STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION/ MEMBERSELECT INSURANCE COMPANY,

Plaintiff-Appellant,

v

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN, CORE PHYSICAL THERAPY CORP., FOCUS POINT DIAGNOSTICS, LLC, and SABREEN SHAMOON,

Defendants-Appellees,

and

WILLIAM BEAUMONT HOSPITAL, UNIVERSAL MACOMB AMBULANCE SERVICE, INC., and TRINITY MEDICAL CENTER, PC,

Defendants.

UNPUBLISHED
September 23, 2021

No. 353439
Macomb Circuit Court
LC No. 2019-003078-NF

Before: RICK, P.J., and RONAYNE KRAUSE and LETICA, JJ.

PER CURIAM.

In this dispute between insurers about the apportionment of responsibility for payment of benefits under the no-fault act, MCL 500.3101 *et seq.*, plaintiff appeals as of right the trial court's order dismissing its case. On appeal, plaintiff challenges the trial court's earlier order granting summary disposition in favor of defendant Farm Bureau General Insurance Company of Michigan (Farm Bureau). Plaintiff argues that the trial court erred by granting summary disposition on the basis that plaintiff's complaint was barred by the statute of limitations and that it improperly dismissed defendants Core Physical Therapy Corp. (Core Physical Therapy), and Focus Point Diagnostics, LLC (Focus Point Diagnostics). We affirm in part, reverse in part, and remand for further proceedings.

I. FACTS AND PROCEDURAL HISTORY

On March 25, 2017, defendant Sabreen Shamoon was a passenger in a Dodge Journey driven by her sister when another vehicle struck the Journey in an intersection; Shamoon and her sister both sustained injuries. Plaintiff had issued a policy to another of Shamoon's sisters, listing that sister as the "principal named insured" and the Dodge Journey as one of the insured vehicles. The policy listed Shamoon as an "assigned driver" of the Dodge Journey. The policy defined "named insured" to include several classes of persons beyond simply the "principal named insured," including, in relevant part, "assigned drivers" with respect to the vehicle to which they were assigned:

> 21. **You, Your(s), Named Insured** means any person . . . named on the Declaration Certificate as:
>
> a. **principal named insured**;
>
> b. assigned driver, but only for the specific vehicle when so named . . . .

Accordingly, under the no-fault insurance policy, Shamoon was considered a "named insured" with respect to this accident because she was an "assigned driver" of the Dodge Journey in which she was injured.

From May 2017 through October 2017, plaintiff paid nearly $43,000 to the healthcare providers that treated Shamoon after the accident. Shamoon later sued plaintiff in Macomb Circuit Court seeking additional no-fault benefits. Shamoon amended her complaint to include Farm Bureau, asserting that she was also entitled to benefits from defendant under a no-fault policy Farm Bureau issued to her husband.[1]

Upon learning that Shamoon's husband had a no-fault policy with Farm Bureau, plaintiff filed this lawsuit against Farm Bureau, Shamoon, and several of Shamoon's healthcare providers. In the complaint, plaintiff asserted that Farm Bureau was a higher-priority insurer under MCL 500.3114, and thus solely liable for payment of Shamoon's no-fault benefits; Auto Club accordingly sought reimbursement of all benefits it had paid.

Several motions for summary disposition followed. Core Physical Therapy, Focus Point Diagnostics, and Universal Macomb Ambulance Service, Inc. (Universal Macomb Ambulance), filed motions for summary disposition. The healthcare providers' motions generally argued that plaintiff's complaint only sought declaratory relief against Farm Bureau by asserting that Farm Bureau was higher in priority than plaintiff. The healthcare providers asserted that because there was no actual controversy between plaintiff and the healthcare providers, summary disposition was appropriate.

[1] We note that all references to the policy pertain only to the no-fault policy between plaintiff and Shamoon. The no-fault policy between Farm Bureau and Shamoon's husband is not relevant to this appeal.

Farm Bureau filed a motion for summary disposition under MCR 2.116(C)(7), arguing that because plaintiff was seeking reimbursement from Farm Bureau as a higher-priority insurer, plaintiff's claim was a subrogation action, and thus subject to the one-year period of limitations under MCL 500.3145 (one-year-back rule). Because plaintiff filed its complaint after the expiration of the one-year limitations period, Farm Bureau asserted that plaintiff's complaint was barred as untimely. Plaintiff responded by arguing that Shamoon was a "person named in the policy" for purposes of MCL 500.3114 because the policy defined an assigned driver as a named insured. Thus, plaintiff and Farm Bureau were insurers of equal priority. Plaintiff further argued that it was not acting as a subrogee of Shamoon, but instead, was proceeding independently to enforce its statutory right to reimbursement, which has a six-year limitations period. Accordingly, plaintiff argued that its complaint was timely filed and summary disposition was inappropriate.

The trial court issued a written opinion and order granting Farm Bureau's motion for summary disposition. The court rejected plaintiff's argument that it and Farm Bureau had equal priority and ruled that Farm Bureau was the higher-priority insurer, and thus plaintiff's lawsuit a subrogation claim subject to the one-year-back rule.

The trial court further granted Universal Macomb Ambulance's motion for summary disposition, concluding that there was "no actual controversy" between plaintiff and Universal Macomb Ambulance. Later, citing its rationale for dismissing Universal Macomb Ambulance, the trial court entered an order dismissing all remaining parties, including Core Physical Therapy and Focus Point Diagnostics. This appeal followed.

II. STANDARD OF REVIEW

"We review de novo whether a cause of action is barred by the statute of limitations under MCR 2.116(C)(7), and whether the cause of action is barred by the statute of limitations is a question of law that this Court also reviews de novo." *Ferndale v Florence Cement Co*, 269 Mich App 452, 457; 712 NW2d 522 (2006) (citations omitted). Where, as here, a party brings a motion for summary disposition under MCR 2.116(C)(7), the allegations of the complaint must be accepted as true unless contradicted by affidavits or other documentary evidence, which the trial court must consider if a party submits such evidence. *Pusakulich v Ironwood*, 247 Mich App 80, 82-83; 635 NW2d 323 (2001). Whether the trial court properly interpreted the statutory provisions at issue is a question of law also subject to review de novo. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). Likewise, whether a trial court properly construed a contract is a question of law, and insurance policies are subject to the same principles of construction as other contracts. *Id*. at 553-554.

III. LIMITATIONS PERIOD

It is undisputed that the one-year limitations period set forth by MCL 500.3145(1)[2] bars plaintiff's claim if that limitations period applies. If MCL 500.3145(1) does not apply, however,

[2] The no-fault act was amended effective June 11, 2019. See 2019 PA 21. Because the accident occurred before that date, the prior version of the statute applies.

then plaintiff's complaint was timely filed under the six-year statute of limitations for other personal actions, MCL 600.5813.[3] Determining the applicable limitations period depends on whether plaintiff and Farm Bureau have equal priority as insurers of Shamoon or whether Farm Bureau is higher in priority. If Farm Bureau is higher in priority than plaintiff, then plaintiff's claim is a subrogation action through which plaintiff stands in Shamoon's shoes to seek recovery from Farm Bureau. See *Titan Ins Co v North Pointe Ins Co*, 270 Mich App 339, 343-344; 715 NW2d 324 (2006). Such subrogation claims are subject to MCL 500.3145(1)'s one-year-back rule because a subrogated insurer has no greater rights than the insured. *Id*.

On the other hand, if plaintiff and Farm Bureau are equal-priority insurers, then plaintiff is entitled to partial recoupment under MCL 500.3115(2):[4]

> When 2 or more insurers are in the same order of priority to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among such insurers.

Such statutory claims are not subject to the one-year-back rule, but rather to the six-year limitations period set forth in MCL 600.5813. *Titan Ins Co v Farmers Ins Exch*, 241 Mich App 258, 263; 615 NW2d 774 (2000).

The priority issue turns on whether Shamoon is "the person named in the policy" issued by plaintiff for the purposes of MCL 500.3114(1):

> [A] personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

"The phrase 'the person named in the policy' is synonymous with the term 'the named insured.' " *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 255; 819 NW2d 68 (2012).

Farm Bureau insists that because Shamoon was an "assigned driver" under the policy she cannot be a "person named in the policy," despite repeatedly acknowledging that caselaw is well settled that "person named in the policy" is the same as "named insured." Farm Bureau cites cases that reject attempts by an "assigned driver" or similarly situated person to seek "named insured" status under a policy. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 264-265; 548 NW2d 698

In pertinent part, MCL 500.3145(1) read that "[a]n action for recovery of personal protection insurance benefits payable under [the no-fault act] . . . may not be commenced later than 1 year after the date of the accident . . . ."

[3] "All other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes."

[4] See footnote 2.

(1996); *Transamerica Ins Corp v Hastings Mutual Ins Co*, 185 Mich App 249, 255; 460 NW2d 291 (1990); *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 686; 333 NW2d 322 (1983). But these cases are distinguishable because they do not involve policy language that specifically defines "named insured" to include "assigned drivers."

Here, however, the policy plainly states that plaintiff considers an "assigned driver" to be a "named insured" with respect to the specific insured vehicle to which the driver is assigned. There is no dispute that Shamoon was an assigned driver and that the vehicle for which she was given that status was the vehicle in which she was injured in this car accident.

Farm Bureau makes much of plaintiff's allegation in its complaint that Farm Bureau was a higher-priority insurer and asserting subrogation rights, while advancing the "equal-priority" argument only in response to Farm Bureau's motion for summary disposition. Farm Bureau urges, essentially, that plaintiff should be held to the assertion in its complaint that plaintiff was seeking reimbursement from an allegedly higher-priority insurer. In suggesting that plaintiff be held strictly to its original position for purposes of determining whether its claim was time-barred, Farm Bureau relies on caselaw that holds that "[i]n considering the gravamen of plaintiff's complaint, [courts] examine the entire claim, looking beyond procedural labels to determine the exact nature of the claim." *Altobelli v Hartmann*, 499 Mich 284, 303; 884 NW2d 537 (2016), citing *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999); *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007). But "considering the gravamen of plaintiff's complaint" and "looking beyond procedural labels to determine the exact nature of the claim" actually supports plaintiff's equal-priority argument. The gravamen of plaintiff's complaint is that it paid no-fault benefits on behalf of Shamoon that Farm Bureau should have paid. The only difference between plaintiff's position in its complaint and its position in response to Farm Bureau's motion for summary disposition is the mechanism through which plaintiff seeks reimbursement from Farm Bureau, i.e., subrogation or statutory reimbursement.

Because Shamoon was an assigned driver who was injured in the specific vehicle designated in the policy declarations, plaintiff's policy plainly provided that Shamoon is a "named insured" for the present purposes. Because "named insured" is "synonymous with" the statutory term "person named in the policy," Shamoon was a "person named" with respect to plaintiff's policy, and the trial court erred by ruling otherwise. And because it is undisputed that she was also a "person named in the policy" issued by Farm Bureau, the parties have equal priority. Thus, the one-year limitations period in MCL 500.3145(1) did not apply to plaintiff's claims for reimbursement. Accordingly, the trial court erred in ruling that plaintiff's complaint was untimely and granting summary disposition on that basis.

IV. DISMISSAL OF THE PROVIDERS

In arguing that the trial court erred in dismissing the healthcare providers, plaintiff argues that the doctrine of res judicata required it to include the healthcare providers in this action in order to prevent them from relitigating the issues decided here.

"In general, res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action is identical to that essential to a prior action." *Richards v Tibaldi*, 272 Mich App 522, 530; 726 NW2d 770 (2006). "Res judicata requires that (1) the prior action

was decided on the merits, (2) the decree in the prior action was a final decision, (3) the matter contested in the second case was or could have been resolved in the first, and (4) both actions involved the same parties or their privies." *Id.* at 531.

Here, however, nothing about the dispute between plaintiff and Farm Bureau will resolve any dispute between plaintiff and the healthcare providers. The healthcare providers are pursuing litigation in the district court to obtain payment for services they provided to Shamoon. Whether the healthcare providers are entitled to payment for those services is not connected to the dispute between plaintiff and Farm Bureau, which concerns those parties' respective responsibilities for covering Shamoon's benefits. The healthcare providers have no role to play in resolving that controversy. In fact, the apportionment of responsibility between plaintiff and Farm Bureau is not even relevant to the district court suit. Whether Core Physical Therapy and Focus Point Diagnostics are entitled to payment is not being litigated here, and the result of the instant litigation will have no effect on that issue in the district court. Accordingly, the trial court properly dismissed those healthcare providers from this case.

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

/s/ Michelle M. Rick
/s/ Amy Ronayne Krause
/s/ Anica Letica