

STATE OF MICHIGAN  
COURT OF APPEALS

WAYNE PARKS,

Plaintiff-Appellee,

v

Nos. 97793, 98259

DETROIT AUTOMOBILE INTER-  
INSURANCE EXCHANGE,

Defendant,

and

ROADWAY EXPRESS, INC.,

Defendant-Appellant,

and

MICHIGAN DEPARTMENT OF STATE,  
ASSIGNED CLAIMS FACILITY,

Defendant.

---

BEFORE: Cynar, P.J., E. A. Weaver and R. M. Pajtas\*, JJ.

PER CURIAM

Defendant Roadway Express, Inc., ("Roadway") appeals from a circuit court order requiring it to pay one-half of plaintiff's attorney fees.

I

Following plaintiff's injury on March 13, 1981 as a result of unloading one of Roadway's trailers located at its terminal in Muskegon, plaintiff sought recovery of no-fault benefits against Roadway, his personal no-fault insurance carrier (defendant Detroit Automobile Inter-Insurance Exchange), and the Michigan Department of State. Roadway refused to pay such no-fault benefits and was granted summary disposition based on the court's finding that, because the trailer was not subject to the security requirements of the no-fault Act, MCL 500.3131 et seq.; MSA 24.13101 et seq., no coverage existed.

The trial court then held defendant DAIIE responsible for payment of no-fault benefits. This Court reversed that decision, holding Roadway liable instead, but the Michigan Supreme Court reversed that decision upon leave granted. Parks v DAIIE,

---

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

426 Mich 191; 393 NW2d 833 (1986). Upon subsequent motion by plaintiff, the trial court then entered judgment for no-fault benefits and penalty interest against DAIIE only, plus judgment for attorney fees against both DAIIE and Roadway. Roadway now appeals that portion of the trial court's decision requiring it to pay one-half of plaintiff's attorney fees.

## II

On appeal, Roadway argues that it was clearly erroneous for the trial court to hold Roadway responsible for paying any of plaintiff's attorney fees. We agree.

The trial court conceded that Roadway had demonstrated a bona fide question of statutory construction. Therefore, Roadway's nonpayment cannot be characterized as an unreasonable refusal or unreasonable delay. MCL 500.3148(1); MSA 24.13148(1); Liddell v DAIIE, 102 Mich App 636, 650; 302 NW2d 260 (1981), lv den 411 Mich 1079 (1981).

The Michigan Supreme Court had by its prior review already established (1) that Roadway's trailer was not subject to Michigan's vehicle registration requirements since the trailer was an out-of-state vehicle not operative in Michigan for more than thirty days, and (2) that therefore the mandatory security provisions of the no-fault act did not apply. Parks, supra at 196, 201, 206. Since Roadway was not subject to the no-fault act as applied to plaintiff's case, the Court looked to the general intention of the Legislature to find DAIIE, as plaintiff's personal insurer, the party responsible for providing compensation. Id. at 206-207.

The Supreme Court having found that Roadway was not subject to the security requirements of the no-fault act, Roadway never qualified for inclusion in the scheme of priorities set forth at Sec. 3114(1), and the trial court was without a basis for finding that plaintiff's claim involved a priority dispute entitling him to early payment of claims which could later be

settled between insurance companies. Cf. Darnell v Auto-Owners Ins Co, 142 Mich App 1, 12-13; 369 NW2d 243 (1985). Since the trial court's order requiring Roadway to pay one-half of plaintiff's attorney fees was therefore clearly erroneous, that order is reversed. Liddell, supra at 650.

However, because we do not find plaintiff's claim to have been "fraudulent or so excessive as to have no reasonable foundation," we deny Roadway's request for attorney fees from plaintiff. MCL 500.3148(2); MSA 24.13148(2). Further, our reversal of the trial court's order as to Roadway's liability for one-half of plaintiff's attorney fee renders it unnecessary to address Roadway's claim that the fee was excessive.

Reversed as to Roadway's obligation to pay one-half of plaintiff's attorney fee. Remanded to the trial court for a new order conforming to this opinion, requiring DAIIE to pay the entire amount of attorney fees. We do not retain jurisdiction.

/s/ Walter P. Cynar  
/s/ Elizabeth A. Weaver  
/s/ Richard M. Pajtas