STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE S. WEISMAN, M.D.,

Plaintiff-Appellant,

v No. 92643

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

Before: Walsh, P.J., and Weaver and M. Warshawsky,* JJ.

PER CURIAM

Plaintiff Lawrence Weisman, M.D., appeals by leave from a grant of summary disposition in favor of defendant State Farm Mutual Automobile Insurance Company.

State Farm was the no-fault insurance carrier of Kola and Drita Gojcajs, who were injured in an automobile accident in August, 1982, and treated by Dr. Weisman. When medical treatment was begun, Dr. Weisman requested that the Gojcajs sign an insurance payment authorization which read:

> "This is to certify that State Farm will pay Dr. Lawrence S. Weisman a legally qualified physician upon receipt of his itemized statement for services rendered out of INDEMNITY due me under the terms of my policy No. 228107618 issued by your Company. This policy was in full force and effect at the time these services were rendered. Payment of this amount as herein directed, whole or part, shall be the same as if paid to me."

Dr. Weisman sent State Farm several medical bills with copies of the payment authorization attached.

State Farm declared the Gojcajs ineligible for medical benefits after December 7, 1982, and the Gojcajs filed suit against the insurer for its failure to pay medical bills and lost wages in a timely manner. This suit was dismissed after the Gojcajs released all claims against State Farm in a settlement for $4500.

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

Dr. Weisman was not notified of the suit or the settlement negotiations. He brought suit against State Farm for payment of his medical services to the Gojcajs. State Farm contended that the payment authorization was void under §3143 as an assignment of a benefit payable in the future. Dr. Weisman contended that: (1) the payment authorization agreement was not an assignment of future benefits under MCL 500.3143; MSA 24.13143 but was for a benefit past due because the medical treatments had already been received by the insureds and (2) under MCL 500.3112; MSA 24.13112 State Farm had no right to settle the claim with the Gojcajs without protecting his interest of which they had actual knowledge. The Oakland Circuit Court affirmed the district court's decision that the payment authorization agreement between Dr. Weisman and the insureds was an assignment of future benefits and therefore void under §3143 of the no-fault act.

The non-assignability provision of the no-fault act provides:

> "An agreement for assignment of a right to benefits payable in the future is void." MCL 500.3143; MSA 24.13143.

Assignments transfer property rights. 6 Am Jur 2d, Assignments, §1, p 185. A lien, by contrast, is not a property right in or right to the thing itself, but constitutes a charge or security thereon. 51 Am Jur 2d, Liens, §1, pp 142-144; Warren Tool Co v Stephenson, 11 Mich App 274, 284, n 7; 161 NW2d 133 (1968). It is a right to have a specific fund or property applied to the payment of a particular debt. 51 Am Jur 2d, Liens, §§22, 25, 26, 27, pp 160-161, 164-166.

We do not believe that Dr. Weisman was, as a matter of substantive law, an "assignee" as distinguished from a person merely designated to receive payment. The agreement was not an assignment of any and all claims to Dr. Weisman such as would defeat the insureds' right to bring action against State Farm. An examination of the purported assignment of benefits discloses that the payment authorization agreement constitutes a lien. The payment authorization agreement does not express an intent to

make a grant to or vest in Dr. Weisman the insureds' rights under the policy but merely directs the insurer to pay over the checks directly to Dr. Weisman as the insureds' agent. There was no relinquishing of choses in action. See East Texas Life & Accident Ins Co v Carver, 407 SW2d 251 (Tex, 1966).

Moreover, even if we were to assume arguendo that the agreement between the insureds and Dr. Weisman was an assignment, the assignment was not of a right to "benefits payable in the future." Apparently, a payment authorization agreement was attached to each bill submitted to State Farm for services rendered by Dr. Weisman. The assignments, if any, were for benefits payable for past medical expenses which had already accrued. See MCL 500.3110(4); MSA 24.13110(4) and MCL 500.3142; MSA 24.13142. The "assignments" were not for potential medical expenses to be rendered at an indeterminate time in the future.

We therefore hold that §3143 is not applicable to the instant case to void the agreement between the insureds and Dr. Weisman.

Plaintiff further argues that pursuant to MCL 500.3112; MSA 24.13112 State Farm had no right to settle the claim with the Gojcajs because the insurer had actual knowledge of the agreement between the insureds and Dr. Weisman.

Section 3112 provides, in relevant part, as follows:

> "Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his death, to or for the benefit of his dependents. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled thereto, the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order. The court may designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate. . . ." [Emphasis added] MCL 500.3112; MSA 24.13112.

Applying the above provision to the instant case, we believe that Dr. Weisman may receive payments under the insureds'

policy directly from State Farm "for the benefit of an injured person," here, the Gojcajs. State Farm does not dispute that it had been notified in writing by the insureds to make payment directly to Dr. Weisman in lieu of payment to the insureds.

We disagree, however, with plaintiff's contention that State Farm had no "right" to enter into a settlement with the Gojcajs since we find there was no "assignment" under substantive law to plaintiff of the insureds' claim against State Farm. See 18A Couch on Insurance 2d (Rev. ed), §74:293, pp 766-767. Nevertheless, we believe that since State Farm had knowledge of Dr. Weisman's claims to payment under the insureds' policy at the time it settled with the insureds, State Farm entered into the settlement at its own peril. Section 3112 discharges an insurer's liability for payments made only where the insurer has not been put on written notice of other potential claims to the payments. To protect itself against possibly paying twice for identical claims for medical expenses, State Farm should have sought declaratory relief in respect of the seemingly conflicting claims upon the benefits payable and should have joined Dr. Weisman as an interested party. See MCR 2.205, .206, .207.

We reverse the grant of summary disposition to defendant and remand for further action consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh
/s/ Meyer Warshawsky

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WEAVER, J., (Dissenting).

I dissent. I do not believe that the district and circuit courts erred when permitting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10).

The "insurance payment authorization" which the Gojcajs signed in favor of Dr. Weisman was an assignment by the Gojcajs of their right to receive future claim benefits from their no-fault insurer, State Farm. As such, the authorization constituted "an agreement for assignment of a right to benefits payable in the future," expressly void under MCL 500. 3143; MSA 24.13143. Aetna Casualty v Starkey, 116 Mich App 640, 646; 323 NW2d 325 (1982), lv den 417 Mich 929 (1983). Once State Farm was notified in writing of a conflicting claim by the Gojcajs, State Farm was not required to pay Dr. Weisman as one whom State Farm believed was entitled to the benefits. Id. MCL 500.3122; MSA 24.13112.

Since plaintiff argues for the first time on appeal that the payment authorization was not an assignment[1] but created a lien, his failure to preserve the lien argument for appeal renders it unnecessary for us to address this issue. Even were the payment authorization found to create a lien, however, State Farm had no obligation to notify Dr. Weisman of settlement negotiations. This is because a lien in favor of Dr. Weisman would

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

not attach until it was determined what benefits were owed the Gojcajs under the insurance policy. Warren Tool Co v Stephenson, 11 Mich App 274, 294; 161 NW2d 133 (1968). Therefore under a lien analysis it was the Gojcajs, not State Farm, who breached the payment authorization agreement by retaining the medical benefits and failing to pay them over to Dr. Weisman pursuant to their agreement.

I would affirm.

/s/ Elizabeth A. Weaver

[1] At the hearing on summary disposition, plaintiff called the payment authorization an "assignment" of past benefits because of medical treatment already received. He made no argument that the authorization constituted a lien.