STATE OF MICHIGAN

COURT OF APPEALS

WILLIE SEALS,

Plaintiff-Appellant,

and

THE PAIN CENTER USA, PLLC, and INTERVENTIONAL PAIN CENTER,

Intervening Plaintiffs,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 20, 2019

No. 343573
Wayne Circuit Court
LC No. 16-015077-NF

Before: CAMERON, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

In this no-fault action, plaintiff, Willie Seals, appeals the trial court's order granting, upon reconsideration, summary disposition under MCR 2.116(C)(10) in favor of defendant, Allstate Insurance Company. We affirm.

This case arises out of a car accident that occurred on the east side of Detroit. On April 1, 2016, Seals was a passenger in an uninsured vehicle that was struck by another car after it failed to stop at a stop sign. While Seals originally declined medical treatment after the accident, he later claimed injuries to his head, back, legs, and right shoulder.

Seals, who also did not have car insurance at the time, filed an application with the Michigan Automobile Insurance Placement Facility (MAIPF) for coverage under the Michigan Assigned Claims Plan (MACP). Seals then sued the MACP contending that the MACP had either unreasonably refused to make, or unreasonably delayed making, payments to Seals. As part of Seals's complaint, he claimed expenses for attendant care services. The MACP later

assigned Seals's claim for no-fault benefits to defendant, and the parties agreed to substitute defendant for the MACP.

As part of discovery, Seals asserted, both in answers to interrogatories and in a deposition, that his longtime friend and roommate, Walter Bentley, had provided attendant care services to Seals. Seals testified in his deposition that Bentley had helped Seals to get in and out of the bath tub and his bed, and had helped him to put on his socks, pants, and shoes. Seals denied needing help actually bathing himself. However, Bentley, in his deposition, specifically denied ever helping Seals dress, bathe, or get out of bed, and he stated that he had only assisted Seals with chores and errands. Bentley also specifically denied ever helping Seals with getting in and out of the bathtub. Bentley also submitted calendars and statements documenting the household services that he performed for Seals, but the statements did not document whether Bentley had assisted with personal or attendant care services.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10) contending that Seals had asserted false information as part of his attendant care claim, and, consequently, Seals's entire claim for no-fault benefits must be dismissed. Seals responded to defendant's motion and contended that there was no evidence demonstrating that Seals had an intent to defraud defendant, and that the correct remedy for the inconsistency was to strike the attendant care claim. The trial court first denied defendant's motion for summary disposition; however, after defendant filed a motion for reconsideration, the trial court granted defendant's motion for summary disposition, concluding that Seals had submitted false information. This appeal followed.

Seals contends that the trial court erred in granting summary disposition to defendant upon reconsideration because a genuine issue of material fact exists regarding whether he committed a fraudulent insurance act. We disagree.

This Court reviews a trial court's decision regarding a motion for reconsideration for an abuse of discretion. *Sanders v McLaren-Macomb*, 323 Mich App 254, 264; 916 NW2d 305 (2018). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Cadwell v Highland Park*, 324 Mich App 642, 649; 922 NW2d 639 (2018) (quotation marks and citation omitted).

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018), citing *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a party's claim." *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). The trial court appropriately grants that motion when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*., quoting *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003) (quotation marks omitted). Questions of statutory interpretation are also reviewed de novo. *Bazzi v Sentinel Ins Co*, 502 Mich 390, 398; 919 NW2d 20 (2018).

As a preliminary matter, we note that the trial court granted defendant's motion for reconsideration despite the fact that defendant did not present a new issue or substantially

different facts than in its motion for summary disposition. A party moving for reconsideration is required to "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." MCR 2.119(F)(3). A trial court is afforded "considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *In re Estate of Moukalled*, 269 Mich App 708, 714; 714 NW2d 400 (2006) (quotation marks and citation omitted). The trial court also has the discretion to "decline to consider new legal theories or evidence that could have been presented when the motion was initially decided." *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012). But similarly, the trial court may also give the party moving for reconsideration a "second chance" even if the motion presents nothing new. *Id.* (quotation marks and citation omitted).

The trial court has wide discretion to grant a motion for reconsideration even if nothing new has been presented; therefore, it cannot have necessarily abused its discretion in doing so. Because the trial court did not err in granting reconsideration simply because defendant did not present any new information, we will review de novo the result of the grant of reconsideration, which was, in essence, granting defendant's motion for summary disposition. See *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454; 674 NW2d 731 (2003) (applying de novo review after the court granted a motion for reconsideration overruling an initially successful motion for summary disposition).

MCL 500.3173a(2) provides:

> A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the [MAIPF] for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under [MCL 500.4503][1] that is subject to the penalties imposed under [MCL 500.4511]. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

This Court, in *Candler v Farm Bur Mut Ins Co of Mich*, 321 Mich App 772, 779-780; 910 NW2d 666 (2017), held that a person commits a "fraudulent insurance act" under MCL 500.3173a(2), when:

> (1) the person presents or causes to be presented an oral or written statement, (2) the statement is part of or in support of a claim for no-fault benefits, and (3) the

[1] MCL 500.4503 provides definitions and examples of fraudulent insurance acts which include, but are not limited to, statements to an insurer that are known to be false, soliciting insurance with a statement that is known to be false, or assisting another with a no-fault claim by providing a statement that is known to be false. The reference to MCL 500.4503 in MCL 500.3173a indicates only that the conduct described in MCL 500.3173a is a fraudulent insurance act under MCL 500.4503.

> claim for benefits was submitted to the MAIPF. Further, (4) the person must have known that the statement contained false information, and (5) the statement concerned a fact or thing material to the claim.

The Court also explained that MCL 500.3173a does not mandate that a specific person or entity must receive the false statement or information. Rather, the statement only needs to be used "as part of or in support of a claim to the [MAIPF]" in order to qualify as a fraudulent insurance act. *Candler*, 321 Mich App at 780, quoting MCL 500.3173a(2) (quotation marks omitted; alteration in original). If the original claim for no-fault benefits was made to the MAIPF, then the provisions of MCL 500.3173a apply, even if the MAIPF or MACP has assigned the claim to a private insurer. *Id*. at 779-780. Furthermore, the plain language of MCL 500.3173a does not require that the person submitting the false information have an intent to defraud. MCL 500.3173a. Finally, while formal documentation, i.e., bills, statements, or logs, is considered the best way of establishing that no-fault services have been rendered, there is no statutory provision that requires formal documentation to establish a claim for benefits; testimony by a service provider can be sufficient to establish that expenses have been incurred. *Douglas v Allstate Ins Co*, 492 Mich 241, 269-270; 821 NW2d 472 (2012).[2]

Seals's and Bentley's deposition testimonies establish that Seals committed a fraudulent insurance act. First, in Seals's deposition testimony, he made an oral statement that Bentley had provided attendant care services, and Seals specifically described Bentley as having regularly helped Seals get in and out of the bathtub as well as his bed, and as having helped to dress Seals. It is immaterial that Seals did not submit specific forms or calendars describing the services; under the statute, Seals's oral statement was sufficient to support a claim of fraud. MCL 500.3173a(2). Second, the statements made during the deposition supported Seals's claim for attendant care services allowed under MCL 500.3107 of the no-fault act. Third, Seals's claim for no-fault benefits was submitted to the MAIPF, and he then asserted an attendant care claim in his complaint against the MACP. Fourth, Seals must have known that his deposition testimony contained false information. Defense counsel asked Seals, "As far as bathing, you said [Bentley] helps you sometimes?" Seals answered, "Yes, help me get in and out of the tub." Defense counsel repeated, "You just need help to get in and out?" Seals again said, "In and out the tub, yes, with my legs." Bentley, however, asserted at his deposition that he did not provide personal

[2] We note that the cited language from *Douglas* is dicta and does not directly address a situation analogous to this case; however, it is persuasive and consistent with both *Candler* and MCL 500.3173a. The *Douglas* Court addressed what evidence could be used or submitted to satisfy the one year back rule of MCL 500.3145(1) when it stated that "no statutory provision *requires* that [a claimant use formal documentation] to establish entitlement to allowable expenses . . ." and "testimony can allow a fact-finder to conclude that expenses have been incurred . . . ." *Douglas*, 492 Mich at 270. Similarly, both *Candler* and MCL 500.3173a state that specific documentation is not required to establish a fraudulent insurance act; rather, any false "oral or written statement" pertaining to a material aspect of a claim for no-fault benefits submitted to the MAIPF may constitute a "fraudulent insurance act." MCL 500.3173a(2); *Candler*, 321 Mich App at 779-780.

care services to Seals, and he specifically denied ever helping Seals get in and out of the bathtub or having helped to dress Seals. At his deposition, Bentley was asked by defense counsel: "Have you ever had to help [Seals] get in and out of the bathtub since the accident?" Bentley answered, "No, ma'am." Similarly, defense counsel asked, "So have you ever had to help [Seals] get dressed?" Again, Bentley answered, "No, ma'am." Because Seals was the person who originally asserted the information that Bentley later denied, Seals asserted a statement that he must have known was false. Fifth, and finally, Seals was describing the services—bathing and dressing—that constitute allowable expenses under an attendant care claim; therefore, they were material to Seals's attendant care claim. See *Shivers v Schmiege*, 285 Mich App 636, 643; 776 NW2d 669 (2009) (describing that assistance with dressing, using the bathroom, and basic hygiene are part of an attendant care claim). Therefore, the irreconcilable deposition testimony of Seals and Bentley is sufficient to constitute a "fraudulent insurance act" and render Seals "ineligible for payment or benefits" through the no-fault act. MCL 500.3173a(2); *Candler*, 321 Mich App at 779-782. We conclude that no genuine issue of material fact existed regarding whether Seals submitted false information as part of a no-fault claim.

We also note that the mere fact that there is a discrepancy between Seals's and Bentley's deposition testimonies does not create a question of fact for several reasons. First, the dispute in question is whether the two deposition testimonies, taken together, constitute fraud under MCL 500.3173a. The issue is not whether Bentley did or did not provide attendant care services. The two questions are intertwined in this case; however, that is only true because of Seals's original assertion that Bentley performed attendant care services. Similarly, Seals does not assert that the discrepancy between Seals's and Bentley's deposition testimonies creates a question of fact; rather, Seals contends on appeal that he either did not make an attendant care claim or that there was no specific contradiction between the deposition testimonies. Bentley's deposition testimony has not been produced in an attempt to create a new question of fact or to support or discredit Seals's position, as would be expected if there was a genuine issue of material fact. Rather, the testimony was produced to supplement Seals's testimony and show that he committed fraud. Defendant has introduced both testimonies to demonstrate that Seals committed fraud, instead of each party introducing either Seals's or Bentley's testimony to demonstrate a question of fact. Finally, Seals never disputes the veracity of Bentley's deposition testimony. Seals claimed to do so in an affidavit allegedly prepared before defendant's motion for summary disposition, but that affidavit was not presented to the court until after the hearing on defendant's motion for summary disposition, and it could not have been considered. *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 724; 909 NW2d 890 (2017) ("A circuit court's review is limited to the evidence that is presented to the court at the time the motion was decided."). To the contrary, Seals's actions before the trial court seem to acknowledge that Bentley's testimony was true. As soon as defendant asserted a fraud claim based on the discrepancy between the two deposition testimonies, Seals moved to withdraw his attendant care claim. This indicates an acknowledgement by Seals that no attendant care services were actually provided to him. For those reasons, we conclude that there is no question of material fact because of the posture in which the deposition testimonies must be viewed.

Seals, nonetheless, contends that he did not commit a fraudulent insurance act, and the trial court erred in dismissing his claim for no-fault benefits in its entirety for a variety of reasons. Seals's contentions are without merit. First, Seals contends that, because no forms or formal documentation were submitted to the court, he had not made an attendant care claim.

However, Seals's prior complaint, interrogatories, and deposition testimony establish that he made an attendant care claim. Seals consistently asserted that he was submitting a claim for attendant care; he only retracted that claim at the hearing on defendant's motion for summary disposition after defendant asserted that Seals had submitted false information. Seals's complaint stated that he had incurred attendant care expenses and that defendant was obligated to pay those expenses. Seals reasserted that same attendant care claim in his answer to defendant's interrogatories and stated specifically that Bentley was Seals's service provider. In defendant's requests for admissions, Seals responded, "Plaintiff is claiming attendant care services at a rate of $15.00 dollars per hour[.]" In Seals's deposition, he asserted again that he was making an attendant care claim, and he specifically described the personal care services that Bentley had allegedly provided to Seals. The only "evidence" that Seals had that he was rescinding the attendant care claim was an affidavit that was never provided to the court, and any information allegedly contained in it cannot be considered. See *Meisner*, 321 Mich App at 724 ("[T]his Court's review is limited to the trial court record[.]"). Furthermore, formal documentation was not required to establish an attendant care claim. See *Candler*, 321 Mich App at 779-780 (requiring only an "oral or written statement"); see also *Douglas*, 492 Mich at 269-270 (stating that "no statutory provision *requires* that [formal documentation] be used to establish entitlement to allowable expenses. . . ."). The complaint, taken with the answers to interrogatories and Seals's deposition testimony, was sufficient to allow the trial court to find that no genuine issue of material fact existed regarding whether Seals submitted a fraudlent claim for attendant care services.

Next, Seals contends that he was confused or lacked understanding during his deposition testimony, indicating that he believed that he was only claiming replacement services and did not "know" that he was making a false statement as required by MCL 500.3173a(2) and *Candler*. However, the deposition transcript makes it abundantly clear that Seals knew he was asserting a claim for attendant care services. Defense counsel explained that attendant care was help with "personal care type items, like bathing, going to the bathroom, taking care of your hair, [and] getting dressed," while replacement services dealt with chores or errands. While Seals originally said that Bentley had helped with chores or errands as part of Seals's attendant care claim, defense counsel reminded Seals that those were not attendant care services. Seals then corrected himself and stated that, from a personal care standpoint, Bentley helped to dress Seals and to get him in and out of the bathtub. Thus, Seals's deposition testimony shows that Seals understood that he was making a claim for attendant care services.

Additionally, Seals contends that there was no specific contradictory statement between his and Bentley's deposition testimonies. However, Seals specifically testified that Bentley performed certain actions, such as helping Seals to get out of bed, helping Seals to get in the bathtub, and helping Seals to dress himself by putting on his socks, shoes, and pants. Seals said that Bentley helped Seals to get in the tub "three times a week" and that each instance took "about an hour." Furthermore, Bentley helped to dress Seals every day, and each instance took about 30 or 45 minutes. However, Bentley denied assisting Seals with any of that:

> [*Defense Counsel*]: There's another category of services that we call attendant care, which is the personal care type stuff that I asked you about. But it's your testimony today that you were assisting with chores and you were not helping him with the personal care items?

[*Bentley*]: No, not dressing, not bathing him, none of that.

Bentley confirmed later in the deposition that he had never helped Seals to dress, or to get in or out of the bathtub, or to get out of bed, and that Bentley had only assisted with chores or errands. Contrary to Seals's assertions, Bentley's testimony directly contradicts Seals's testimony because Bentley specifically denied ever assisting Seals with the attendant care services that Seals stated that Bentley did.

Finally, Seals contends that defendant cannot prove that he intended to defraud defendant. As such, the trial court should have severed Seals's attendant care claim from the remainder of his claim for no-fault benefits. However, defendant does not need to prove that Seals intended to defraud defendant as that is not statutorily required under MCL 500.3173a, nor is it listed in *Candler*. MCL 500.3173a(2); *Candler*, 321 Mich App at 779-780. Furthermore, nothing in the statute provides a court with the ability to sever an attendant care claim from the remainder of a plaintiff's claim for no-fault benefits. Rather, if a person submits false information, the proper remedy is to render that person ineligible for any no-fault benefits. MCL 500.3173a(2). MCL 500.3173a(2) clearly states that "a claim that contains . . . a fraudulent insurance act . . . is ineligible for payment or benefits under the assigned claims plan." The *Candler* Court affirmed that, in a situation such as those analogous to this case, the statute dictates that a party's entire claim is ineligible for any payment under the MACP. *Candler*, 321 Mich App at 782; see also *Candler*, 321 Mich App at 784 (CAMERON, J., dissenting) ("Under the majority's reading of the statute, plaintiff is barred from receiving any benefits because he presented a false statement in support of a claim for no-fault benefits to [an insurer assigned a claim from the MACP]."). Therefore, the trial court could not have severed Seals's attendant care claim from the remainder of his claim, and it properly dismissed Seals's entire claim for no-fault benefits.

Affirmed.

/s/ Thomas C. Cameron
/s/ Jane E. Markey
/s/ Stephen L. Borrello