

**STATE OF MICHIGAN
COURT OF APPEALS**

SAFECO INSURANCE COMPANY

Plaintiff-Appellant,

v

ECONOMY FIRE & CASUALTY COMPANY,

Defendant-Appellee.

March 6, 1990

FOR PUBLICATION

No. 114848

Before: Brennan, P.J., and Michael J. Kelly and Cynar, JJ.

PER CURIAM.

Plaintiff Safeco Insurance Company appeals as of right from the January 13, 1989 order of the Kent Circuit Court, which granted summary disposition in favor of defendant Economy Fire & Casualty Company pursuant to MCR 2.116(C)(8), finding that defendant was not obligated to pay Michigan no-fault insurance benefits in this case. We reverse.

Plaintiff brought this action to obtain reimbursement for personal injury protection benefits paid by plaintiff allegedly on behalf of defendant to Mary Baker, a named policyholder of motor vehicle insurance issued in Indiana by defendant, for injuries she received in a motor vehicle accident which occurred in Michigan on June 7, 1987. Mary Baker was an occupant of an involved motor vehicle owned by her son, Maxwell Baker. Both Maxwell Baker and his vehicle were insured under a policy of motor vehicle insurance issued by plaintiff in Indiana. Plaintiff's complaint also sought a declaratory judgment holding defendant responsible for payment of any future benefits to Mary Baker arising out of the accident.

Both plaintiff and defendant currently transact some insurance business within the state of Michigan and the county of Kent. At the time of the accident, both plaintiff and defendant had on file with the state of Michigan a written certification in accordance with MCL 500.3163; MSA 24.13163 of the Michigan no-fault insurance act. Defendant had filed its certification on August 31, 1973, as required under subsection (1) of section 3163 for a foreign insurance corporation authorized to write auto insurance liability policies in Michigan. Defendant voluntarily withdrew its authorization to write auto insurance in 1983, but never withdrew its certification on file with the State. After 1983, defendant continued to be authorized in Michigan to transact some insurance business, but not automobile liability insurance and worker's compensation insurance.

Plaintiff alleges that under MCL 500.3114(1); MSA 24.13114(1), defendant was first in priority to make payments of benefits to Mary Baker for her injuries. When defendant refused to make these payments, plaintiff made the payments and subsequently initiated the present action.

Defendant argues, and the court below agreed, that when defendant unilaterally and voluntarily withdrew its authorization to write auto insurance in Michigan in 1983, its certification, filed as required by subsection (1) of section 3163 of the no-fault act, automatically terminated at the same time. We disagree.

MCL 500.3163; MSA 24.13163, provides in full:

(1) An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle by an out-

of-state resident who is insured under its automobile liability insurance policies, shall be subject to the personal and property protection insurance system set forth in this act.

(2) A nonadmitted insurer may voluntarily file the certification described in subsection (1).

(3) When a certification filed under subsections (1) or (2) applies to accidental bodily injury or property damage, the insurer and its insureds with respect to that injury or damage have the rights and immunities under this act for personal and property protection insureds, and claimants have the rights and benefits of personal and property protection insurance claimants, including the right to receive benefits from the electing insurer as if it were an insurer of personal and property insurance applicable to the accidental bodily injury or property damage.

As often repeated by our Court:

When determining legislative intent, statutory language should be given a reasonable construction considering the statute's purpose and the object sought to be accomplished. An act must be read in its entirety and the meaning given to one section arrived at after due consideration of other sections so as to produce, if possible, a harmonious and consistent enactment as a whole. Statutes are to be construed so as to avoid absurd or unreasonable consequences. [*Joy Management Co v City of Detroit*, 176 Mich App 722, 731; 440 NW2d 654 (1989), lv den 433 Mich 860 (1989)]

In *Transport Ins Co v Home Ins Co*, 134 Mich App 645, 651; 352 NW2d 701 (1984), a panel of our Court determined that the only conditions for an insurer's liability under section 3163 are:

(1) certification of the carrier in Michigan, (2) existence of an automobile liability policy between the nonresident and the certified carrier, and (3) a sufficient causal relationship between the nonresident's injuries and his or her ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

The form and substance of a section 3163 certificate is the same regardless of whether its filing was originally mandated under subsection (1), or was voluntarily filed pursuant to subsection (2). Further section 3163 makes no reference to or provision for automatic termination of certification in the event authorization to write auto insurance in Michigan is withdrawn. In fact, there is no such provision contained with the no-fault act as a whole, nor should such a provision be impliedly inserted into the act by this Court.

As noted by our Court in *Kriko v Allstate Ins Co of Canada*, 137 Mich App 528, 532; 357 NW2d 882 (1984), there are at least two benefits that an out-of-state insurance company receives by filing and maintaining on file a section 3163 certificate even though it does not write any motor vehicle insurance policies in this state:

Defendant, who was not licensed to do business in Michigan, filed its certification pursuant to MCL 500.3163(2). Defendant was therefore clearly aware that its insureds might be travelling in the State of Michigan and involved in accidents therein; it would appear that defendant sought to make its insurance policies more attractive to potential customers who might be regular travellers in the State of Michigan and/or sought to avail itself of the potential benefits provided by Michigan's no-fault system by filing its certification. [emphasis added]

Besides making its auto policies more marketable, the *Kriko* court noted and the express language of subsection (3) of section 3163 provides that an out-of-state insurer also benefits from "the rights and immunities" under the no-fault act, including the limitations on tort liability provided under MCL 500.3135; MSA 24.13135. Thus, we see no reason to conclude that the legislature intended an out-of-state insurer, such as defendant here, to have the unilateral option to either rely on or render void its properly filed and

maintained no-fault certification depending on whether the provisions of the no-fault act benefit it in a particular situation, or subject it to liability.

Defendant also contends in its reply brief on appeal that MCL 500.3113(c); MSA 24.13113(c), excludes coverage for Mary Baker, and that, in any event, the one-year-back rule of MCL 500.3145(1) MSA 24.13145(1), precludes plaintiff's recovery for benefits paid prior to August 18, 1987. However, defendant's issue regarding section 3113(c) of the act was never raised before the trial court, and, therefore, is not preserved for appellate review. Attorney General v Blue Cross and Blue Shield of Michigan, 168 Mich App 372, 383; 424 NW2d 54 (1988), lv den 432 Mich 887 (1989). Further, although it was raised below, defendant's issue with respect to section 3145(1) was not reached by the trial court. Our review is limited to issues actually decided by the lower court. Michigan Mutual Ins Co v American Community Mutual Ins Co, 165 Mich App 269, 277; 418 NW2d 455 (1987), lv den 430 Mich 884 (1988), reconsideration den 431 Mich 903 (1988). Moreover, we note that neither issue has been raised by way of cross-appeal, and for that reason as well, they are not properly before this Court. Michigan Association of Administrative Law Judges v Personnel Director of the State of Michigan, 156 Mich App 388, 395; 402 NW2d 19 (1986).

Reversed. We do not retain jurisdiction.

/s/ Thomas J. Brennan
/s/ Michael J. Kelly
/s/ Walter P. Cynar