STATE OF MICHIGAN

COURT OF APPEALS

RAFAL SABBAR and TIBA ALKHALIDI,

Plaintiffs,

and

EQMD, INC.,

Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 23, 2021

No. 355249
Macomb Circuit Court
LC No. 2018-004776-NF

Before: M. J. KELLY, P.J., and STEPHENS and REDFORD, JJ.

PER CURIAM.

This case concerns the attempt of appellant,[1] EQMD, Inc., to intervene in an underlying no-fault case and seek payment for services rendered to plaintiff Rafal Sabbar by Dr. Jeffrey Carroll, DO. In its motion to intervene, EQMD asserted that it has been tasked with billing and collecting the costs of services rendered by Dr. Carroll to Sabbar, so it has an interest in the underlying action for which intervention was proper under MCR 2.209(A)(3). The trial court denied the motion to intervene and entered a stipulated order dismissing plaintiffs' complaint with prejudice. Appellant appeals now as of right. We affirm.

[1] In its brief on appeal, EQMD acknowledges that the trial court denied its motion to intervene. Nevertheless, it also identifies itself as an intervening-plaintiff. Because the motion to intervene was not granted, however, it is more appropriate to refer to EQMD by the designation "appellant," as opposing to "intervening-plaintiff/appellant."

I. BASIC FACTS

In December 2017, plaintiffs were involved in a motor-vehicle crash. On December 11, 2018, they filed a complaint against defendant State Farm Mutual Insurance Company seeking personal protection insurance (PIP) benefits for injuries they allegedly suffered in the December 2017 crash.[2] State Farm moved for partial summary disposition as it related to bills from EQMD. State Farm argued that EQMD was a nationwide provider of pharmaceutical dispensing solutions for physicians, but that it had not filed paperwork with the Michigan Department of Licensing and Regulatory Affairs (LARA) to conduct business in the state, and, despite being a manufacturer and wholesale distributor as defined in the Public Health Code, MCL 333.1101 *et seq*., was not licensed to have "any pharmaceutical involvement" in Michigan. As a result, State Farm argued that EQMD's alleged products and services were unlawful and not reimbursable as a no-fault benefit. The trial court granted State Farm's motion and dismissed EQMD's bills with prejudice, stating that, because EQMD was not licensed in Michigan, it was "unlawfully rendering services" and was not entitled to no-fault benefits.

Subsequently, on March 11, 2020 EQMD filed a motion to intervene under MCR 2.209(A)(3). On April 6, 2020, the trial court took the matter under advisement. Further, after ascertaining that EQMD wanted to participate in facilitation between State Farm and plaintiffs, the court directed that it be permitted to do so. On appeal, EQMD asserts that during an off-the-record settlement conference, the trial court granted its motion to intervene and ordered the matter to be remanded to the district court because the amount in controversy was below the jurisdictional threshold. No record of such an order exists, however. Instead, in August 2020, EQMD submitted a proposed order granting its motion to intervene. State Farm objected to the proposed order, and it was never entered. Thereafter, on October 5, 2020, the trial court held a hearing on the motion.[3] Although the hearing was not transcribed, the parties agree that during the proceedings the trial court denied the motion to intervene and entered a stipulated order dismissing the plaintiffs' complaint with prejudice. This appeal follows.

II. MOTION TO INTERVENE

A. STANDARD OF REVIEW

A trial court's decision to deny a motion to intervene is reviewed for an abuse of discretion. *State Treasurer v Bences*, 318 Mich App 146, 149; 896 NW2d 93 (2016). "An abuse of discretion occurs if the trial court's decision falls outside the range of principled outcomes." *Macomb Co Dep't of Human Servs v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

[2] Plaintiffs also named Everest National Insurance Company as a defendant; however, Everest was dismissed with prejudice by stipulation of the parties in November 2019. Everest, therefore, is no longer a party to this action.

[3] Due to the COVID-19 pandemic, the hearing was scheduled as a Zoom hearing.

B. ANALYSIS

Under MCR 2.209(A)(3), intervention is allowed on timely application

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Here, the subject of the underlying action is PIP benefits. Thus, in order to intervene, EQMD had to have had an interest in those benefits. It did not.

In its motion to intervene, EQMD asserted that it has an interest in the PIP benefits because:

> a licensed physician prescribed and dispensed Plaintiff's prescriptions for medications that were reasonable and necessary for treatment of injuries Plaintiff sustained in an auto crash. EQMD has been charged by that physician with billing for and collecting the costs of Plaintiff's prescriptions in the amount of $5,023.42 [sic].

To support its allegation, it attached a bill for $2,293.64. The bill, which is dated January 30, 2020, indicates that it was for patient "Rafal Sabbar," that the date of service was December 12, 2017, and that the facility was "Star Management & Rehab." No documentation was submitted to support the allegation that EQMD had been charged by a licensed physician to recover those costs. Nor is there any indication that the prescriptions were dispensed to Sabbar as a result of a motor-vehicle crash.[4] Finally, EQMD acknowledged that it had not received an assignment from Sabbar that would entitle it to seek recovery of PIP benefits owed to Sabbar. See *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 217 n 40; 895 NW2d 490 (2017) (noting that an insured who is entitled to PIP benefits under the no-fault act may assign his or her right to past or presently due benefits to a healthcare provider); see also MCL 500.3112 as amended by 2019 PA 21 (stating that a healthcare provider listed in MCL 500.3157 "may make a claim and assert a direct cause of action against an insurer . . . .").[5]

Thus, based on EQMD's motion to intervene, it is clear that EQMD is not a healthcare provider, nor does it have an assignment from Sabbar entitling it to pursue a direct cause of action against State Farm to recover PIP-benefits owed to Sabbar. As a result, it is not entitled to pursue

[4] A second bill is attached to EQMD's proposed complaint. That bill is dated September 10, 2019, and refers to a patient who is not a plaintiff in the underlying complaint in this matter. It is for prescriptions dispensed between March 9, 2018 and April 10, 2018. That bill provides no support whatsoever for EQMD's motion to intervene in this case.

[5] The healthcare providers listed in MCL 500.3157 are: "a physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by personal protection insurance, or a person that provides rehabilitative occupational training following the injury . . . ." EQMD does not contend that it is a healthcare provider.

a direct cause of action against State Farm to recover PIP benefits allegedly owed to Sabbar.[6] Moreover, there is no documentation supporting EQMD's claim that it was charged with collecting the $2,293.64 on behalf of a healthcare provider. In sum, we conclude that, in this case, EQMD has not established an interest in the PIP benefits at issue, so it was not entitled to intervene under MCR 2.209(A)(3). The trial court, therefore, did not abuse its discretion by denying the motion to intervene.[7]

Affirmed. State Farm may tax costs as the prevailing party. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Cynthia Diane Stephens
/s/ James Robert Redford

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[6] In contrast, in *Harbi v State Farm Mutual Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 10, 2020 (Docket No. 352139), p 2, EQMD was allowed to intervene when the plaintiffs to the underlying action assigned their claim for benefits from State Farm to EQMD, thereby granting EQMD an interest "relating to the property or transaction" at issue in the underlying claim.

[7] On appeal, EQMD asserts that it was prejudiced by State Farm's failure to provide notice of non-party fault under MCR 2.112(K)(3). EQMD also argues that EQMD should have been joined as a necessary party under MCR 2.205(A). However, Michigan courts follow a "raise or waive" rule of appellate review. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). In a civil action, a "failure to timely raise an issue waives review of that issue on appeal." *Id*. (quotation marks and citation omitted). Here, EQMD did not raise its arguments related to non-party fault or joinder. As a result, it has waived appellate review of those issues, so we are not considering them.

Additionally, because EQMD's motion to intervene was properly denied, it is not an aggrieved party under the appellate rules. See *American States Ins Co v Albin*, 118 Mich App 201, 209-210; 324 NW2d 574 (1982). As a result, we do not reach the question of whether summary disposition was improperly granted.

Finally, EQMD asks this Court to enjoin State Farm from

> using officers of the court to petition the court to dispose of EQMD's claims without notice to EQMD, but rather, to provide notice to EQMD each and every time a court officer is used to petition the Courts in order to secure an Order declaring the legality of EQMD's operations and/or compensability of EQMD's claims so that a fair adjudication on the merits may be had.

Under MCR 7.216(A)(7), this Court has discretion to "enter any judgment or order or grant further or different relief as the case may require." "[I]njunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Davis v Detroit Fin Review Team*, 296 Mich App 568, 612; 821 NW2d 896 (2012). Although EQMD requests a very broad injunction against State Farm, it has made no effort to show that such extraordinary relief is required. As a result, we decline to exercise our discretion under MCR 7.216(A)(7).