STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA BRASS,

Plaintiff-Appellant,

v. No. 85444

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

BEFORE: S. J. Bronson, P.J., Beasley and C. L. Horn,* JJ.

PER CURIAM

Plaintiff filed the present declaratory judgment action in Macomb County Circuit Court against defendant Citizens Insurance Company, after defendant refused to pay her any further no-fault insurance benefits following the redemption of her workers' compensation claim. The trial court granted defendant's motion for partial summary disposition pursuant to MCR 2.116(C)(8) [GCR 1963, 117.2(1)] finding that defendant was not bound by the plaintiff's redemption agreement and could continue to set off against no-fault benefits the full amount of workers' compensation benefits which plaintiff would have been entitled to receive but for the redemption. Plaintiff appeals as of right and we affirm.

Plaintiff was injured in an automobile accident while she was driving a bus for the Chippewa Valley School District. The vehicle she was driving was insured by the defendant and plaintiff filed a claim with the defendant for no-fault insurance benefits. Plaintiff also filed for workers' compensation benefits and began receiving both medical and wage loss benefits pursuant to the workers' compensation act. On May 1, 1981, plaintiff redeemed her workers' compensation claim for $10,000. Under the

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

redemption agreement, the lump sum payment redeemed all liability of the workers' compensation carrier for medical and wage-loss benefits past, present and future.

Plaintiff subsequently filed the present action asserting that all medical expenses and wage losses after the date of the redemption agreement were now the responsibility of the defendant. The defendant denied that it was liable to plaintiff for the full amount of the personal protection benefits and asserted that under MCL 500.3109(1); MSA 24.13109(1) of the no-fault act, it was entitled to a set off of all workers' compensation payments required to be paid to plaintiff despite the redemption of her claim. Based on Thacker v Detroit Automobile Inter-Insurance Exchange, 114 Mich App 374; 319 NW2d 349 (1982), lv den 419 Mich 875 (1984), the trial court agreed with the defendant and granted summary disposition dismissing plaintiff's action in favor of the defendant.

Since plaintiff was injured in an automobile accident in the course of her employment she was eligible to collect both workers' compensation and no-fault insurance benefits. However, it is undisputed that pursuant to MCL 500.3109(1); MSA 24.13109(1), a no-fault insurance carrier is entitled to set off workers' compensation benefits paid against no-fault benefits otherwise due. See Mathias v Interstate Motor Freight System, 408 Mich 164, 186; 289 NW2d 708 (1980). The controversy in this case concerns the effect of plaintiff's redemption of her workers' compensation claim on the defendant's right to set off such benefits against no-fault benefits otherwise payable. In this appeal, plaintiff argues that the amount actually received under the redemption agreement determines the amount of set off. Defendant asserts that it is the amount plaintiff would have received had she not redeemed her workers' compensation claim which determines the set off.

Recently, in Gregory v Transamerica Ins Co, 425 Mich 625; _____ NW2d _____ (1986), our Supreme Court held that a no-fault insurer's liability for personal protection insurance benefits should be offset by the amount of workers' compensation benefits the injured employee would have received despite the fact that the employee entered into a redemption agreement. Id. at 628. Specifically, the Court stated:

> "We hold that a redemption agreement with the workers' compensation carrier operates as a bar to further claims by the plaintiff against any insurer for primary wage loss benefits. The no-fault insurer remains liable for all claims which are in excess of the benefits available from the workers' compensation carrier and which are covered by the no-fault statute." Id. at 636.

The Court reasoned that allowing a plaintiff to settle with the workers' compensation insurer and then recover full wage loss benefits from the excess insurer would undermine the legislative desire to keep no-fault premiums as low as possible by eliminating double recoveries.

Based on Gregory, plaintiff has clearly failed to establish a claim for full wage loss benefits from the defendant. Defendant is only required to pay any excess future wage loss benefits if plaintiff demonstrates that the amount to which she is entitled exceeds the workers' compensation benefits she would have received had she not redeemed her workers' compensation claim. The set off under MCL 500.3109(1) is not limited to the amount of the redemption agreement as plaintiff claims. Therefore, the trial court correctly granted summary disposition to the defendant as to plaintiff's claim for full personal protection insurance benefits under the no-fault act.

Plaintiff also asserts that since she redeemed her claim for a lump sum encompassing the payment of both medical and wage loss benefits, the case must be remanded for a determination of the amount attributable to each category.

We disagree. The amount received by plaintiff under the redemption agreement is irrelevant to a determination of the set off amount under § 3109(1). Defendant is not liable for plaintiff's future medical expenses since those expenses would have been covered by workers' compensation but for the redemption agreement. Because plaintiff was entitled to receive reasonable medical benefits from her workers' compensation carrier pursuant to MCL 418.315; MSA 17.237(315), and plaintiff surrendered that right, allowing her to collect future medical benefits from the defendant would permit the type of duplicative recovery from the same accident specifically condemned in Gregory. Accordingly, a remand to determine the amount of the lump sum payment which is attributable to medical benefits is not necessary.

Affirmed.

Bronson, J., did not participate.

/s/ William R. Beasley
/s/ Carl L. Horn