STATE OF MICHIGAN

COURT OF APPEALS

LORI ANN WEINEL,

Plaintiff-Appellee,

v No. 99487

STATE FARM MUTUAL INSURANCE COMPANY, a/k/a STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, as assignee of the MICHIGAN ASSIGNED CLAIMS FACILITY,

Defendant Cross-Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant Cross-Defendant-Appellant,

and

UNITED STATES FIDELITY AND GUARANTY COMPANY,

Defendant and Cross-Defendant.

BEFORE: J.B. Sullivan, P.J., MacKenzie and G. Schnelz*, JJ.

PER CURIAM

Allstate Insurance Company, defendant-cross-defendant herein, appeals as of right an October 20, 1987 circuit court order granting summary disposition and awarding judgment in favor of State Farm Mutual Automobile Insurance Company (State Farm), as assignee of The Michigan Assigned Claims Facility, against Allstate for $84,551.14, which represents all benefits paid by State Farm plus the adjustment cost. The court also added twelve percent interest from the date of filing of the cross-claim until the date of payment together with additional interest at the rate of twenty percent.

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

The instant dispute has its genesis in an automobile accident that occurred on September 22, 1985, in which plaintiff, driving her parents' vehicle, was seriously injured. At the time of the accident, plaintiff was insured under a no-fault automobile policy issued by Allstate. Plaintiff alleged that her parents were insured by defendant United States Fidelity & Guaranty Insurance Company (USF&G). Plaintiff sought but was denied no-fault benefits by both insurers. She thereafter applied for benefits from The Michigan Assigned Claims Facility which, in turn, assigned the claim to State Farm. State Farm, as assignee, paid personal protection insurance benefits and filed a cross-claim against Allstate and USF&G for reimbursement.[1]

Following a hearing on September 29, 1986, the trial court granted State Farm's motion for summary disposition pursuant to MCR 2.116(C)(10). However, the court did not determine damages until an evidentiary hearing held on October 20, 1986. At this time, the court entered State Farm's proposed judgment, over objection by Allstate, together with an order granting summary disposition in favor of State Farm.

On October 27, 1986, Allstate filed a motion for rehearing pursuant to MCR 2.119(F). A supplemental motion for rehearing was filed on October 30, 1986. State Farm acknowledges that on November 25, 1986, Allstate made a partial payment in satisfaction of the judgment. Thereafter, on December 17, 1986, a writ of garnishment was issued against funds held at the National Bank of Detroit in an effort to satisfy the judgment.

Allstate responded by moving to set aside the writ on January 13, 1987. Opposing the motion, State Farm, in turn, filed a motion seeking supplemental attorney fees of $1740 and expenses of $58.50. Following a hearing, Allstate's motions for rehearing and to set aside the garnishment were denied. State Farm's motion was granted.

On March 26, 1987, Allstate satisfied the judgment and the garnishment was released by stipulation of the parties.

In this case, the trial court determined that Allstate was primarily liable for payment of any no-fault benefits to which plaintiff was entitled. Allstate does not contest this ruling. Allstate was ordered to pay any future benefits due plaintiff and to reimburse State Farm for benefits it had paid together with twelve percent interest plus an additional twenty percent interest from the date of filing of the cross-claim until the date of payment. Allstate contends that the trial court erred in assessing an additional interest at a rate of twenty percent. Allstate argues further that this is a penalty interest, rather than an interest for purposes of reimbursement, which is not authorized by statute.

State Farm contends initially that Allstate is precluded from appealing this issue by failing to object to the penalty interest rate prior to entry of judgment or bringing proper post-judgment motions. However, the issue was brought before the trial court in Allstate's motions for rehearing and, given the fundamental and apparent nature of the error, we will address this issue. See Kline v Kline, 92 Mich App 62, 74; 284 NW2d 488 (1979).

MCL 500.3172; MSA 24.13172, allows a claim to be assigned to a different insurance company if a personal protection insurance policy applicable to an accident cannot be identified or if there is a dispute between two or more insurers concerning their obligations. Attorney General v State Farm Mutual Automobile Ins Co, 160 Mich App 57, 61; 408 NW2d 103 (1987). Subsection (f) provides:

"(f) After hearing the action, the circuit court shall determine the insurer or insurers, if any, obligated to provide the applicable personal protection insurance benefits and the equitable distribution, if any, among the insurers obligated therefor, and shall order reimbursement to the assigned claims facility from the insurer or insurers to the extent of the responsibility as determined by the court. The reimbursement ordered under this subdivision shall include all benefits and

costs paid or incurred by the claims facility and all benefits and costs paid or incurred by insurers determined not to be obligated to provide applicable personal protection insurance benefits, including reasonable attorney fees and interest at the rate prescribed in section 3175 as of December 31 of the year preceding the determination of the circuit court."

Section 3175(1) provides that the insurer who pays benefits on behalf of the assigned claims facility is entitled to reimbursement of those payments:

". . . together with an amount determined by use of the average 90-day United States treasury bill yield rate, as reported by the council of economic advisers as of December 31 of the year for which reimbursement is sought, . . ."

Subsection 4 states:

"(4) Payments for the operation of the assigned claims facility and plan not paid by the due date shall bear interest at the rate of 20% per annum."

We are asked to decide whether the interest rate as set forth in subsection (1) or (4) should have been applied when the court awarded interest pursuant to §3172.

In construing a statute, the primary goal is to give effect to the Legislature's intent. Browder v International Fidelity Ins Co, 413 Mich 603 611; 321 NW2d 668 (1982). The specific language of the statute is the first criterion to consider, Kalamazoo City Ed Ass'n v Kalamazoo Public Schools, 406 Mich 579, 603; 281 NW2d 454 91979), and if possible, every phrase, clause, and word must be given effect. Further, construction of one part of a statute should not render other parts void. Melia v Employment Security Comm, 346 Mich 544, 562; 78 NW2d 273 (1956). Plain and unambiguous statutes must be applied and not interpreted. City of Lansing v Lansing Twp, 356 Mich 641, 649; 97 NW2d 804 (1959). Finally, ordinary words must be given their plain and ordinary meaning. Carter Metropolitan Christian Methodist Episcopal Church v Liquor Control Comm, 107 Mich App 22, 28; 308 NW2d 677 (1981), lv den 411 Mich 1037 (1981).

As plaintiff correctly notes, both §§3172(3)(f) and 3175(1) use the term "reimbursement." Applying the foregoing

rules, it is only logical to apply the interest rate of §3175(1) to reimbursement awards in §3172(3)(f). Additionally, both of these sections state that the rate is determined as of December 31 of the year in question. By direct contrast, §3175(4) applies to payments not made by the due date and is clearly a penalty provision provided for the recalcitrant insurer that, after a circuit court determination on the matter, refuses to fulfill its obligations. The clear wording of the respective sections indicates to us an intent to reimburse the insurer that pays as assignee of the assigned claims facility, on the one hand, and on the other, to penalize the insurer, ultimately determined to be liable, for failure to make a timely reimbursement.

Finally, the legislative history of these provisions according to both the house legislative analysis section and the senate analysis section, indicates that the rate of interest on reimbursement would be tied to the 90-day U.S. Treasury bill yield rate.

We conclude, therefore, and so hold, that the interest rate set forth in §3175(1) should have been applied when the court made an award of interest under §3172. By not doing so, the court erred as a matter of law. Accordingly, we reverse the court's order as to interest and remand for entry of judgment applying the appropriate interest rate which is the average annual 90-day U.S. Treasury bill yield rate as of December 31, 1985, as set forth in MCL 500.3175(1); MSA 24.13175(1).

Allstate also argues that the trial court erred by denying its motion to set aside the writ of garnishment obtained by State Farm; by denying its request for attorney fees in connection with its motion to set aside the garnishment and by granting State Farm's motion for supplemental attorney fees which Allstate claims resulted from State Farm's having submitted a defective judgment to the trial court on October 20, 1986.

We initially note that the garnishment was released by stipulation of the parties. Therefore, the failure of the trial court to release the garnishment is moot and need not be addressed by this Court. MCR 7.211(C)(2)(c). See Crawford v Secretary of State, 160 Mich App 88, 93; 408 NW2d 112 (1987).

As to supplemental attorney fees, at the February 11, 1987 hearing, the court concluded that Allstate's motion for rehearing and reconsideration was inappropriate and thereby denied it. For the same reason, the court ruled that attorney fees would necessarily follow. While Allstate may not have used the procedurally proper method, the substance of the motion for rehearing was that the judgment reflected an improper interest rate. Our previous disposition of this matter reflects our concurrence with the merits of Allstate's claim. This is not a situation where Allstate was penalized for unreasonably refusing to pay benefits. See Liddell v DAIIE, 102 Mich App 636; 302 NW2d 260 (1981), lv den 411 Mich 1079 (1981). Nor do we find Allstate's motion motivated by bad faith or dilatory tactics. Although a motion for rehearing and reconsideration is substantively different from a post-judgment motion, in this case we find no prejudice to State Farm as a result of mislabeling the motion. State Farm submitted a responsive memorandum and there was a hearing on the matter. Allstate's motion was necessitated by entry of an order which imposed an improper interest rate. Under these circumstances, we find that the trial court abused its discretion in awarding supplemental attorney fees. See Harvey v Gerber, 153 Mich App 528, 531; 396 NW2d 470 (1986), lv den 428 Mich 881 (1987).

Finally, we find no merit to Allstate's claim that the court erred by denying its motion to grant attorney fees in connection with its motion to set aside the garnishment.

Remanded in accordance with this opinion.

/s/ Joseph B. Sullivan
/s/ Barbara B. MacKenzie
/s/ Gene Schnelz

[1] USF&G was granted summary disposition on October 16, 1986 as to plaintiff's complaint and State Farm's cross-claim. This dismissal is not being appealed in the instant matter.