

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

ALLSTATE INSURANCE COMPANY,
Subrogee of JacLynn Faulhaber,

JAN 6 1987

Plaintiff-Appellant,

v.

No. 90271

SCHEILAN FAULHABER,

Defendant-Appellee.

BEFORE: Danhof, C.J., S. J. Bronson and T. Gillespie,* JJ.

PER CURIAM

On February 14, 1982, JacLynn Faulhaber was injured in an automobile accident while occupying an automobile owned by the defendant. The vehicle was not insured with a policy of no-fault insurance. As a result, the claim was assigned to Allstate Insurance Company for the payment of benefits. See MCL 500.3171; MSA 24.13171. Allstate last paid benefits to JacLynn Faulhaber on October 16, 1984.

On October 8, 1985, Allstate, as subrogee to JacLynn Faulhaber, commenced the present action against the defendant, requesting recoupment of the monies paid on behalf of Ms. Faulhaber. MCL 500.3175; MCL 24.13175. Defendant promptly moved for summary disposition asserting that Allstate's claim was barred by the one-year statute of limitations found in MCL 500.3145; 24.13145. Allstate argued that the six-year statute of limitations of MCL 600.5807(8); MSA 27A.5807(8) applied because there was no other applicable statute of limitations. The trial court ruled that the general three-year limitation period found in MCL 500.5805(8); MSA 27A.5805(8) applied and granted defendant's motion for summary disposition. Allstate appeals by right.

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

During the pendency of this action, the Legislature amended the no-fault insurance act to provide for a specific statute of limitation for an action to enforce rights to indemnity or reimbursement against a third party. As evidenced by the present case, prior to the enactment of this statutory amendment, there was no clear statute of limitations governing actions for indemnification or reimbursement. MCL 500.3175(3); MSA 24.13175(3) now provides that:

"An action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant."

Allstate argues that this Court should apply the new statute of limitations to the present action despite the fact that the enactment did not become effective until after Allstate made their last payment to JacLynn Faulhaber. We agree.

Generally, a statute is presumed to operate prospectively only unless the Legislature either expressly or impliedly indicates an intention to give the statute retroactive effect. Selk v Detroit Plastic Products, 419 Mich 1, 9; 345 NW2d 184 (1984). This rule does not apply to statutory amendments which can be classified as remedial or procedural in nature. Spencer v Clark Twp, 142 Mich App 63, 69; 368 NW2d 897 (1985). Further, a statute which operates in furtherance of a remedy already existing and which neither creates new rights nor destroys existing rights are held to operate retrospectively unless a contrary legislative intent is manifested. Selk, supra, p 10.

A statute is considered remedial or procedural if it is designed to correct an existing oversight in the law or redress an existing grievance. Spencer, supra, at 68. Those statutory amendments which imply an intention to reform or extend existing rights are generally viewed as remedial. Id.

It has also been recognized that when a statute is uncertain, then any amendment adopted which serves to clarify that uncertainty is ordinarily given retroactive effect. ACCO Industries, Inc v Dep't of Treasury, 134 Mich App 316, 322; 350 NW2d 871 (1984), lv den 421 Mich 856 (1985).

In this case, we conclude that the statutory amendment to MCL 500.3175 is remedial and should be applied retroactively to Allstate's claim against the defendant. The 1985 amendment to § 3175(3) did not create a new substantive right for insurance companies, but instead simply provided for a definitive statute of limitations in reimbursement actions. Prior to the statutory amendment, no clear statute of limitations existed in such actions. Thus, we believe that the amendment was intended by the Legislature to clarify this ambiguity in the no-fault act and provide for uniformity. Since it appears that the amendment was enacted to correct a legislative oversight, we believe that the Legislature intended for it to apply retroactively to all actions. The new statute of limitations does not take away any substantive right of the defendant nor can we discern any real prejudice to the defendant by applying the statute retroactively.

When the new statute of limitations is applied to Allstate's action in the present case, it is clear that the reimbursement action was timely filed. Allstate last paid benefit to or on behalf of JacLynn Faulhaber on October 16, 1984 and commenced the present action on October 8, 1985. Section 3175(3) provides for a statute of limitations of two years after the assignment of the claim to the insurance company or within one year after the last benefits have been paid. Since Allstate's action was commenced within one year after they last paid benefits, their action was timely. Therefore, the trial court erred in dismissing Allstate's claim against the defendant.

Accordingly, the judgment of the trial court is reversed and the case remanded for reinstatement of Allstate's action against the defendant.

/s/ Robert J. Danhof

/s/ Tyrone Gillespie

Judge Bronson not participating.