STATE OF MICHIGAN

COURT OF APPEALS

BRIAN T. JOHNSON,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee,

and

PRUDENTIAL INSURANCE COMPANY,

Defendant.

June 27, 1991

No. 120495

Before: Michael J. Kelly, P.J., and Doctoroff and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from two orders of summary disposition entered by the circuit court in favor of defendants Allstate Insurance Co. and Prudential Insurance Co. Plaintiff had sought recovery of his medical expenses from defendants after he was injured by an automobile. Allstate was plaintiff's no-fault insurer, while Prudential was plaintiff's group health insurer. The trial court granted summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm.

I

Plaintiff, an emergency medical technician, was injured when he was struck by an automobile while rendering off-duty assistance at the scene of an automobile accident. Plaintiff's no-fault insurance policy with Allstate contained a coordination of benefits clause for medical and work-loss benefits. Plaintiff was also insured by Prudential through a group medical insurance policy. The Prudential policy also contained a coordination of benefits provision, as well as a third-party liability clause, which generally denied benefits for injuries caused by liable third parties. Prudential will, however, pay claims for such injuries if the insured agrees to reimburse Prudential to the extent of any payments made by the liable third party to the insured.

Plaintiff submitted claims for medical expenses to Allstate and Prudential. Prudential offered plaintiff a reimbursement agreement to sign pursuant to the third-party liability clause, but plaintiff refused to sign the agreement. Prudential, therefore, refused to pay plaintiff's claim. Allstate also refused to pay plaintiff's claim on the ground that Prudential was primarily liable to plaintiff and, pursuant to its coordination of benefits clause, Allstate was liable to plaintiff only for excess claims not paid by Prudential.

After the litigation began, Allstate learned from Prudential the percentage of plaintiff's medical expenses claim that Prudential would pay if plaintiff executed the reimbursement agreement. Allstate calculated the difference between the amount of plaintiff's claim and the benefits that Prudential would pay, then tendered a check for that amount to plaintiff, who negotiated it. Allstate also paid wage loss benefits and replacement services to plaintiff during the litigation.

Both defendants moved for summary disposition. Prudential argued that its third-party liability clause met the requirements of the Michigan insurance code and case law. Allstate argued that plaintiff had received a reduction in his insurance premiums by agreeing to the coordinated benefits clause, that plaintiff's

refusal to sign the Prudential reimbursement agreement did not obligate Allstate to pay all of plaintiff's claim, and that Allstate had met its obligations under the no-fault policy by paying all of the claim not covered by the Prudential policy.

In a detailed opinion from the bench, the trial court found that there were no material facts in dispute and that Prudential's third-party liability provision was valid. The trial court granted summary disposition to Prudential.

The trial court then found that Allstate was secondarily liable to Prudential for any excess and that Allstate had acted properly in denying plaintiff's claim for the benefits that would have been payable by Prudential but for plaintiff's refusal to sign the reimbursement agreement. The court then granted summary disposition to Allstate.

The trial court also held that plaintiff had failed to state a claim for tortious conduct in count III of his complaint.

During the pendency of this appeal, the parties stipulated that plaintiff's claim of appeal filed against Prudential be dismissed, and this Court entered an order dismissing Prudential as a party. Accordingly, we will not address plaintiff's issues which pertain to Prudential.

II

Plaintiff contends that Allstate acted in bad faith when it denied no-fault benefits to plaintiff, conspired against him, refused to perform its statutory duties, and forced plaintiff to institute this action. He contends that the trial court therefore erred when it dismissed his claim for bad faith representation. We disagree.

Generally, damages for mental anguish or emotional distress are not recoverable in an action for the breach of a commercial contract absent proof of contemplation of such damages at the time the agreement was made. Kewin v Massachusetts Mutual Life Ins Co, 409 Mich 401, 419-420; 295 NW2d 50 (1980); Wendt v Auto-Owners Ins Co, 156 Mich App 19, 24; 401 NW2d 375 (1986). An allegation of a bad faith breach of an insurance contract does not support recovery of damages for mental distress in Michigan. Crossley v Allstate Ins Co, 155 Mich App 694, 698; 400 NW2d 625 (1986).

Some panels of this Court have identified an exception to the general rule against recovery for emotional distress in contract actions. These cases hold that such damages may be recoverable for tortious conduct existing independent of the breach of contract on the authority of Kewin and Roberts v Auto-Owners Ins Co, 422 Mich 594; 374 NW2d 905 (1985). See, e.g., Wendt, supra, pp 24-25; Crossley, supra, pp 698-699. Such a claim requires allegations of extreme and outrageous conduct, combined with intent or recklessness, causation, and severe emotional distress. Roberts, supra, p 602; Wendt, supra, p 24. The mere failure to pay a contractual obligation, without more, does not amount to outrageous conduct for purposes of this tort, even if the failure is willful or in bad faith. Roberts, supra, pp 605, 608; Wendt, supra, p 25.

Here, count III of plaintiff's complaint sought damages for emotional distress and mental anguish. Plaintiff alleged that Allstate had acted in bad faith in denying him benefits and that it had intentionally humiliated him by its outrageous conduct. Such allegations are insufficient to state a claim for emotional distress damages in an action for a breach of a commercial contract. Summary disposition for Allstate was appropriate.

III

Plaintiff also contends that the trial court erred in failing to award plaintiff's counsel his one-third contingent fee. We disagree.

In Michigan, awards of costs and attorney fees are generally recoverable only where specifically authorized by statute, the court rules, or a recognized exception. Michigan Bank-Midwest v D J Reynaert,

Inc, 165 Mich App 630, 644; 419 NW2d 439 (1988). MCL 500.3148; MSA 24.13148 requires an award of a reasonable fee to an attorney representing a claimant in a no-fault action for personal protection insurance benefits which are overdue. Here, the trial court found that Allstate acted properly in denying plaintiff's claim for all of his expenses and acted timely in tendering the amount owed under Allstate's secondary liability. Plaintiff's benefits were, therefore, not overdue under the statute, and plaintiff is not entitled to attorney fees.

IV

Plaintiff's remaining issues are deemed waived because he cites no authority to support his position on those issues. Goolsby v Detroit, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); Baker v Wayne Co Bd of Road Comm'rs, 185 Mich App 82, 88; 460 NW2d 566 (1990). Argument must be supported by citation to appropriate authority or policy. Haefele v Meijer, Inc, 165 Mich App 485, 494; 418 NW2d 900 (1987).

Affirmed.

/s/ Michael J. Kelly
/s/ Martin M. Doctoroff
/s/ Janet T. Neff