STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN INSTITUTE OF PAIN AND HEADACHE, PC, doing business as METRO PAIN CLINIC, and BASSAM HONEINI,

Plaintiffs-Appellants,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 24, 2021

No. 353033
Oakland Circuit Court
LC No. 2019-171937-NF

Before: GLEICHER, P.J., and CAVANAGH and LETICA, JJ.

PER CURIAM.

Plaintiff, Michigan Institute of Pain and Headache, PC, appeals as of right, challenging an order granting partial summary disposition of its claims disputing partial payment of its charges for healthcare services provided to defendant's insured, plaintiff Bassam Honeini, in this no-fault case.[1] We reverse and remand.

I. BACKGROUND FACTS

This case arises out of an automobile accident that occurred on December 31, 2017, and resulted in injuries to Honeini. Between March 2, 2018 and November 2, 2018, plaintiff provided medical services to Honeini. Each time services were provided, Honeini executed an Assignment of Rights transferring all payment collection rights to plaintiff. Plaintiff submitted its bills to defendant pursuant to defendant's duty to pay no-fault benefits under the Michigan no-fault act, MCL 500.3101, *et seq*. Defendant submitted partial payments on the basis of its assessment of the reasonableness of the charges and the necessity of the treatments.

[1] Plaintiff is acting as the assignee of Honeini and, because of his limited involvement in this case, the term "plaintiff" refers exclusively to Michigan Institute of Pain and Headache, PC.

In February 2019, plaintiff filed this lawsuit in its capacity as Honeini's assignee, seeking damages arising out of the difference between what it billed and what defendant paid. Defendant moved for partial summary disposition under MCR 2.116(C)(10), arguing that Honeini could not have sued defendant for payment of the balance of the bills because he suffered no loss or damages (he was not sued for the outstanding bills), and therefore plaintiff, as the Honeini's assignee, had no cause of action for payment of the balance of the bills. Plaintiff disagreed, arguing that Honeini incurred the medical expenses once he accepted medical treatment, and thus, was liable for those expenses, i.e., he incurred the liability and loss. The trial court adopted defendant's argument, granted defendant's motion, and dismissed plaintiff's claim for damages arising from the unpaid balance of Honeini's bills. Plaintiff moved for reconsideration, which was denied. The trial court dismissed the remaining claims on the basis of the parties' stipulation. This appeal followed.

II. STANDARD OF REVIEW

We review de novo a lower court's decision regarding summary disposition under MCR 2.116(C)(10). *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005). The documentary evidence submitted by the parties is reviewed in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists for the jury to decide. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). If reasonable minds could differ on an issue, a genuine issue of material fact exists. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). However, in this case defendant argued, and the trial court concluded, that plaintiff had no legal right to sue defendant directly for Honeini's outstanding medical bills; rather, plaintiff had to sue its insured, Honeini. Thus, a motion for summary dismissal under MCR 2.116(C)(8) would have been more appropriate because such a motion tests the legal sufficiency of a complaint and is granted for failure to state a claim upon which relief can be granted. See *Maiden v Rozwood*, 461 Mich 109, 118-119; 597 NW2d 817 (19999).

III. LAW AND ANALYSIS

Plaintiff argues that the trial court erroneously dismissed its claims seeking the unpaid balances of its bills for medical services provided to Honeini because, as Honeini's assignee, plaintiff had the legal right to pursue the outstanding balances. We agree.

Under MCL 500.3107(1), personal protection insurance (PIP) benefits are payable for "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."[2] And MCL 500.3157 generally states that a healthcare provider may charge a reasonable amount for treatment rendered to an injured person for an accidental bodily injury covered by personal protection insurance. In *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 210-217; 895 NW2d 490 (2017), our Supreme Court held that the claim for payment of PIP benefits belongs to the injured party, not to their

[2] In this opinion we refer to the version of the relevant statutes in effect at the time Honeini sustained injuries covered by defendant's policy of insurance, December 31, 2017.

healthcare provider.[3] In reaching that decision, the *Covenant* Court explained that charges for healthcare services are not "incurred" by the provider as provided by MCL 500.3107(1)(a); rather, "charges for healthcare are incurred by others, most commonly patients, and those patients are the ones who become liable for payment of those charges." *Id*. at 207; see also *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 484; 673 NW2d 739 (2003) (defining the term "incur" as including "to become liable"). The *Covenant* Court noted, however, that its decision in no way impaired "an insured's ability to assign his or her right to past or presently due benefits to a healthcare provider." *Covenant Med Ctr, Inc*, 500 Mich at 217 n 40. And in *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 199-200; 920 NW2d 148 (2018), this Court held that an insured who has a statutory claim to payment of PIP benefits under the no-fault act has a cause of action for those benefits that may be assigned to a healthcare provider.

In this case, defendant argued that because plaintiff did not sue Honeini for the outstanding balances allegedly under-paid for its healthcare services, Honeini did not "incur" those expenses so he had no claim against defendant. And because Honeini had no claim against defendant, plaintiff—as Honeini's assignee—has no claim against defendant for those outstanding balances. We cannot agree. As our Supreme Court explained in *Covenant*, Honeini "incurred" the charges for healthcare services he received from plaintiff once those services were rendered, and thus, Honeini became liable for payment of those charges at that time. See *Covenant Med Ctr, Inc*, 500 Mich at 207; see also, e.g., *Community Resource Consultants, Inc v Progressive Mich Ins Co*, 480 Mich 1097, 1098; 745 NW2d 123 (2008) ("Generally, one becomes liable for the payment of services once those services have been rendered."); *Clark v Al-Amin*, 309 Mich App 387, 397; 872 NW2d 730 (2015). Under the no-fault act, Honeini was entitled to have the reasonable medical expenses he incurred for healthcare services provided by plaintiff paid by defendant and Honeini assigned his right to such no-fault benefit to plaintiff. See *Covenant*, 500 Mich at 217 n 40. "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Jawad A Shah, MD, PC*, 324 Mich App at 204 (quotation marks and citation omitted).

In support of its argument that Honeini had to be sued by plaintiff in order to "incur" damages, defendant relied on the cases of *McGill v Auto Ass'n of Mich*, 207 Mich App 402; 526 NW2d 12 (1994), and *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577; 543 NW2d 42 (1995). However, in those cases there was no assignment of rights; the insureds had not assigned their rights to past or presently due PIP benefits to their healthcare providers. Instead the insureds themselves sued, challenging the failure of their insurers to pay the full amounts billed by their healthcare providers. *LaMothe*, 214 Mich App at 580; *McGill*, 207 Mich App at 404. But the healthcare providers had not challenged the partial payments, and thus, the insureds in both cases had no legal reason to contest the partial payments. *LaMothe*, 214 Mich App at 582; *McGill*, 207 Mich App at 407. The *LaMothe* and *McGill* cases are factually distinguishable from the facts of

[3] As stated in *Spectrum Health Hosps v Mich Assigned Claims Plan*, 330 Mich App 21, 28 n 4; 944 NW2d 412 (2019): "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."

the case at issue here because, in this case, Honeini assigned to plaintiff his right under the no-fault act to the payment of reasonable medical expenses incurred for healthcare services provided by plaintiff.

Similarly, there was no assignment of rights in *Auto-Owners Ins Co v Compass Healthcare PLC*, 326 Mich App 595; 928 NW2d 726 (2018). In that case, the healthcare provider contested the reasonableness of an insurer's reimbursement for an insured-patient's medical bills by repeatedly invoicing the insured-patient directly for payment of the unpaid balances under a contract theory, disputing the fact that the no-fault act precluded such action. *Id*. at 600-603. This Court disagreed, *id*. at 608-609, holding that "[t]o conclude that [healthcare providers] could prevail on the theory of an implied contract is contrary to the purpose of the no-fault act, and its implications would allow medical providers to circumvent the protective nature of the act, *id*. at 611. Again, in that case the insured had not executed an assignment of his right under the no-fault act to the payment of reasonable medical expenses incurred for medical services provided by that particular healthcare provider.

In summary, there is no dispute that Honeini received medical services from plaintiff and defendant paid amounts it deemed reasonable for those services pursuant to the no-fault act. In other words, defendant acknowledged with its payments that Honeini incurred—and became liable for—plaintiff's healthcare services once those services were rendered but defendant disputed the reasonableness of those charges. Defendant does not dispute that plaintiff obtained a valid assignment of rights from Honeini and Honeini had the right under the no-fault act to have his reasonable medical expenses arising from the accident paid by defendant. Thus, plaintiff had the legal right to pursue reasonable medical expenses to which Honeini was entitled under the no-fault act. And plaintiff could challenge as unreasonable defendant's partial payments of plaintiff's charges for its healthcare services. Accordingly, the trial court's order granting defendant's motion for partial summary disposition of plaintiff's claims challenging defendant's partial payment of its charges for healthcare services provided to Honeini is reversed.

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

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Anica Letica