STATE OF MICHIGAN

COURT OF APPEALS

ADVANCE PAIN CARE, PLLC,

Plaintiff-Appellant,

v

TRUMBULL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
May 13, 2021

No. 353991
Oakland Circuit Court
LC No. 2019-177739-NF

Before: K. F. KELLY, P.J., and SERVITTO and LETICA, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

On July 28, 2018, James Baltimore was injured in a motor vehicle accident. As a result of the accident, Baltimore received medical services from plaintiff from March 5, 2019 to September 17, 2019. On March 5, 2019, and April 2, 2019, Baltimore executed assignments of rights (assignments) that named plaintiff as the provider and assignee. The assignments stated, in part, that Baltimore "hereby certifies that upon execution of this agreement, [Baltimore] has incurred charges with respect to Services from [plaintiff] on or before the date of execution of this agreement for which the rights, privileges and remedies for payment for each of the Services are hereby assigned." The assignments also contained provisions stating that the assignments could not be revoked unless mutually agreed to by both Baltimore and plaintiff. During the time that Baltimore received services from plaintiff, Baltimore also signed two additional forms in which he assigned to plaintiff his rights for no-fault benefits as a result of services rendered on 11 dates from March 5, 2019 to September 17, 2019.

On April 17, 2019, Baltimore filed his own lawsuit against defendant for breach of contract, stating that defendant had failed to pay benefits to Baltimore to which he was entitled as a result of the July 28, 2018 motor vehicle accident. On September 23, 2019, Baltimore settled the lawsuit against defendant, and as part of the settlement, Baltimore executed a release. This release provided, in pertinent part, that in exchange for $9,000, Baltimore released defendant of "all claims

PAST, PRESENT AND FUTURE for medical benefits/expenses," arising out of the motor vehicle accident. The release also stated that Baltimore revoked any and all prior assignments, known or unknown to defendant, that had been "executed in connection with services provided by any medical provider and/or claimant that may otherwise have had a claim against [defendant] . . . for payment of benefits under the Michigan No-Fault Act."

Prior to the execution of the release, plaintiff submitted bills to defendant of medical expenses incurred as a result of services rendered to Baltimore. In response, defendant sent Explanations of Benefits (EOBs) denying plaintiff's claims for lack of proper documentation and questioned the reasonableness of the expenses for medical providers in the geographic area. One of the EOBs, dated September 18, 2019, stated that a bill received by defendant on August 26, 2019, was denied because defendant made payments on September 17, 2019, and September 18, 2019, for two prior bills received. After the release was executed, defendant sent plaintiff two additional EOBs, stating, "CLAIMS DENIED. SETTLEMENT BY RELEASE FOR ALL PAST, PRESENT, & FUTURE CLAIMS."

On November 4, 2019, plaintiff filed a complaint against defendant for breach of contract and for violation of the no-fault act, MCL 500.3101 *et seq*, arguing that defendant had failed to reimburse plaintiff for the medical expenses incurred on behalf of Baltimore and to which plaintiff was entitled in light of the assignments. Defendant moved for summary disposition, alleging that plaintiff's claims for benefits were barred by the prior release executed by Baltimore. In response, plaintiff alleged that it acquired the rights to pursue Baltimore's claims for benefits through the assignments. Furthermore, defendant had prior knowledge of the bills, reviewed them, and denied the request for payment, and Baltimore did not have the authority to revoke the assignments. The trial court granted summary disposition for defendant, concluding that the release barred plaintiff's claims, plaintiff failed to establish that defendant had written notice of plaintiff's assignments through the EOBs, and plaintiff failed to intervene in Baltimore's lawsuit against defendant.

II. RELEASE AND ASSIGNMENT

Plaintiff contends that defendant's liability to plaintiff was not discharged when it entered into a settlement agreement with Baltimore because defendant had written notice of plaintiff's claims pursuit to MCL 500.3112. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Mays v Snyder*, 323 Mich App 1, 9; 916 NW2d 227 (2018), aff'd 506 Mich 157 (2020). "MCR 2.116(C)(7) permits summary disposition 'because of release, payment, prior judgment, [or] immunity granted by law.' " *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015), quoting MCR 2.116(C)(7). "When it grants a motion under MCR 2.116(C)(7), a trial court should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the nonmoving party." *Id*. (citation and quotation marks omitted). "Only if no facts are in dispute and reasonable minds could not differ regarding the legal effect of those facts should the trial court grant a motion for summary disposition under MCR 2.116(C)(7)." *Grosse Pointe Law Firm, PC v Jaguar Land Rover North America, LLC*, 317 Mich App 395, 400; 894 NW2d 700 (2016). "We review matters of statutory interpretation de novo, and interpret a statute to give effect to the intent of the Legislature by

focusing on the statute's plain language." *Clay*, 311 Mich App at 362 (citation and quotation marks omitted).

Under the no-fault act, an insured is entitled to personal injury projection benefits (PIP) for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). An insured may assign his or her right to past or presently due benefits to a healthcare provider. *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 217 n 40; 895 NW2d 490 (2017).[1] "[A]n assignee stands in the shoes of an assignor, acquiring the same rights and being subject to the same defenses as the assignor." *Coventry Parkhomes Condo Ass'n v Fed Nat'l Mtg Ass'n*, 298 Mich App 252, 256-257; 827 NW2d 379 (2012).

Plaintiff contends that, because Baltimore executed assignments in favor of plaintiff, the terms of the settlement and release between defendant and Baltimore did not discharge defendant's liability to plaintiff because defendant had written notice of plaintiff's claims for benefits pursuant to MCL 500.3112, which provides, in part:

> Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person.

However, in *Physiatry and Rehab Assoc v Alhalemi*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349465); slip op at 1-2, Mohammed Alhalemi was injured in a motor vehicle accident on May 1, 2017, and the plaintiff provided medical services to Alhalemi, who had a no-fault insurance policy through the defendant. After Alhalemi filed a lawsuit against the defendant for the payment of no-fault benefits, Alhalemi executed an assignment of rights in favor of the plaintiff on March 22, 2018. The lawsuit settled for $45,000, and on June 6, 2018, Alhalemi and the defendant entered into a facilitation agreement, in which Alhalemi agreed to "execute the necessary release waiving all past, present and future no-fault benefits," "pay all liens, if any, and all medicals [sic] bill [sic] from the settlement," and "hold harmless and indemnify the defendant from all medical providers." *Id*. at ___; slip op at 2. On June 7, 2018, Alhalemi executed a release in which he "release[d] and discharge[d] [the defendant] . . . from any and all past, present and future claims and demands for no-fault personal protection insurance benefits arising out of a motor vehicle accident that occurred on or about May 1, 2017," and agreed "to defend, indemnify, and hold harmless [the defendant] for any claims, demands, causes of action, etc., related to any liens, unpaid medical expenses, or other collateral benefits incurred[.]" *Id*. Accordingly, the trial court dismissed the plaintiff's complaint on the basis of the release, concluding that the defendant was released "from any and all past, present and future claims and demands for no-fault personal protection insurance benefits arising out of the May 2017 vehicle accident," and the plaintiff failed

[1] "The Michigan Legislature 'overruled' *Covenant* by amending MCL 500.3112 to give healthcare providers the right to file a direct claim or cause of action against an insurer for reimbursement for services provided to an injured person. See 2019 PA 21, effective June 11, 2019." *Spectrum Health Hosps v Mich Assigned Claims Plan*, 330 Mich App 21, 28 n 4; 944 NW2d 412 (2019).

to show that the defendant "had been notified in writing of their claim or assignment prior to the settlement." *Id*. at ___; slip op 2-3.

On appeal, this Court affirmed the trial court, concluding that "[a]lthough [the] plaintiff makes a claim that [the] defendant was aware of the claims, it points to no evidence to support that assertion." *Id*. at ___; slip op at 3. Additionally, we concluded that the plaintiff's claims for benefits were barred under MCL 500.3112, by stating:

> In other words, plaintiff would have to have provided defendant with a copy of the assignment of benefits before defendant entered into the settlement agreement with Alhalemi. There is no indication that this happened. See *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 210; 895 NW2d 490 (2017) ("This sentence allows a no-fault insurer to discharge its liability through payment to or for the benefit of a person it believes is entitled to benefits, as long as the payment is made in good faith and the insurer has not been previously 'notified in writing of the claim of some other person.' ").
>
> In sum, Alhalemi entered into a settlement which release[d] all claims, past, present, and future that he had against defendant and agreed to pay all medical bills arising from the accident from the settlement. Moreover, plaintiff points us to no evidence that a written copy of the assignment was ever provided to defendant before the settlement agreement was entered into. Accordingly, defendant was properly granted summary disposition. [*Id*. at ___; slip op at 3-4.]

In this case, defendant contends that *Physiatry and Rehab Assoc* is dispositive on this issue and compels the dismissal of plaintiff's claims for benefits because there is neither evidence that plaintiff sent a copy of an assignment of rights to defendant, nor does plaintiff even assert that it sent a copy of an assignment of rights to defendant. On the contrary, plaintiff contends that this case is distinguishable from *Physiatry and Rehab Assoc* because there is ample evidence that defendant had written notice of plaintiff's claims before it settled with Baltimore. However, plaintiff does not allege and offer documentary evidence in support of its contention that it sent defendant a copy of any of the assignments. See *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 336; 941 NW2d 685 (2019). Rather, plaintiff contends that it sent defendant bills for the services rendered as illustrated by the fact that defendant responded to the bills by sending plaintiff EOBs denying its claims for payment.

Thus, we must address whether the bills sent to defendant constituted sufficient written notice of a claim to prevent defendant from discharging its liability to plaintiff. In *Covenant*, 500 Mich at 217 n 40, our Supreme Court addressed the meaning of "claim" under the no-fault act, stating:

> Because the no-fault act does not define "claim," we may consult a dictionary definition. The relevant dictionary definitions of "claim" include "a demand for something due or believed to be due" and "a right to something." *Merriam–Webster's Collegiate Dictionary* (11th ed). Therefore, to have a "claim" under the no-fault act, a provider must have a right to payment of PIP benefits from a no-fault insurer. [*Covenant*, 500 Mich at 211 n 31 (citation omitted).]

Accordingly, defendant needed to be provided written notice that plaintiff had a "right to something." There is no dispute that plaintiff sent bills to defendant. However, on the basis of *Covenant* and *Physiatry and Rehab Assoc*, those bills were insufficient to put defendant on notice of a "claim" for benefits.[2] In its complaint, plaintiff alleged that it had a right to payment for services rendered to Baltimore on the basis of the assignments executed by Baltimore. However, plaintiff further had to demonstrate that it had the right to these payments in lieu of Baltimore. A medical bill does not necessarily put defendant on notice of plaintiff's right to collect no-fault benefits from defendant on behalf of Baltimore. Because there is neither evidence that plaintiff sent a copy of an assignment to defendant, nor even an assertion by plaintiff that it sent an assignment to defendant, there is no documentary evidence to support the contention that defendant had written notice of plaintiff's right to payment of no-fault benefits. Thus, the settlement with Baltimore discharged defendant's liability to plaintiff.

Plaintiff also argues that, even if the $9,000 settlement to Baltimore is credited against plaintiff's claim for $41,884.13, defendant still owes plaintiff the remaining balance because an insurer can discharge its liability only "to the extent of the payments" under MCL 500.3112. This argument was raised in *Physiatry and Rehab Assoc* when the plaintiff submitted that the release entered into by Alhalemi "only applie[d] to those specific claims that Alhalemi included in the underlying litigation" with the defendant, and "to the extent that the agreement and release applied to all claims that Alhalemi had against [the] defendant, such inclusions created an ambiguity." *Physiatry and Rehab Assoc*, ___ Mich App at ___; slip op at 3. This Court disagreed with the plaintiff's argument, stating:

> While the settlement may have arisen out of the claims made in the litigation, i.e., a claim for PIP benefits, it clearly and unambiguously released all claims, past, present, and future. Moreover, Alhalemi explicitly agreed to pay all unpaid medical expenses from the settlement. As the trial court concluded, there is no way to read the release in any other manner. [*Id*. at ___; slip op at 3.]

Thus, under *Physiatry and Rehab Assoc*, defendant is not liable to plaintiff for the remainder of the balance owed in medical expenses because Baltimore agreed to waive all no-fault claims incurred previously or in the future.

Plaintiff also contends that an assignment of rights is a contract; thus, under contract principles, Baltimore could not unilaterally revoke the assignments he executed on behalf of plaintiff. Accordingly, because Baltimore could not unilaterally revoke the assignments, plaintiff asserts that it is the real party in interest to the claims Baltimore assigned. Therefore, defendant cannot rely on the release, which was solely an agreement between defendant and Baltimore, to deny plaintiff's claims for benefits.

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[2] The *Physiatry and Rehab Assoc* decision was released one day after the final order was entered in this case. However, "[g]enerally, judicial decisions are given full retroactive effect, i.e., they are applied to all pending cases in which the same challenge has been raised and preserved." *Clay*, 311 Mich App at 362.

The question of whether Baltimore could unilaterally revoke the rights he assigned to plaintiff is an issue to be addressed between Baltimore and plaintiff. As discussed in *Physiatry and Rehab Assoc*, MCL 500.3112 governs an insurer's liability or obligation to others once it makes a good faith payment. In *Physiatry and Rehab Assoc*, Alhalemi executed an assignment, which was presumably not unilaterally revocable. Nonetheless, this Court concluded that MCL 500.3112 governed the defendant's ability to discharge its liability irrespective of the underlying assignment. Therefore, because defendant made a payment to Baltimore, relying on the settlement and release, defendant's liability to plaintiff was discharged having not received the proper written notice of a claim, irrespective of an underlying assignment between plaintiff and Baltimore. The trial court properly granted summary disposition for defendant.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Deborah A. Servitto
/s/ Anica Letica