plaintiff asked Winn about insurance while he was at the hospital and was informed that Winn was uninsured. Plaintiff ascertained that Miller had canceled her insurance policy for the vehicle. Plaintiff hired a private investigator to try to locate Winn but the investigator was unsuccessful in doing so. Also, plaintiff's attorney represented that, on September 30, 2014, he attempted to obtain the name of Burns Recovery's no-fault insurer from Lakeside but Lakeside refused to disclose the name. The record contains an email dated October 9, 2014, in which plaintiff's attorney attempted to obtain

the pertinent information from Burns Recovery. In addition, and significantly, the record contains a letter dated September 23, 2014, in which plaintiff's attorney specifically asks Lakeside to open a PIP claim with regard to the accident.

Defendant claims that if plaintiff had exercised further diligence it could have discovered an applicable insurance policy through Miller or through the repossessing owner, but overall plaintiff's actions were reasonable, especially considering that the police report indicated (albeit falsely, as later determined), that the vehicle was in the process of being repossessed at the time of the accident.[9] We find no basis for reversal.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Amy Ronayne Krause

[9] This led to an inference that Burns Recovery would be the entity having applicable insurance, and, as detailed, plaintiff diligently attempted to obtain information regarding Burns Recovery's no-fault carrier.