STATE OF MICHIGAN

COURT OF APPEALS

SOUTHFIELD REHABILITATION HOSPITAL and POLYCLINIC ASSOCIATES, P.C.,

Plaintiffs-Appellees,

v

MICHIGAN MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

November 12, 1991

No. 121851

Before: Griffin, P.J., and Doctoroff and Brennan, JJ.

PER CURIAM.

In this no-fault insurance dispute, defendant, Michigan Mutual Insurance Company, appeals as of right from a September 25, 1989, "order for summary judgment" entered by the Oakland Circuit Court. We affirm in part and vacate in part.

This case arises out of a hit and run automobile accident in which Braxton Clark, a pedestrian, was seriously injured. Plaintiffs, Southfield Rehabilitation Hospital and Polyclinic Associates, P.C., are health care providers who treated Clark's injuries. Defendant, Michigan Mutual Insurance Company, received plaintiff's claim for no-fault insurance benefits pursuant to the assigned claims facility, MCL 500.3171, et seq. MSA 24.131 et seq.

On May 23, 1988, plaintiffs sued defendant to recover the reasonable cost of treatment for Clark's injuries. As the matter proceeded, various motions for summary disposition were filed. Defendant took the position that its liability should be limited to the amounts plaintiffs would receive from Medicaid had Clark not been injured by an automobile. Defendant also asserted that plaintiffs were not "claimants" and that therefore they were not entitled to recover attorney fees and penalty interest for overdue payments under the no-fault act. See MCL 500.3148(1); MSA 24.13148(1), MCL 500.3142(2); MSA 24.13142(2).

After several hearings, the trial court rejected defendant's claim that its liability should not exceed what Medicaid would pay in the absence of no-fault. The court further ruled that plaintiffs were entitled to attorney fees and penalty interest as a result of defendant's delay in paying benefits.

On appeal, defendant raises five issues. In its first two issues, defendant renews its argument that its liability for Clark's medical expenses should be capped by what Medicaid would have paid the providers had Clark's injuries not resulted from an automobile accident. Defendant all but concedes that this issue was squarely resolved against it in Johnson v Michigan Mutual Ins Co, 180 Mich App 314, 320-322; 446 NW2d 899 (1989). Nonetheless, defendant submits that this Court "dodged" the real issue in Johnson. Defendant argues that the result in Johnson contravenes public policy in that it allows the availability of a no-fault remedy to increase the cost of health care.

In response to this contention, we would point out that the panel in Johnson said all that need be said about public policy when it found defendant's position "untenable" in light of the unambiguous statutory language found in MCL 500.3157; MSA 24.13157:

> Nor did the defendant insurer question the reasonableness of the hospital's charges or the necessity of services provided, but instead sought to persuade the trial court that the hospital's charges could only approximate those reimbursable by Medicaid. We find this an

untenable position in light of the unambiguous statutory language of MCL 500.3157; MSA 24.13157, which clearly permits health care providers such as Southfield Rehabilitation Hospital to charge reasonable amounts not exceeding their customary charges for the products, services and accommodations they provide to other injured persons in cases not involving insurance.

The no-fault act was designed to afford prompt and adequate reparation for economic losses, such as medical expenses, incurred by individuals injured in motor vehicle accidents. Shavers v Attorney General, 402 Mich 554, 578-579; 267 NW2d 72 (1978), aff'd 412 Mich 1105 (1982). Where, as here, the language of a statute is clear and unambiguous, judicial construction is neither required nor permitted; such a statute must be applied and not interpreted, since it speaks for itself. Van Dam v Grand Rapids Civic Service Board, 162 Mich App 135, 138; 412 NW2d 260 (1987); Auto Club Ins Ass'n v Hill, 431 Mich 449, 454; 430 NW2d 636 (1988). [Johnson, supra, pp 321-322.]

We agree with this rationale. Accordingly, we conclude that the trial court did not err when it refused to limit defendant's liability to the amounts payable under Medicaid.

In its remaining three issues, defendant contends that the trial court's award of statutory attorney fees and penalty interest to plaintiffs was in error. We agree.

Resolution of this issue hinges on whether or not the plaintiffs are "claimants" within the meaning of the no-fault act. MCL 500.3148(1); MSA 24.13148(1) provides:

An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

In the present case, plaintiffs essentially argue that they should be considered claimants because they were entitled to receive payment for the medical services rendered to Braxton Clark. In short, plaintiffs contend that the term "claimant" should be construed broadly to include entities other than the person suffering bodily injury.

This Court considered and rejected a similar argument in Darnell v Auto Owners Ins Co, 142 Mich App 1; 369 NW2d 243 (1985). In Darnell, an assigned claims insurer, State Farm, sought no-fault penalties from a defaulting insurer as subrogee of the injured party. In rejecting State Farm's contention, this Court held:

The statute makes it clear that the attorney who is entitled to fees is the attorney advising and representing the claimant in an action for PIP benefits which are overdue. By simply representing the assigned claims facility, it was not representing a "claimant" in an action for personal or property protection insurance benefits which were overdue. More importantly, the policy underlying the penalty provisions of the no-fault act do not support State Farm's claim.

It is clear that the purpose of the penalty provisions of the no-fault act was to insure that the injured party is promptly paid. Allstate Ins Co v Citizens Ins Co of America, 118 Mich App 594, 607; 325 NW2d 505 (1982). In an effort to encourage such, the Legislature enacted the penalty provisions allowing for both the payment of attorney fees (where payment is unreasonably delayed) and the payment of 12% interest on the overdue payment. See §§ 3148 and 3142. We do not believe that the Legislature contemplated payment of such under the circumstances inasmuch as the purpose of the penalty provisions is served by awarding attorney fees to the claimant, not the assigned claims facility representative. [Id., pp 14-15. Emphasis in original.]

We find this rationale applicable here. We are not persuaded that we should expand the definition of claimants to include health care providers. As emphasized in Darnell, the purpose of the statute is to secure prompt payment to the injured party. Because plaintiffs are not claimants, they are not entitled to the statutory penalties. See Hicks v Auto Club Ins Ass'n, ___ Mich App ___; ___ NW2d ___ (Docket No. 123988, rel'd 5/20/91 slip op. p 2). Accordingly, we vacate that portion of the trial court's order awarding plaintiffs attorney fees and penalty interest pursuant to MCL 500.3148(1); MSA 24.13148(1), MCL 500.3142(2); MSA 24.13142(2).

Affirmed in part, vacated in part. No costs, neither party having prevailed in full.

/s/ Richard Allen Griffin
/s/ Martin M. Doctoroff
/s/ Thomas J. Brennan