

STATE OF MICHIGAN
COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,
a Michigan insurance corporation,

Plaintiff-Appellant,

v

No. 114324

IBA MUTUAL INSURANCE COMPANY,

Defendant-Appellee,

and

LINDA HEIKKILA,

Defendant,

and

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Amicus Curiae.

Before: Weaver, P.J., and Gillis and Cavanagh, JJ.

PER CURIAM.

Plaintiff Auto Owners Insurance Company (AOIC) appeals as of right from a December 15, 1988, order granting summary disposition in favor of defendant IBA Insurance Company (IBA). AOIC brought this declaratory action to determine whether IBA was primarily liable for the payment of medical expenses incurred by defendant Heikkila in connection with an automobile accident. The trial court concluded that AOIC had failed to bring this action within the applicable statute of limitations. We agree.

Defendant Heikkila was involved in an automobile accident on January 1, 1982. At the time of the accident, Heikkila had a health insurance policy through defendant IBA and a no-fault insurance policy with plaintiff AOIC. Both policies had a coordination of benefits clause which apparently made each insurer's liability secondary to other coverage.

Following the accident, Heikkila made claims to both insurers. After a dispute between the two insurers, AOIC commenced paying Heikkila's medical expenses.

On December 28, 1987, AOIC instituted the instant action for declaratory judgment, claiming IBA was primarily liable for the payment of those medical expenses.

The issue is whether this action is an action for recovery of no-fault personal protection insurance benefits, or an action to enforce a claim against a health insurance policy.

Section 3145(1) of the no-fault act provides, in pertinent part:

An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. [MCL 500.3145(1); MSA 24.13145(1).]

This suit was brought under the no-fault act with AOIC claiming that it was not primarily liable for the payment of Heikkila's medical benefits. At the motion hearing, AOIC attempted to characterize the claim as one for indemnification. On appeal, AOIC now seeks to characterize the claim as one for enforcement of a subrogee's claim against her insurer.

In Badger State Mutual Casualty Insurance Co v Auto-Owners Insurance Co, 128 Mich App 120; 339 NW2d 713 (1983), this Court discussed the same issue concerning a no-fault insurer and a worker's compensation insurer. The Court went on to expressly reject any claim by Badger State that the case was anything but a recovery of no-fault personal protection insurance benefits.

No matter how one characterizes this action, it is in effect a suit for recovery of no-fault benefits. It is the subject matter of the action, not the parties involved, that determines whether the limitations period is applicable. Badger State, supra, 129. The trial court correctly concluded that the

one-year statute of limitations applied and properly granted
IBA's motion for summary disposition.

Affirmed.

/s/ Elizabeth A. Weaver
/s/ John H. Gillis
/s/ Mark J. Cavanagh