STATE OF MICHIGAN

COURT OF APPEALS

SUZANNE MARIE BEAUDOIN,

Plaintiff-Appellant,

v

MICHIGAN PROPERTY & CASUALTY GUARANTY ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
March 15, 2018

No. 336952
Macomb Circuit Court
LC No. 2015-001224-NF

Before: M. J. KELLY, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Plaintiff, Suzanne Marie Beaudoin, appeals as of right an opinion and order denying plaintiff's request for attorney fees following an evidentiary hearing. We affirm in part and reverse and remand in part.

This appeal primarily centers on whether plaintiff submitted sufficient proof that her treatments for neck pain were related to a 1998 automobile accident such that defendant, Michigan Property & Casualty Guaranty Association,[1] should have approved no-fault insurance payments for the treatments upon submission of the bills. The parties do not dispute that plaintiff broke her back in the accident and that defendant had been properly paying benefits related to her back for some time. However, defendant initially denied the claims related to plaintiff's *neck* and made the payments only after additional investigations. Plaintiff sought attorney fees based on the allegedly unreasonable delay, but the trial court found no unreasonable delay.

Plaintiff contends that the trial court erred by finding that she failed to present reasonable proof of loss and that, as a result, defendant did not unreasonably delay paying benefits. We review the trial court's finding for clear error. See *Attard v Citizens Ins Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999).

[1] It is not disputed that defendant was required to provide plaintiff with personal-injury-protection benefits because her insurer had become insolvent.

MCL 500.3148(1) states:

> An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

MCL 500.3142(2) states:

> Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Any part of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. For the purpose of calculating the extent to which benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

Defendant contends that it did not obtain reasonable proof of loss until it received the report of an independent medical examination (IME) by Dr. Jerry Matlen, M.D., a contention with which the trial court agreed.

A refusal or delay in payment will not be deemed unreasonable if a bona fide factual uncertainty exists. *Roberts v Farmers Ins Exchange*, 275 Mich App 58, 67; 737 NW2d 332 (2007). The Michigan Supreme Court has stated that the plain language of MCL 500.3148(1) "requires that the trial court engage in a fact-specific inquiry to determine whether 'the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.' " *Moore v Secura Ins*, 482 Mich 507, 522; 759 NW2d 833 (2008), quoting MCL 500.3148(1). Whether benefits are ultimately deemed warranted is not dispositive; the pertinent question is whether the initial refusal to pay was unreasonable. *Id*. at 522. In addition, "[u]nder the plain language of [MCL 500.3142(2)], the claimant shoulders the initial burden to supply reasonable proof of her entire claim, or reasonable proof for some portion thereof. When the claimant provides such evidence, the insurer then must evaluate that evidence as well as evidence supplied by the insurer's doctor before making a reasonable decision regarding whether to provide the benefits sought." *Id*. at 523.

It is true that Dr. Antoine Geffrard, M.D., in a 2008 IME report, opined that plaintiff's neck pain was likely related to the accident. However, plaintiff, in the current case, was seeking payment for treatments occurring *several years later*. It is not reasonable to expect that defendant would have used a 2008 report as reasonable proof of loss with regard to the instant claims, when plaintiff had not been making any claims related to her neck in the interim period. Plaintiff claims that because the adjuster's case file contained an August 2014 note from a pain-management clinic indicating that plaintiff had communicated that she had been experiencing neck pain for years, defendant was on reasonable notice that the instant claims were related to

the accident. However, "years" from August 2014 could be 2012, which is still multiple years after Dr. Geffrard's report. Plaintiff also emphasizes that she communicated to defendant in February 2015 that she was experiencing neck pain related to her back, and it is not disputed that plaintiff broke her back in the 1998 accident and that defendant had been continuously paying claims for plaintiff's back. It is not reasonable to expect that defendant would have "taken plaintiff's word" for the explanation of her neck pain, however, when plaintiff is not trained in medicine; the claims adjuster, Elaine Smith, reasonably interpreted this statement as a "claim," not as proof of loss. In addition, to the extent plaintiff is attempting to argue that the bills submitted by the treatment providers were proof of loss, this is not tenable; the bills, like plaintiff's statement, were part of the claim for loss but did not reasonably establish a causal link between the accident and the neck issues.

Plaintiff also emphasizes her ongoing problems with a hunched back and alleges that Dr. Geffrard opined that this hunched back was related to the accident. However, Dr. Gerrard stated that it was "entirely possible that [plaintiff's] poor posture is related and is primarily related to the chronic complaints of pain and paraspinal thoracic and lumbar diminished range of motion in all levels of the vertebral paraspinal muscles." Even assuming, without deciding, that there was sufficient evidence to tie the hunched back to plaintiff's neck pain, Dr. Gerrard merely expressed a *possibility* of relatedness, whereas plaintiff was obligated to present *reasonable proof of loss*.

Considering all the evidence, the trial court did not clearly err in concluding that defendant did not obtain reasonable proof of loss until it received the IME report of Dr. Matlen.

Plaintiff next argues that the trial court clearly erred by determining that defendant paid all bills within 30 days of obtaining reasonable proof of loss and having an obligation to pay, because the payment to one of the treatment providers was not processed until April 26, 2016, more than 30 days after Dr. Matlen's report. The trial court ruled that defendant "paid all outstanding provider claims within thirty days of receiving Dr. Matlen's report on February 5, 2016." Plaintiff does not dispute that if one assumes that the "trigger date" is February 4, 2016,[2] defendant timely paid the bill relating to Basha Diagnostics, PC. Plaintiff raises an argument solely related to the treatments provided by United Pain Therapies, PLLC (UPT). Smith stated that the "date of processing" for the payment to UPT was April 26, 2016, which, obviously, is more than 30 days past February 5, 2016.

[2] Plaintiff uses February 4, 2016 (the date of Dr. Matlen's report) as the relevant date, whereas defendant uses February 5, 2016 (the date defendant allegedly received the report). Plaintiff does not dispute the date of receipt and thus, the date of February 5, 2016, is the appropriate date on which to focus; indeed, defendant could not have a proof of loss based on a document it had not yet received.

The gist of defendant's argument is that because defendant *began* paying the providers on February 23, 2016, defendant paid within 30 days of February 5, 2016.[3]

MCL 500.3142(2) states, in pertinent part:

> Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. . . . *For the purpose of calculating the extent to which benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery*. [Emphasis added.]

The date of processing for the UPT payment was April 26, 2016. Clearly, a "valid instrument" was not placed in the mail before that date, nor was a "delivery" made before that date. *Id*. Statutes are to be enforced in accordance with their plain language. *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004). The trial court made an implicit finding that the date of reasonable proof of loss and the trigger date for the obligation to pay was February 5, 2016, when it stated: "[Defendant] paid all outstanding provider claims within thirty days of receiving Dr. Matlen's report on February 5, 2016. Thus, because there is no evidence that the payment of benefits to Basha and [UPT] were overdue, plaintiff is not entitled to an award of attorney fess under MCL 500.3148(1)." No party adequately disputes this finding of the trigger date, and there is no basis for disturbing the finding. As such, the payment on or after April 26, 2016, was indeed overdue under the language of MCL 500.3148(1).

As noted, MCL 500.3148(1) states:

> An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which

[3] At certain points in its brief, defendant appears to be arguing that there was no true reasonable proof of loss and no obligation to pay until the date of the evidentiary hearing, when plaintiff supplied an affidavit from her treating physician. This could be interpreted to mean that defendant is arguing for a "trigger date" of November 29, 2016, the first day of the evidentiary hearing. If that date is used, then the April 26, 2016, payment cannot, obviously, be deemed untimely. However, when read as a whole, it is apparent that defendant is *not* in fact arguing this alternative basis for affirmance but is instead agreeing with the trial court's conclusion that the trigger date is February 5, 2016, and that payments were timely even using this date. Indeed, defendant states that it "arranged for three IMEs for the purpose of determining if the current treatments relate back to the 1998 accident." Defendant then states, "*The chronology of the dates on which [defendant] received the three IME reports is dispositive*." (Emphasis added.) Defendant goes on to state that on February 5, 2016, defendant received Dr. Matlen's report "finding a link between [the] 1998 accident and [the] 2015 condition." Defendant continues, "In that same month of February, beginning on February 23, [defendant] began paying the providers for their services." Defendant argues that, therefore, the 30-day requirement was satisfied.

> are overdue. *The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment*. [Emphasis added.]

At certain points in these proceedings (i.e., 30 days after February 5, 2016), plaintiff's attorney "represent[ed] a claimant in an action for . . . benefits which [were] overdue." *Id*. As such, the question becomes whether defendant "unreasonably delayed in making proper payment" after February 5, 2016. It is entirely possible that any delay was not unreasonable and was attributable to the bill-review process as discussed by Smith, but this Court is not in the position to decide this matter. We thus reverse the trial court's findings in part and remand this case for further proceedings.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Patrick M. Meter