STATE OF MICHIGAN

COURT OF APPEALS

LAHNA SPECHT,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant.

FOR PUBLICATION
February 26, 1999
9:15 a.m.

No. 204280
Kent Circuit Court
LC No. 95-004298 NF

Before: Hood, P.J., and Neff and Markey, JJ.

PER CURIAM.

This is a no-fault insurance case. Defendant appeals as of right from a $73,662.63 jury verdict in plaintiff's favor, arguing that the trial court should have granted its motion to dismiss for lack of jurisdiction under MCR 2.116(C)(4). We affirm.

Plaintiff was injured in an auto accident while driving her own car during the course of her employment. She filed both a claim with the worker's compensation bureau and a lawsuit against defendant, her no-fault insurance carrier.[1] Defendant's only argument on appeal is that the pendency of a claim before the worker's compensation bureau deprived the trial court of jurisdiction to decide whether plaintiff's injuries arose out of the work-related auto accident. We disagree.

Whether the trial court had subject matter jurisdiction is a question of law which we review de novo. *Bruwer v Oaks*, 218 Mich App 392, 395; 554 NW2d 345 (1996).

"The Worker's Disability Compensation Act (WDCA) and the no-fault insurance act are complete and self-contained legislative schemes addressing discrete problems. Neither act refers expressly to the other." *Mathis v Interstate Motor Freight System*, 408 Mich 164, 179; 289 NW2d 708 (1980). "The WDCA provides a substitute for common-law tort liability founded upon an employer's negligence . . ." *Mathis, supra*, 408 Mich at 179. On the other hand, "[t]he no-fault act provides a substitute for common-law tort liability based upon the ownership and operation of a motor vehicle." *Mathis, supra*, 408 Mich at 179. Thus, when an employee such as plaintiff is injured in a motor vehicle accident during the course of her employment, her entitlement to compensation for her injuries is governed by both the WDCA and the no-fault act.

(in an action for no-fault benefits, the no-fault carrier has the burden of proving its entitlement to a set-off).

Defendant's reliance on *St Paul Fire & Marine Ins Co v Littky*, 60 Mich App 375; 230 NW2d 440 (1975), is misplaced. In *St Paul*, a worker's compensation carrier sued for declaratory judgment concerning its liability to its insured/employer. *St Paul*, *supra*, 60 Mich App at 376. The issue was whether the injured employee was covered by the worker's compensation policy, given its exclusion of persons employed in violation of the law, where he had allegedly been practicing law without a license. *St Paul*, *supra*, 60 Mich App at 376. Thus, unlike in the present case, the issue before the court was the scope and meaning of the worker's compensation policy. *St Paul*, *supra*, 60 Mich App at 376-379. We also note that *St Paul* was decided before *Sewell* clarified the *Szydlowski/Herman* rule and may not have survived that decision. See *Sewell*, *supra*, 419 Mich at 62.

Similarly, in *Michigan Prop and Cas Guar Ass'n v Checker Cab Co*, 138 Mich App 180, 182; 360 NW2d 168 (1984), the successor of defendant's bankrupt worker's compensation carrier sued for a determination of whether the injured employee was covered by its policy. In light of *Sewell* and others, this Court noted that "circuit courts ha[ve] jurisdiction to determine rights arising out of an entirely different relationship and in an entirely different type of proceeding in which the employer-employee relationship is only incidentally involved." *Checker*, *supra*, 138 Mich App at 183 (dicta). The court nevertheless agreed that "the underlying question is whether claimant [employee] is entitled to worker's compensation benefits," and thus concluded that the action was within the bureau's exclusive jurisdiction. *Checker*, *supra*, 138 Mich App at 181, 183.

In the present case, by contrast, a determination of whether the accident occurred during the course of plaintiff's employment was both unnecessary and irrelevant to the question of her entitlement to no-fault benefits. There was also no need to examine or interpret the terms of plaintiff's employer's worker's compensation policy. Rather, defendant's liability depended only on whether plaintiff was injured during the course of an accident covered by the no-fault policy which she purchased from defendant.

We therefore find that whether defendant was liable to plaintiff for no-fault benefits was clearly an issue over which circuit courts have jurisdiction. See *Sewell*, *supra*, 419 Mich at 62. Plaintiff's employment relationship was, at best, only tangentially involved. *Checker*, *supra*, 138 Mich App at 183. Thus, the trial court correctly refused to dismiss plaintiff's action for lack of subject matter jurisdiction.

Affirmed.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Janet E. Markey

[1] Plaintiff received no-fault benefits until about September of 1993, and worker's compensation benefits until about March of 1994. This case concerns medical expenses, work loss benefits, and replacement services incurred after those dates.