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STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellant,

v

CARL LIKELY,

Defendant-Appellee.

UNPUBLISHED
October 21, 2021

No. 354615
Oakland Circuit Court
LC No. 2020-179619-CZ

Before: LETICA, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right the opinion and order granting defendant's motion for summary disposition. We affirm.

I. FACTUAL BACKGROUND

This case arises out of defendant's involvement in an August 3, 2002 automobile accident. After the accident, defendant applied for no-fault benefits through the Michigan Assigned Claims Plan.[1] Defendant's claim was assigned to plaintiff. Since then, defendant brought five lawsuits against plaintiff seeking no-fault benefits stemming from the 2002 accident.[2] Plaintiff filed a

[1] "If no insurance is available, a person may obtain benefits through the Assigned Claims Plan, which serves as the insurer of last priority." *Titan Ins Co v American Ins Co*, 312 Mich App 291, 298; 876 NW2d 853 (2015); see also MCL 500.3172(1). An insurer assigned a claim under the Michigan Assigned Claims Plan "shall make prompt payment of loss in accordance with this act" and is "entitled to reimbursement by the Michigan automobile insurance placement facility for the payments . . . ." MCL 500.3175(1).

[2] Wayne Circuit Court (Docket No. 05-524574- NI); Wayne Circuit Court (Docket No. 17- 001247- NF); 30th District Court Docket No. 17- 0456- GC; 30th District Court (Docket No. 18- 0994- GC); 30th District Court (Docket No. 19- 0483- GC). None of these matters is

complaint on February 12, 2020, seeking a declaratory judgment holding that defendant "has fully recovered from any injuries he sustained in his August 2002 motor vehicle accident" and that, as a result, he is no longer entitled to any additional no-fault benefits. On March 30, 2020, defendant moved the trial court for summary disposition under MCR 2.116(C)(6) and MCR 2.116(C)(8), arguing that plaintiff failed to state a claim upon which relief could be granted. The trial court issued a written opinion and order granting defendant's motion for summary disposition finding that plaintiff made "completely conclusory" allegations, "failed to submit a factually sufficient complaint," and therefore failed to state a claim upon which relief could be granted. Plaintiff moved the trial court for reconsideration under MCR 2.119(F) and, alternatively, for leave to file an amended complaint under MCR 2.116(I)(5) and MCR 2.118. Plaintiff included a proposed amended pleading with its motion that included statements concerning examinations that showed "no signs of any residual injuries and no need for any additional treatment or services." The trial court denied plaintiff's motions. This appeal followed.

II. SUMMARY DISPOSITION

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because plaintiff's complaint sufficiently set forth factual allegations that supported its claim for relief and put defendant on notice of plaintiff's claim for declaratory relief. We disagree.

A. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny summary disposition. *Varela v Spanski*, 329 Mich App 58, 68; 941 NW2d 60 (2019). The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(8), which allows a party to move for dismissal of an action where "[t]he opposing party has failed to state a claim on which relief can be granted." "A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159- 160; 934 NW2d 665 (2019), citing *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *El-Khalil*, 504 Mich 160, citing *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013); see also *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). However, "the mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance*,

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currently pending and none were pending at the time the trial court granted summary disposition in the instant matter. In addition to these lawsuits, several medical providers have brought suit for services performed on defendant's behalf: Wayne Circuit Court (Docket No. 14- 004987- NF); 30th District Court (Docket No. 19- 0484- GC); 30th District Court (Docket No. 19- 0485- GC); *Best Kept Home Care v Citizens Insurance Co*, Wayne Circuit Court (Docket No. 20- 008813- NF); *Simplistic Solutions v Citizens Ins Co*, 30th District Court (Docket No. 20-0430- GC); *Pro Nursing, LLC v Citizens Ins Co*, 30th District Court (Docket No. 20-0431-GC). The last two cases were the only ones pending, to this Court's knowledge, at the time the summary disposition order was entered (they have since been dismissed) but this Court is unable to ascertain the basis of the cases and neither party has provided explanation or documentation concerning those cases.

204 Mich App 392, 395; 516 NW2d 498 (1994). Summary disposition should be granted under MCR 2.116(C)(8) only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Bedford v Witte*, 318 Mich App 60, 64; 896 NW2d 69 (2016).

The de novo standard of review also applies to our interpretation of both Michigan statutes and the Michigan Rules of Court. *State Farm Fire & Casualty Co v Corby Energy Servs, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006); *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003).

B. LAW AND ANALYSIS

A complaint must set forth "the facts . . . 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).

> This rule is designed to avoid two opposite, but equivalent, evils. At one extreme lies the straightjacket of ancient forms of action. Courts would summarily dismiss suits when plaintiffs could not fit the facts into these abstract conceptual packages. At the other extreme lies ambiguous and uninformative pleading. Leaving a defendant to guess upon what grounds plaintiff believes recovery is justified violates basic notions of fair play and substantial justice. Extreme formalism and extreme ambiguity interfere equivalently with the ability of the judicial system to resolve a dispute on the merits. The former leads to dismissal of potentially meritorious claims while the latter undermines a defendant's opportunity to present a defense. Neither is acceptable. [*Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992)].

The trial court found that plaintiff had not satisfied the notice requirements of MCR 2.111(B)(1), explaining:

> [Plaintiff] does not allege any specifics pertaining to [defendant's] injuries, treatment, rehabilitation, or recovery; nor does [plaintiff] allege any specifics pertaining to [defendant's] current condition. Rather, [plaintiff's] allegations that [defendant] is "fully healed[],["] both in its [c]omplaint as well as its [r]esponse to [defendant's] [m]otion, are completely conclusory. If [defendant] seeks benefits from [plaintiff] for treatment or care that is unrelated to the 2002 motor vehicle accident, then of course [plaintiff] has a defense in any given lawsuit that such treatment or injury is not related to the 2002 motor vehicle accident, if that is indeed the case; but to seek a declaratory judgment against [defendant] by claiming he is "fully healed[],["] without any factual allegations to support this contention, fails to state a claim upon which relief can be granted.

As the trial court recognized, plaintiff's conclusory allegation that defendant was "fully healed" was not specific and not accompanied by supporting facts. A plaintiff's conclusory allegations are insufficient to state a cause of action. *Kloian v Schwartz*, 272 Mich App 232, 240; 725 NW2d 671 (2006). And "unsupported statements of legal conclusions are insufficient to state

a cause of action." *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 445; 886 NW2d 445 (2015), citing *ETT Ambulance Serv Corp, Inc*, 204 Mich App at 395. For example, in *Dacon*, 441 Mich at 321, the representative of a minor child sued a hospital for malpractice, alleging that the hospital had failed to provide the proper treatment and medication for the minor child. Our Supreme Court held, in relevant part, that plaintiff failed to satisfy the MCR 2.111(B)(1) notice standard because it "d[id] not refer either specifically or generally to any facts" and "delineate[d] nothing specific about how the [hospital] erred. By literally alleging everything, this allegation allege[d] nothing. Allegations such as this do not provide reasonable notice to defendants and are not proper under MCR 2.111." *Id*. at 330. The same is true in this case. Plaintiff failed to refer to even the most general facts in support of its allegation that defendant was "fully healed." It has alleged everything and alleged nothing at the same time. *Id*. Plaintiff merely stated that defendant was "fully healed" and offered no specific allegations leading to that conclusion. Therefore, the trial court did not err in deciding that plaintiff's conclusory and unsupported allegations failed to state a claim for which relief could be granted.[3]

Plaintiff nevertheless argues the trial court misconstrued the proceedings as being a motion for summary disposition under MCR 2.116(C)(10), rather than MCR 2.116(C)(8). Unlike MCR 2.116(C)(8), which tests the legal sufficiency of a complaint, *El-Khalil*, 504 Mich at 159-160, MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden*, 461 Mich at 120. Plaintiff argues the trial court's focus on the factual insufficiency of plaintiff's complaint implies the trial court misconstrued the proceedings as being brought under MCR 2.116(C)(10). However, MCR 2.111(B)(1), clearly states that complaints must include "[a] statement of facts . . . on which the pleader relies in stating the cause of action . . ." A general allegation that defendant has fully healed, without setting forth the basis underlying that allegation is an insufficient "statement of facts."

Plaintiff also argues that defendant's reference to plaintiff's arguments in his pleadings shows that he had notice of plaintiff's claims. This argument is irrelevant to the question on appeal. The question is whether the trial court erred in deciding that plaintiff's complaint did not meet the notice requirements of MCR 2.111(B)(1). Our review of a motion for summary disposition under MCR 2.116(C)(8) is limited to the well-pleaded allegations of the complaint; any additional or later arguments do not affect whether the complaint was properly pleaded.[4] The trial court did not err in granting summary disposition under MCR 2.116(C)(8).

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[3] Plaintiff claims that *Dacon* is distinguishable from this case. Plaintiff focuses on the fact that there were two different theories presented by the plaintiff in that case, only one of which was held to be insufficiently supported by factual allegations. But plaintiff's focus on the difference between the two theories advanced by the plaintiff in that case obscures the overall takeaway that is relevant for this case: the *reason* our Supreme Court decided that the complaint was insufficient. Our Supreme Court decided thus "[b]ecause [the] plaintiff's complaint reveals no factual support for [its] allegation, as required . . . by MCR 2.111(B)(1)." *Dacon*, 441 Mich at 333.

[4] Plaintiff offers additional argument based on unpublished decisions of this Court. However, unpublished decisions are not precedentially binding (MCR 7.215(C)(1)) and we see no need to

II. LEAVE TO AMEND

Plaintiff next argues that the trial court should have allowed plaintiff to amend its pleadings consistent with MCR 2.116(I)(5) and MCR 2.118. Because the claim is not ripe, we disagree.

A. STANDARD OF REVIEW

We review a trial court's decision to grant or deny leave to amend a pleading under MCR 2.116(I)(5) for an abuse of discretion. *Boylan v Fifty-Eight LLC*, 289 Mich App 709, 727; 808 NW2d 277 (2010). An abuse of discretion occurs where the decision falls outside the range of principled and reasonable outcomes. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). The de novo standard of review applies to our interpretation of Michigan statutes and the Michigan Rules of Court. *Corby Energy Servs, Inc*, 271 Mich App at 483; *Webb*, 259 Mich App at 391.

B. LAW AND ANALYSIS

"The rules pertaining to the amendment of pleadings are designed to facilitate amendment except when prejudice to the opposing party would result; amendment is generally a matter of right rather than grace." *PT Today, Inc v Comm'r of the Office of Fin & Ins Servs*, 270 Mich App 110, 143; 715 NW2d 398 (2006) (citation omitted). For motions brought under MCR 2.116(C)(8), "the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." MCR 2.116(I)(5). The word "shall" designates a mandatory provision. *In re Guardianship of Redd*, 321 Mich App 398, 409; 909 NW2d 289 (2017).

A court can deny leave to amend a pleading, but such a decision "should be supported by specific findings . . . ." *Ben P Fyke & Sons, Inc v Gunter Co*, 390 Mich 649, 656-657; 213 NW2d 134 (1973), quoting *LaBar v Cooper*, 376 Mich 401, 409; 137 NW2d 136 (1965). In particular, a denial of leave to amend a pleading is warranted where there has been "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. . . . ." *Dampier v Grace Hosp Corp*, 233 Mich App 714, 733; 592 NW2d 809 (1999), citing *Ben P Fyke*, 390 Mich at 656. A court that denies a motion to amend a pleading "must specify one of the [*Fyke*] reasons in its denial, and a failure to do so constitutes error requiring a reversal unless such amendment would be futile." *Dampier*, 233 Mich App at 733-734, citing *Terhaar v Hoekwater*, 182 Mich App 747, 751; 452 NW2d 905 (1990).

"An amendment would be futile if (1) . . . it is legally insufficient on its face, (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction." *PT Today, Inc*, 270 Mich App at 143 (internal citations omitted). An amendment is also futile if "it merely . . . adds allegations that still fail to state a claim." *Lane v Kindercare Learning Ctrs, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

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refer to the cases cited by plaintiff, given the straight-forward and clear issues and governing law presented in this matter.

Notably, plaintiff's initial complaint sought to obtain a declaratory judgment from the trial court. A declaratory judgment action allows parties to have "access to courts to preliminarily determine their rights." *Detroit v Michigan*, 262 Mich App 542, 550- 551; 686 NW2d 514 (2004). However, declaratory relief is conditional on the existence of an "actual controversy," which prevents the court from "deciding hypothetical issues." *Id*.

> [W]hat is essential to an "actual controversy" under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." Generally, where the injury sought to be prevented is merely hypothetical, [an] . . . actual controversy does not exist. [*Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 54-55; 620 NW2d 546 (2000)].

Plaintiff did not raise the issue of amending its pleadings until its motion for reconsideration or leave to amend. The trial court denied plaintiff's motion, stating that plaintiff had "failed to demonstrate a palpable error by which this [c]ourt and the parties have been misled. Plaintiff merely present[s] the same issues as ruled upon previously by this [c]ourt either expressly or by reasonable implication." The trial court, then, seemingly construed plaintiff's motion as solely a motion for reconsideration. While the trial court's failure to address plaintiff's request to amend its pleadings would generally warrant a remand to the trial court for a proper ruling, we need not do so here.

Relevant to the instant matter, "[a] claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or may not occur at all." *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210 (2008), citing *City of Huntington Woods v Detroit*, 279 Mich App 603, 615-616; 761 NW2d 127 (2008). The ripeness doctrine is "designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained." *Id*. at 615. The key question in a ripeness analysis is whether there is "a genuine case or controversy between the parties, one in which there is a real, not a hypothetical, dispute." *Id*.

Plaintiff openly stated that its reason for seeking a declaratory judgment was to avoid the multiple lawsuits filed by defendant. Plaintiff also asserted that defendant is not currently in need of any benefits or treatment. This fact is of particular salience, since "[a] claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or may not occur at all." *Citizens Protecting Michigan's Constitution*, 280 Mich App at 282. Plaintiff's claim rests on hypothetical and contingent future events—defendant's potential need for benefits—which may not occur. Defendant may never ask for additional or future benefits; or he may ask for benefits several times. Either way, the reality is that defendant is currently asserting no claim for benefits; therefore, there is no "genuine case or controversy between the parties." *City of Huntington Woods*, 279 Mich App at 615. Plaintiff is seeking a speculative determination, one that is based on a "hypothetical[] dispute" *Id*, and as such, the proposed amended complaint presents a claim that is not ripe. As a result, plaintiff's proposed amendment of the complaint, even if sufficient under MCR 2.111(B)(1), would be futile. This Court may uphold a trial court's ruling where the right result is issued, albeit for the wrong reason, *Gleason v Michigan Dept of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003) and we do so here.

Affirmed.

/s/ Anica Letica
/s/ Deborah A. Servitto
/s/ Michael J. Kelly