STATE OF MICHIGAN

COURT OF APPEALS

JOHN McMILLAN, Individually and as Guardian and Conservator of CHARYL McMILLAN,

Plaintiffs-Appellants,

v

AUTO CLUB INSURANCE ASSOCIATION, a Michigan corporation,

Defendant-Appellee.

May 14, 1992

No. 123193

UNPUBLISHED

AUTO CLUB INSURANCE ASSOCIATION, a Michigan corporation,

Plaintiff-Appellee,

v

JOHN McMILLAN, Individually and as Guardian and Conservator of the Estate of CHARYL McMILLAN,

Defendants-Appellants.

No. 137222

Before: Doctoroff, C.J., and Michael J. Kelly and Brennan, JJ.

PER CURIAM.

Plaintiffs, John McMillan and Charyl McMillan, filed an action against their no-fault automobile insurer, Auto Club Insurance Association (ACIA), on September 6, 1986, claiming that Charyl McMillan's disability from her preexisting condition (multiple sclerosis) was the result of an automobile accident which occurred in February, 1984, and, therefore, she was entitled to no-fault insurance benefits. Following a jury trial on plaintiffs' claims, judgment was entered in favor of plaintiffs. The jury found that Charyl McMillan's disability had arisen out of the automobile accident. Plaintiffs were awarded damages in the amount of $60,000. Plaintiffs then filed post-trial motions for, among other things, taxable costs, additur, or a new trial on the issue of damages, and judgment notwithstanding the verdict awarding no-fault penalty interest. These motions were denied by the trial court in an order dated November 3, 1989. Plaintiffs appealed as of right (Docket No. 123193).

On November 30, 1989, ACIA filed an action against plaintiffs seeking a declaratory judgment that it had no further liability to plaintiffs in connection with Charyl McMillan's automobile accident. Cross-motions for summary disposition were filed. The trial court granted ACIA's motion for summary disposition in an order dated January 7, 1991. Plaintiffs again appealed as of right (Docket No. 137222). Plaintiffs' two appeals were consolidated by order of this Court.

Plaintiffs first argue that the trial court erred in denying their post-trial motion for costs under MCR 2.625. We agree.

Taxable costs of litigation are allowed to the prevailing party in an action unless prohibited by statute or court rule, or unless the trial court directs otherwise for reasons stated in writing and filed in the action. MCR 2.625(A)(1); Check Reporting Services, Inc., v Michigan National Bank-Leasing, 191 Mich App 614,

629 ___ NW2d ___ (1991). Here, the trial court denied plaintiffs' request for costs but failed to state its reasons for doing so in writing as required by the court rule. However, the record reveals that the trial court's reason for denying plaintiffs' motion for costs was because it determined that since plaintiff sought $300,000 in damages but only obtained a $60,000 jury verdict, plaintiffs were not the prevailing party.

Where there is only one cause of action, the party who prevails on the entire record is deemed to be the prevailing party. MCR 2.625(A)(2). Plaintiffs were the prevailing party in this matter. Plaintiffs' claim was that Charyl McMillan's disability arose out of a 1984 automobile accident, and, therefore, she was entitled to no-fault insurance benefits. The jury so found, and, therefore, plaintiffs succeeded in their claim against defendant. The fact that plaintiffs did not obtain the total amount of damages sought does not prohibit them from being the prevailing party under MCR 2.625(A)(2).

The trial court's reliance on Marina Bay Condominiums, Inc v Schlegel, 167 Mich App 602; 423 NW2d 284 (1988), lv den 431 Mich 905 (1988), is misplaced. Marina Bay stands for the proposition that where a party does not succeed on its claim, it is not a prevailing party even if its position is improved as a result of the litigation. The Marina Bay case does not stand for the proposition that a party receiving less than all the damages sought as trial is not a prevailing party.

Plaintiffs next argue that the trial court erred in denying their request for additur, or, in the alternative, a new trial on the issue of damages. We disagree. An appellate court must accord due deference to the trial court's decision regarding the grant or denial of additur and should reverse the trial court's decision only if an abuse of discretion is shown. Palenkas v Beaumont Hospital, 432 Mich 527, 531; 443 NW2d 354 (1989); Wilson v General Motors Corp, 183 Mich App 21, 38; 454 NW2d 405 (1990), lv den 437 Mich 914 (1991). The proper consideration in granting or denying additur is whether the jury award is supported by the evidence. Palenkas, supra at 532; Wilson, supra at 38. Further, trial courts have discretion in granting new trials, and appellate courts will not interfere absent a palpable abuse of discretion. Palenkas, supra.

After reviewing the record, we conclude that the jury award of $60,000, although much less than that sought by plaintiffs, is supported by the evidence presented at trial. Therefore, the trial court did not abuse its discretion in denying plaintiffs' motion for additur or, in the alternative, a new trial.

Next, plaintiffs argue that the trial court erred in denying their motion for an award of no-fault penalty interest. No-fault penalty interest is not available until the no-fault claimant has presented his insurer with reasonable proof of his claim and thirty days have passed without the insurer paying the claim. MCL 500.3142; MSA 24.13142. As plaintiffs concede, the jury could have found that reasonable proof of plaintiffs' claim had not been presented to ACIA until sometime during the trial. Although we cannot say with certainty at what point during the trial ACIA had reasonable proof of plaintiffs' claim, reasonable proof must have been presented to ACIA by the close of evidence on September 8, 1989. Therefore, as ACIA concedes, plaintiffs are entitled to no-fault penalty interests from October 8, 1989.

Plaintiffs' next claim is the trial court erred in granting defendant's motion for summary disposition in ACIA's action in which ACIA sought a declaratory judgment that it had no further liability to plaintiffs in connection with Charyl McMillan's automobile accident. We agree.

A party is barred from litigating a claim by the doctrine of res judicata if the same parties have litigated the claim before. Res judicata requires (1) the same parties;, (2) the same claim, and (3) judgment on the merits. Curry v City of Detroit, 394 Mich 327, 331; 231 NW2d 57 (1975). ACIA's action for a declaratory judgment involved the same parties as plaintiffs' claim for no-fault disability benefits. The first action included a claim for judgment regarding ACIA's ongoing liability to plaintiffs. Lastly, a judgment was rendered on the merits in the first action providing that Charyl McMillan's disability arose out of the 1984 automobile accident. In the first action, the McMillans sought, litigated and received a judgment providing for ACIA's ongoing responsibility to cover Charyl McMillan's disability. ACIA never objected to the judgment rendered in the first action or sought to appeal it. Instead, ACIA sought a declaratory judgment that is in direct conflict with a judgment entered against it. The doctrine of res judicata bars ACIA from relitigating its responsibility to plaintiffs. The trial court erred in granting defendant's motion for summary disposition and in denying plaintiffs' motion for summary disposition.

Lastly, we find no merit in the final issue raised by plaintiffs on appeal. The trial court did not decide that its prior ruling on plaintiffs' motion for additur collaterally estopped plaintiffs from litigating in the second action the interpretation of the jury's verdict in the first action.

Docket No. 123193 is remanded to the trial court for further proceedings consistent with this opinion. Docket No. 137222 is remanded to the trial court for entry of judgment in favor of the McMillans.

/s/ Martin M. Doctoroff
/s/ Michael J. Kelly
/s/ Thomas J. Brennan