

STATE OF MICHIGAN
COURT OF APPEALS

HAWKEYE SECURITY INSURANCE COMPANY,

JAN 14 1988

Plaintiff-Appellee and
Cross-Appellee,

v

No. 93275

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Defendant-Appellant and
Cross-Appellee,

and

THE MUTUAL BENEFIT LIFE INSURANCE
COMPANY,

Defendant-Appellee and
Cross-Appellant.

BEFORE: MacKenzie, P.J., M.M. Doctoroff and J.C. Kingsley,* JJ.

PER CURIAM

Defendant American Community Mutual Insurance Company ("American Community") appeals as of right from an order granting plaintiff's ("Hawkeye") motion for summary disposition, MCR 2.116(C)(9) and (10). Defendant Mutual Benefit Life Insurance Company ("Mutual Benefit") cross-appeals as of right. We affirm.

On May 11, 1985, the parties' insured was injured in an automobile accident following which he incurred substantial medical expenses. At the time of the accident, the insured was covered by three different medical expense reimbursement insurance policies. Plaintiff Hawkeye Security Insurance Company ("Hawkeye") was his no-fault insurer; American Community provided group medical insurance coverage through his employer; and Mutual Benefit provided group medical insurance through his spouse, covering him as a dependent of the policyholder.

In an apparent attempt to avoid hardship on the insured, Hawkeye paid his medical expenses until May of 1986. Hawkeye then sought a declaratory judgment that either American Community or Mutual Benefit or both were primarily liable for the

*Circuit judge, sitting on the Court of Appeals by assignment.

insured's medical expenses, and sought reimbursement of the medical bills it already paid.

Hawkeye's policy covering the insured contained the following provision:

"If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses."

The policy issued by American Community contained the following provision:

"The following 'Excluded Charges' are specifically excluded from coverage:

"All charges which are not specifically included in the definition of eligible charges for personal insurance and in addition any charges:

* * *

"(11) for any loss caused by accidental bodily injury which arises out of or results from an automobile accident when benefits are provided under the Michigan No-Fault Insurance Act (Act No. 294 of the Public Acts of 1972) including any amendments thereto, exceeding three hundred dollars (\$300) for any one insured person as a result of any Automobile Accident."

American Community conceded primary liability but argued that the liability was limited to \$300 by the express language of its policy. It has paid the \$300 policy limit but denies further liability.

Hawkeye moved for summary disposition, MCR 2.116(C)(9) and (10), claiming that American Community and Mutual Benefit were primarily liable to pay the insured's medical expenses pursuant to Federal Kemper Insurance Co, Inc v Health Insurance Administration, Inc, 424 Mich 537; 383 NW2d 590 (1986).

The trial court determined that Federal Kemper applied to the facts of this case, and that American Community's \$300 limitation would not be enforced. The trial court then determined the applicable order of priority of the insurers to pay their insured's medical expenses: first priority, American Community; second priority, Mutual Benefit; and third priority, Hawkeye.

I

Defendant first argues that the trial court erred by applying Federal Kemper to this case. It asserts that Federal Kemper is distinguishable because the clauses at issue in this case are not conflicting "other insurance" clauses. It further asserts that it does not deny primary liability, but only seeks to limit it.

In Federal Kemper, the Michigan Supreme Court was presented with conflicting "other insurance" clauses of both plaintiff no-fault insurer and defendant health insurer. Both parties disclaimed primary liability for their insured's medical bills following an auto accident. The Court examined the legislative history of §3109a of the no-fault act in order to ascertain which party's clause should be given effect.¹ This provision mandates that no-fault carriers offer coordination of benefits at reduced premiums when an insured has other health and accident coverage. MCL 500.3109a; MSA 24.13109(1).² The Court concluded that defendant's "other insurance" provision, an "excess" clause, was to be given no effect and found the health care insurer primarily liable for payment of medical expenses. Giving effect to plaintiff no-fault insurer's coordinated benefits provisions furthered the purposes of §3109a to contain both auto insurance costs and health care costs while eliminating duplicative recovery. 424 Mich at 551.

In this case, defendant's clause is a modified "escape" clause that enables it to restrict or escape liability after payment of a nominal \$300 to its insured. Although defendant does not deny all liability, its clause is merely a version of the restrictive clauses at which the Federal Kemper decision was directed. See Michigan Mutual Ins Co, et al v American Community Ins Co, (Docket Nos. 92599; 94188, rel'd 12/21/87).

Defendant argues that it does not deny "primary liability" because it pays \$300 toward medical expenses before the no-fault insurer becomes liable for payment of the bills. However, defendant misperceives the meaning of the word

"primary". As used in Federal Kemper, "primary" does not mean "first in priority". It means instead "principal" or "first in importance," or "main". As used in this context, American Community has denied primary liability.

We find American Community's other arguments attempting to distinguish Federal Kemper totally unpersuasive. American Community is primarily liable for payment of its insured's medical bills pursuant to Federal Kemper. See also Michigan Mutual Ins Co, et al, supra.

II

Defendant next argues that possible procedural infirmities occurred when plaintiff moved for summary disposition. However, this issue was never raised in the trial court and is not now properly before us. See Community National Bank of Pontiac v Michigan Basic Property Ins Assn, 159 Mich App 510, 520-521; ___ NW2d ___ (1987).

Defendant next asserts that remand is necessary because certain issues were raised below but not addressed by the trial court.

Pursuant to MCR 2.116(G)(5), the trial court must consider the pleadings, affidavits, and other documentary evidence when deciding a motion under MCR 2.116(C)(10). Although the trial court is obligated to consider these, it need not address every issue in its opinion, for findings of fact and conclusions of law are unnecessary in decisions on motions unless specifically required by a particular rule. See MCR 2.517(A)(4). Specific findings were not required in this case. Remand is therefore unnecessary.

III

Cross-appellant Mutual Benefit argues that the trial court erred by ordering it to reimburse Hawkeye for medical expenses already paid on behalf of its insured, for the extent of its liability could not be determined pursuant to a motion for summary disposition.

After reviewing the record, we are persuaded that the trial court's ruling was consistent with Mutual Benefit's position.³ Therefore, Mutual Benefit is not an aggrieved party entitled to appeal from that ruling. See MCR 7.203; MCR 7.207.

Accordingly, we affirm the trial court's order granting plaintiff's motion for summary disposition.

s/Barbara B. MacKenzie
s/Martin M. Doctoroff
s/James C. Kingsley

FOOTNOTE

¹ As set forth in Federal Kemper:

"Many insurance policies contain language intended to restrict or escape liability for a particular risk in the event that there is other insurance. Such 'other insurance' provisions are of three basic types: 'pro rata,' 'escape,' and 'excess.' A 'pro rata' clause purports to limit the insurer's liability to a proportionate percentage of all insurance covering the insured event, while an 'escape' or 'no liability' clause provides that there shall be no liability if the risk is covered by other insurance, and an 'excess' clause limits liability to the amount of loss in excess of the coverage provided by other insurance." (Footnotes omitted.) 424 Mich 542.

² MCL 500.3109a; MSA 24.13109(1) provides:

"An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. The deductibles and exclusions required to be offered by this section shall be subject to prior approval by the commissioner and shall apply only to benefits payable to the person named in the policy, the spouse of the insured and any relative of either domiciled in the same household."

³ The trial court stated:

"To the extent you are not able to sort out what is covered and what isn't covered under your respective policies, and what money should change hands, we will have to try to sort that out, but I should think you would be able to do that as a mechanical exercise."