

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD WOJCIECHOWSKI,

Plaintiff-Appellee,

v

CENTRAL TRANSPORT, INC., and PHILLIP SAGE,

Defendants,

and

WAYNE COUNTY,

Intervenor-Appellant.

January 22, 1991
9:30 a.m.

No. 110283

Before: Danhof, C.J., and Cavanagh and W.R. Beasley,* JJ.

W.R. BEASLEY, J.

Intervenor Wayne County appeals by right from the trial court's judgment and order allowing plaintiff to recover the settlement amount of \$90,000 from defendants and ruling that Wayne County had no right to a lien on those monies. On appeal, Wayne County contends that it was entitled to a lien on the proceeds of the judgment as compensation for its anticipated, future payment of worker's disability benefits to plaintiff. We reverse.

On July 9, 1985, plaintiff, a road maintenance supervisor employed by the Wayne County Road Commission, was working on a job site when he was struck and injured by a truck owned by defendant Central Transport, Inc., and driven by defendant Phillip Sage. Plaintiff received worker's compensation benefits from Wayne County and received personal injury protection benefits, less the compensation he was receiving from Wayne County, under the no-fault act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*, from Aetna Insurance, which insured his personal vehicle. On July 8, 1986, plaintiff filed a third party tort action against defendants pursuant to no-fault, MCL 500.3135(1), (2)(b); MSA 24.13135(1), (2)(b), seeking recovery for pain and suffering, hospitalization, medical treatment and "wage loss in excess of the weekly, monthly and yearly limitations of the Michigan No-Fault Act as well as a loss of earning capacity." Wayne County notified plaintiff and defendant Central Transport of its intent to file a lien in the case on July 9, 1987, although it did not actually file a lien. Mediated on January 7, 1988, the case was evaluated for settlement at \$90,000. After both parties accepted the mediation evaluation, plaintiff moved for entry of a consent judgment and for determination as to whether Wayne County was entitled to a lien on the settlement proceeds. The trial court ruled that Wayne County had no lien on the proceeds and subsequently denied Wayne County's motion for reconsideration.

Wayne County contends that it was entitled to a lien on the proceeds of plaintiff's settlement with defendant Central Transport, because of Wayne County's continuing payment of work loss benefits to plaintiff beyond the three years plaintiff was entitled to such benefits under no-fault. We agree.

An employer may obtain reimbursement for payments made to an employee under the worker's disability compensation act pursuant to MCL 418.827(5); MSA 17.237(827)(5), which provides:

In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting

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

from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to date of recovery and the balance shall forthwith be paid to the employee or his dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits.

However, worker's compensation benefits received by an employee injured in a motor vehicle accident in the course of his employment substitute for no-fault benefits to the extent that the worker's compensation benefits duplicate no-fault benefits otherwise payable to the employee. Great American Ins Co v Queen, 410 Mich 73, 96; 300 NW2d 895 (1980). Where an employer's payments for worker's compensation benefits substitute for no-fault benefits, the employer is not entitled to reimbursement for those payments under the worker's compensation disability act, but is limited to the reimbursement permitted a no-fault insurer under the no-fault act. Id. at 85, 95-96.

On the other hand, to the extent an employer's payment of worker's compensation benefits exceeds the no-fault benefits otherwise payable, such an employer is entitled to a lien against an injured employee's third party recovery for reimbursement of the excess. Bialochowski v Cross Concrete Pumping Co, 428 Mich 219, 230-231; 407 NW2d 355 (1987). The employer may obtain reimbursement regardless of whether the employee's third party recovery is for the same elements of loss compensated by the worker's compensation benefits. Great American Ins Co, *supra* at 89, 97.

In this case, Wayne County's payment of work loss benefits to plaintiff substituted for no-fault benefits to the extent that its payment of work loss benefits did not exceed the no-fault benefits otherwise payable. MCL 500.3107; MSA 24.13107 provided in relevant part:

Personal protection insurance benefits are payable for the following:

* * *

(b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he had not been injured and expenses not exceeding \$20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or of his dependent.

Thus, plaintiff was entitled to work loss benefits under the no-fault act for a three-year period after the date of the accident.¹

During the first three years following the accident, Wayne County's payment of work loss benefits substituted for no-fault benefits, and Wayne County was not entitled to reimbursement for those payments. However, in view of Wayne County's un rebutted allegation below that plaintiff would continue, and here that plaintiff has continued, to receive worker's compensation benefits beyond the three-year limitation of his entitlement to no-fault benefits, the trial court erred in denying Wayne County the right to reimbursement or future credit for those continuing payments under the worker's compensation act. The consent judgment granted to plaintiff was subject to Wayne County's lien governed by MCL 418.827(5); MSA 17.237(827)(5). See Hearns v Ujkaj, 180 Mich App 363; 446 NW2d 657 (1989), lv den 434 Mich 906 (1990). We reverse and remand so that the trial court may determine the amount of reimbursement and future credit to which Wayne County is entitled according to the formula set out in Franges v General Motors Corp, 404 Mich 590; 274 NW2d 392 (1979).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William R. Beasley
/s/ Robert J. Danhof
/s/ Michael J. Cavanagh

¹ Wayne County does not claim, and it does not appear from the record, that plaintiff received work loss benefits in excess of the amount allowable under § 3107 during the three-year period.