

STATE OF MICHIGAN
COURT OF APPEALS

KRISTINA WEISEND,

Plaintiff-Appellant,

v

No. 109886

AMERICAN COMMUNITY MUTUAL INSURANCE
COMPANY,

Defendant-Appellee.

Before: Sullivan, P.J., and Doctoroff and Reilly, JJ.

PER CURIAM.

In this declaratory action, plaintiff appeals as of right from the order granting summary disposition under MCR 2.116(C)(10) and (I)(2) to defendant American Community Mutual Insurance Company. Plaintiff claims that the trial court erred by finding that defendant, plaintiff's health insurance carrier, was secondarily liable for payment of her medical expenses resulting from injuries sustained in a car accident, and that plaintiff's no-fault insurance carrier was primarily liable. We affirm.

At the time of plaintiff's car accident, she was insured by defendant under an individual health insurance policy which contained a variable deductible provision excluding benefits for medical expenses when they are covered under a no-fault insurance policy. At the same time, plaintiff was also insured under a noncoordinated no-fault insurance policy. Plaintiff's no-fault insurer paid all plaintiff's medical expenses arising out of the accident. Consequently, after plaintiff applied to defendant to reimburse her for medical expenses, defendant denied plaintiff's claim because the coordination-of-benefits clause contained in the health insurance policy barred plaintiff's claim. The only issue before us is

whether the health insurer's coordination clause is valid. Plaintiff argues on appeal, as she did in the trial court, that enforcing that clause violates § 3109a of the no-fault insurance act which 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. [MCL 500.3109a; MSA 24.13109(1)]

We disagree.

Section 3109a mandates that no-fault carriers offer coordination of benefits at reduced premiums when the insured has other health and accident coverage. Moreover, under Michigan law, when a no-fault policy and a health insurance policy contain conflicting coordination-of-benefits provisions, the health insurance policy is primarily liable. Federal Kemper Ins Co, Inc v Health Ins Administration, Inc, 424 Mich 537, 539; 383 NW2d 590 (1986). Giving effect to the no-fault insurance coordination provision over the conflicting health insurance coordination provision furthers the legislative purposes of § 3109a to contain both automobile insurance costs and health care costs, while eliminating duplicative recovery, and to leave to the insured the option of coordinating benefits. Federal Kemper, 551-552; Auto-Owners Ins Co v Farm Bureau Mutual Ins Co, 171 Mich App 46, 52; 429 NW2d 637 (1988), lv gtd 433 Mich 878 (1989).

Our Supreme Court expressly limited its decision in Federal Kemper to a situation in which the insured opted for coordinated no-fault benefits. Federal Kemper, 552, n 10. Here, however, plaintiff opted for noncoordinated no-fault benefits. Giving effect to the health insurance coordination provision in such a situation would further the purpose of § 3109a to reduce health care costs and to avoid duplicative recovery. Evidence presented below in the form of an affidavit shows that the health

insurance coordination provision at issue results in reduced premiums to defendant's insureds. Therefore, we decline to hold that the health insurance coordination provision violates § 3109a or public policy. A panel of this Court recently reached the same result in a case which contained a noncoordinated no-fault provision and a coordinated group health insurance policy provision. See Gibbard v Auto-owners Ins Co, 179 Mich App 54; ___ NW2d ___ (1989).

Affirmed.

/s/ Joseph B. Sullivan
/s/ Martin M. Doctoroff
/s/ Maureen Pulte Reilly