STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN RADIOLOGY INSTITUTE, PLLC,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
December 22, 2020

No. 351775
Oakland Circuit Court
LC No. 2019-172091-NF

Before: SWARTZLE, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Plaintiff, Michigan Radiology Institute, PLLC, appeals as of right the trial court's order granting summary disposition to defendant, Farmers Insurance Exchange (FIE), in this first-party no-fault action. We reverse and remand for further proceedings consistent with this opinion.

I. PERTINENT FACTS AND PROCEEDINGS

In this case, plaintiff seeks to recover the personal injury protection (PIP) benefits from FIE that are allegedly owed to Dennis Kimball under the no-fault act, MCL 500.3101 *et seq*.[1] Kimball was in an automobile accident that caused bodily injury. Plaintiff provided services to Kimball in relation to that injury. Kimball assigned to plaintiff his right to PIP benefits in relation to the services rendered by plaintiff, and plaintiff brought suit. Plaintiff initially named the Michigan Assigned Claims Plan (MACP) as defendant. The Michigan Automobile Insurance Placement Facility (MAIPF) answered the complaint and moved for summary disposition on numerous grounds, but the trial court never addressed this motion. Instead, FIE was substituted as defendant by stipulation of the parties and FIE filed a second motion for summary disposition. While FIE sought summary disposition pursuant to MCR 2.116(C)(8) and (10) (no genuine issue

[1] Because the trial court dismissed plaintiff's claim pursuant to MCR 2.116(C)(8) (failure to state a claim), we draw on facts as alleged in the amended complaint.

as to any material fact), its sole assertion was that plaintiff's amended complaint[2] failed to satisfy pleading requirements because it did not include the date of Kimball's accident. In arguing that the amended complaint was insufficient, FIE focused on its inability to plead certain affirmative defenses without the date of the accident. The trial court agreed with FIE and granted its motion pursuant to MCR 2.116(C)(8). Plaintiff now appeals.

II. ANALYSIS

Plaintiff argues the trial court erred by granting summary disposition to FIE on the ground that plaintiff failed to plead the date of the automobile accident giving rise to plaintiff's cause of action. We agree.

"We review de novo a trial court's decision on a motion for summary disposition." *State Farm Mut Auto Ins Co v Michigan Mun Risk Mgt Auth*, 317 Mich App 97, 101; 892 NW2d 451 (2016). While FIE moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), the trial court granted the motion pursuant to MCR 2.116(C)(8).

> A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery. [*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019) (citations omitted).]

"A civil action is commenced by filing a complaint with a court." MCR 2.101(B). A complaint must contain "[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations *necessary reasonably to inform the adverse party of the nature of the claims* the adverse party is called on to defend . . . ." MCR 2.111(B)(1) (emphasis added). Thus, " '[t]he primary function of a pleading in Michigan is to give notice of the nature of the claim . . . sufficient to permit the opposite party to take a responsive position.' " *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010), quoting *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993). "If a party fails to plead facts with sufficient detail, the court should permit the filing of an amended complaint setting forth plaintiff's claims in more specific detail." *Dalley*, 287 Mich App at 305-306 (quotation marks and citation omitted). "Affirmative defenses are not pleadings under the court rules. Nevertheless, affirmative defenses have long been understood to be something that must be pled." *Glasker-Davis v Auvenshire*, ___ Mich App ___, ___; ___ NW2d ___, ___ (2020) (Docket No. 345238); slip op at 4 (quotation marks and citations omitted). "Furthermore, the court rules provide that affirmative defenses may be amended pursuant to the same process as pleadings and are to be included within a pleading." *Id.*, citing MCR 2.111(F)(3) and MCR 2.118.

[2] Plaintiff amended its complaint after MAIPF filed an answer to the original complaint to add a request for declaratory relief.

Plaintiff's amended complaint provides, in relevant part:

5. All rights, privileges and remedies to payment for health care services, products or accommodations provided by Plaintiff to Dennis Kimball (hereinafter "injured party") for which the injured party is or may be entitled to under MCL 500.3101, *et seq*[.], the No[-]Fault Act, have been assigned to Plaintiff.

* * *

11. Dennis Kimball, (hereinafter "the injured party") sustained accidental bodily injuries within the meaning of the statutory provisions of MCL 500.3105.

12. Defendant is first in order of priority to pay for the injured party's claim for no[-]fault personal protection insurance benefits in accordance with Chapter 31 of the Michigan Insurance Code, more commonly known as the "no-fault insurance law."

13. Defendant has become obligated to pay for certain expenses incurred for reasonably necessary products and services rendered for the injured party's care, recovery or rehabilitation as a result of the injured party's sustained accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

14. Plaintiff has provided reasonably necessary products, services and/or accommodations to the injured party and continues to do so, resulting in the following outstanding balances:

a. $44,000.00

15. Plaintiff timely submitted billings to Defendant for medical services that were rendered to the injured party and that were reasonably necessary for the care, recovery or rehabilitation of the injured party for their injuries.

16. Plaintiff also submitted to Defendant supporting medical records and all other documentation and forms necessary for Defendant to determine the reasonableness, necessity and amount of the medical services rendered to the injured party.

17. Defendant was provided reasonable proof of the fact and of the amount of losses sustained and charges incurred.

18. To date, Defendant has unreasonably refused and/or delayed in making payment to Plaintiff for the services rendered.

19. Pursuant to MCL 500.3157, Plaintiff is entitled to recover the outstanding balances for the medical services rendered to the injured party from Defendant.

> 20. Plaintiff has requested payment from Defendant for the amount of the bills due and owing and Defendant has refused and/or neglected to pay them.
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> * * *
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> 27. An actual controversy exists between Plaintiff and Defendants regarding Defendants' [sic] responsibility to assign the injured party's claim for no-fault benefits, including the medical bills at issue for treatment rendered by Plaintiff.

The "Defendant" plaintiff referred to in its amended complaint was MACP, but the parties subsequently stipulated to substitute FIE as the defendant. The trial court, upon FIE's motion for summary disposition, held plaintiff's claim was "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." In so holding, the court found significant FIE's argument that "plaintiff's failure to provide the date of the motor vehicle accident is [a] fatal flaw because Kimball had more than one motor vehicle accident and it inhibits defendant's ability to defend against the claim since it cannot raise affirmative defenses (e.g., claims barred by the one-year back rule) without knowing the date of the alleged motor vehicle accident."

The trial court erred as the language of plaintiff's amended complaint, quoted in part above, sufficiently put FIE on notice of the nature of the claim against it. It is clear that plaintiff is seeking to recover PIP benefits owed to Kimball under the no-fault act, given its multiple references to the no-fault act and Kimball's personal injury arising out of the operation of a motor vehicle. Further, by naming the MACP as the defendant and seeking a declaration "regarding Defendants' [sic] responsibility to assign the injured party's claim for no-fault benefits," plaintiff put FIE on notice that it was seeking benefits under the MACP. While plaintiff could have more clearly laid out its claim, poor draftsmanship is not, generally, a basis to dismiss a claim under MCR 2.116(C)(8). Nor did plaintiff's failure to include the date of the accident giving rise to its claim deprive FIE of notice of the "nature of the claim . . . sufficient to permit [FIE] to take a responsive position." *Dalley*, 287 Mich App at 305 (quotation marks and citation omitted). Indeed, the fact that FIE argued below and on appeal that it needed to know the date of the accident in order to fully defend itself makes clear that FIE knew the nature of the claim against it, since the defenses FIE claims it was impeded from asserting are provided by the no-fault act itself. Thus, plaintiff's failure to include the date of the accident did not render its amended complaint insufficient as a matter of law and subject to dismissal. The information FIE seeks will almost certainly be revealed with discovery, and, therefore, was not the proper basis for granting summary disposition under MCR 2.116(C)(8). See *El-Khalil*, 504 Mich at 160. Therefore, the trial court erred by granting summary disposition to FIE.

We also note two points that make FIE's argument particularly unpersuasive. First, FIE argued below and on appeal that it could not properly assert the notice requirements in MCL 500.3145 and MCL 500.3174, or the "one year back rule implications" of MCL 500.3145. This argument is somewhat puzzling considering that the MAIPF, the only party that answered the complaint in this case, asserted MCL 500.3145 and the one year back rule as affirmative defenses. If MAIPF could do so, we are at a loss as to how FIE is itself precluded from raising these defenses. Second, a party is readily permitted to amend their answer to add additional affirmative defenses that become relevant. This Court recently addressed the issue, noting:

> [A] defending party is not required to inundate a plaintiff with a laundry list of every conceivable affirmative defense from the outset, irrespective of whether there is reason to believe any of the defenses might ultimately be supportable. Rather, a defending party may, and should, amend its affirmative defenses on an ongoing basis as supported by the actual evidence discovered in a matter. Shoehorning every conceivable possibility, appropriate or not, into a first responsive pleading lest it be lost forever is not only unnecessary, but also inappropriate, unhelpful, and essentially contrary to the purpose of pleading. [*Glasker-Davis*, ___ Mich App at ___; slip op at 5 (citations and footnote omitted).]

Here, MAIPF inundated plaintiff with no less than 54 affirmative defenses, including two of the very same defenses FIE argues it was precluded from asserting. Even if FIE was, for some reason imperceivable to this Court, precluded from asserting certain defenses because of plaintiff's failure to include the date of Kimball's accident in the amended complaint, FIE offers no explanation as to why it is unable to simply amend its affirmative defenses once the date of the accident is revealed during discovery. See MCR 2.111(F)(3) ("Affirmative defenses must be stated in a party's responsive pleading, either as originally filed or as amended in accordance with MCR 2.118."); MCR 2.118 (providing the circumstances under which a party may amend a pleading). Further, even if plaintiff's amended complaint was insufficient on this basis, the trial court should have given plaintiff the opportunity to amend its complaint. See *Dalley*, 287 Mich App at 305-306.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher