STATE OF MICHIGAN

COURT OF APPEALS

MT. CARMEL MERCY HOSPITAL,

Plaintiff-Appellant,
Cross-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and HANI NAFSO,

Defendants,

and

HANNE NAFSO and NAIMA NAFSO,

Defendants-Appellees,
Cross-Appellants.

July 6, 1992
9:25 a.m.

No. 119978

PUBLISHED

Before: M.J. Kelly, P.J., and K. Jansen and T.J. Lesinski,* JJ.

Lesinski, J.

Plaintiff Mt. Carmel Mercy Hospital and defendants Hanne and Naima Nafso appeal by right two orders of the Oakland Circuit Court granting summary disposition in favor of defendant-appellee Allstate Insurance Company pursuant to MCR 2.116(C)(10) in an action brought to collect no-fault personal injury benefits. At issue is whether the one-year statute of limitations on bringing claims for personal injury protection ("PIP") benefits bars Mt. Carmel from collecting its costs of treating Naimi Nafso from Allstate as assignees of Naima Nafso's claim. The trial court granted summary disposition in favor of Allstate. We reverse.

The instant dispute centers around the nonpayment of medical expenses for services rendered by Mt. Carmel to Naima Nafso arising out of an automobile accident that occurred in August, 1986. Between August 17, 1986, and December 5, 1986, Mt. Carmel rendered care, accommodation and services to Naima for which it sought a total of $64,160.16.

Allstate insured Hani Nafso, son of defendants Nafsos, at the time of the accident. Hani Nafso was driving the automobile in which his mother Naima was riding when she was injured. Hani Nafso did not reside in the same household as Naima. Naima Nafso filed an application for no-fault benefits with Allstate under Hani's no-fault automobile insurance policy on November 15, 1987. Naima assigned her insurance claim to Mt. Carmel in return for services rendered. Pursuant to the assignment, Mt. Carmel submitted a claim for $64,160.16 to Allstate for reimbursement of expenses occasioned by treatment of Naima's injuries.

Gloria Lewis, a claims adjuster for Allstate, handled the Mt. Carmel/Nafso file. On October 21, 1986, Lewis spoke with Amer Nafso, another son of the Nafsos, for the purpose of determining whether there were any insured motorists living in the same household as Naima. Lewis characterized Amer's answer as "vague"

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

and she thus contacted a "commercial lookup" approximately two weeks later to determine the existence of insureds in Naima's household. Lewis was informed that Amer's address was 19214 Bauman, Detroit, which is also Naima's residence. Having discovered the existence of another insured residing in Naima's household, specifically Amer, who was insured by State Farm, Lewis and Allstate allegedly informed the Nafsos' attorney that Allstate was not obligated to pay Naima's personal protection insurance ("PIP") benefits.

A person injured in an automobile accident is entitled to PIP benefits from his or her own policy if one exists, from the policy of a spouse, or from the policy of a relative if domiciled in the same household. See MCL 500.3114(1); MSA 27.13114(1). Lewis sent a letter to this effect to Naima Nafso on February 24, 1987. In her affidavit, Lewis also stated that she denied Mt. Carmel's request for authorization for Naima's hospitalization via telephone and that she referred Mt. Carmel's employee to the Nafsos' attorney on April 6, 1987.

Apparently, Mt. Carmel assigned its claim against Allstate to World Credit Inc. The record contains a letter dated November 16, 1987, from Lewis referring World Credit back to the Nafsos' attorney on the basis that Allstate would not pay Hani's claims until it received notice of payment or denial of benefits by Union Banker pursuant to a coordinated benefits clause in its policy with Hani. The letter also informed World Credit that Allstate had already informed the Nafsos' attorney that Naima's bills must be forwarded to State Farm for payment under Amer's policy.

On August 24, 1988, Mt. Carmel filed the instant lawsuit seeking payment of its bill from Allstate, State Farm, and from the Nafsos. State Farm was dismissed from the proceedings pursuant to court order. Subsequently, Allstate brought a motion for summary disposition on the ground that Mt. Carmel and the Nafsos failed to file a complaint within one year of Allstate's denial of coverage for Naima's PIP claim. The trial court granted Allstate's motion. In a related order, the trial court granted Mt. Carmel's motion for summary disposition establishing the liability of the Nafsos and dismissed the case. Mt. Carmel appeals the grant of summary disposition for Allstate and the final dismissal of the case. The Nafsos cross-appeal on the same grounds, seeking an order obligating Allstate to pay Mt. Carmel's bill.

In its opinion and order filed July 3, 1989, the trial court provided the following reasons for granting Allstate's motion for summary disposition:

> 2. A letter from Allstate to counsel for the Nafsos, dated February 24, 1987, refers to a conversation between those parties and further gives written notice that State Farm insures Akram Najir and Amer Nafso.
>
> 3. The same letter further gives written notice that State Farm is the proper party with whom a PIP claim for the injured party, Naima, should be filed.
>
> 4. While the letter does not specifically indicate a denial of claim, the Court finds, based on counsel's presumed expertise in the field of No-Fault Insurance, that the letter did constitute a sufficient denial.
>
> 5. Finally, it would appear that as the statute of limitations was no longer tolled as of the date of Allstate's letter, the statute expired prior to the filing of the complaint and recovery is barred.

Mt. Carmel and the Nafsos contend that they were never properly informed of Allstate's purported denial of Naima's claim. According to them, Allstate's letter dated February 24, 1987, was not a formal denial. In the alternative, Mt. Carmel and the Nafsos argue that the purported denial was ambiguous and, therefore, the question of whether they understood the letter to be a denial was one of fact that survives a motion for summary disposition. Finally, they assert that Allstate should be estopped from denying coverage because it acknowledged that it would process the claim before the statute of limitations period ran out.

A trial court presented with a motion for summary disposition under MCR 2.116(C)(10) must give the benefit of reasonable doubt to the nonmovant and must determine whether a record might be developed which will leave open an issue upon which reasonable minds could differ. Arbelius v Poletti, 188 Mich App 14, 18; 469 NW2d 436 (1991). All inferences are to be drawn in favor of the nonmovant. Id. Before summary disposition may be granted, the court must be satisfied that it is impossible for the claim asserted to be supported by evidence at trial. Id.

The applicable statute of limitations for PIP claims is found at MCL 500.3145(1); MSA 24.13145(1). It provides:

> 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. If notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. . . . [Emphasis added.]

It is undisputed that Naima gave Allstate notice of her claim within one year of the accident. It is also undisputed that the statute of limitations was tolled by the filing of Naima's claim. See Lewis v Detroit Automobile Inter-Ins Exchange, 426 Mich 93, 101-103; 393 NW2d 167 (1986) (notification of a claim for no-fault personal injury insurance benefits within the statutory period of one year tolls the running of the statute of limitations until that time when the insurance company issues a formal denial); Johnson v State Farm Mutual Auto-Ins Co, 183 Mich App 752, 765; 455 NW2d 420 (1990). Rather, the parties dispute whether Allstate "formally" denied coverage for Naima's PIP claim, which would cause the statute of limitations period to begin running again.

The one-year back provision found in MCL 500.3145(1); MSA 24.13145(1) is tolled for any period of time after notice of the claim is given to the insurance company but before a formal denial of the claim is issued. See Lewis, supra; Johnson, supra. In the instant case, Naima incurred expenses from her injury between August and November 1986. She provided notice to Allstate on November 15, 1986. Therefore, the one-year statute of limitations was tolled.

On the other hand, Allstate sent a letter to Naima's attorney on February 24, 1987, in which it allegedly denied Naima's PIP claim. Mt. Carmel, assignee of Naima's PIP claim, filed this action on August 24, 1988. If Allstate's letter of February 24, 1987, was a formal denial of coverage as Allstate alleges, then the one-year back provision of MCL 500.3145(1); MSA 24.13145(1) has not been satisfied and summary disposition was appropriate.

Disposition of this controversy depends on whether the contents of Allstate's February 24, 1987, letter constitutes a "formal" denial of Naima's PIP claim. The letter provides as follows:

> Pursuant to our recent phone conversation, Mr. Amer Nafso and Akram P. Najor live at 19214 Bauman; Detroit, MI 48203; and are insured with State Farm, policy NO. 532736261422.
>
> Therefore, a PIP claim for Naima Nafso must be filed with that company.
>
> We are in receipt of Mr. Nafso's application for benefits. We must know if, if [sic] anyone is taking Mr. Nafso's place in his store; and is the store suffering a loss due to Mr. Nafso's injuries?

Please forward a copy of Mr. Nafso's policy with Continental Life Insurance Company. [Emphasis added.]

What is required for denial of a PIP claim is a "formal" denial of liability. Mousa v State Auto Ins Companies, 185 Mich App 293, 295; 460 NW2d 310 (1990). A denial of liability need not be in writing to be formal, Mousa, supra, but the denial must be explicit. Johnson, supra. In Joiner v Michigan Mutual Ins Co, 137 Mich App 464; 357 NW2d 875 (1984), lv den 422 Mich 920 (1985), this Court ruled that the defendant insurance company's letter responding to the plaintiff's Insurance Bureau complaint denying workers' compensation benefits was not a formal denial of the plaintiff's PIP claim and that therefore the one-year back provision of MCL 500.3145(1); MSA 24.13145(1) was not applicable. Id. at 473-474. In Bourke v North River Ins Co, 117 Mich App 461; 324 NW2d 52 (1982), this Court held that a denial of liability was not "formal" where the only communication of denial from the insurance company was a verbal denial made by an adjuster in the field. Id. at 470.

Although case law offers little guidance on the question of what constitutes formal denial, we find that the language used in the February 24, 1987, letter was a formal denial of Naima Nafso's claim. The language specifically directs Nafsos' attorney to seek PIP benefits from Amer's insurance carrier, which was based on Allstate's reasonable belief that Amer was domiciled in the same household as Naima. Moreover, the language of the third and fourth paragraphs regarding Allstate's further consideration of a claim clearly referencing Hani's claim to the exclusion of Naima's claim further supports our holding.

Next, Mt. Carmel and the Nafsos claim that Allstate's alleged denial was ambiguous and was therefore a question of fact that would survive a motion for summary disposition. However, where written documents are unambiguous and unequivocal, their construction is for the Court to decide as a matter of law. See, e.g., Dykema v Muskegon Piston Ring Co, 348 Mich 129, 138; 82 NW2d 467 (1957); Petrie v G R D, Inc, 39 Mich App 619, 621; 197 NW2d 848 (1972). Based on the language used in Allstate's letter of February 24, 1987, we agree with the trial court that the language of denial in the letter was unambiguous.

The third and final argument made on appeal is that Allstate should be estopped from denying liability for medical bills occasioned by the injuries to Naima Nafso. According to appellants, Allstate's failure to formally deny coverage and its representations that it was still considering the claim establish a prima facie case of equitable estoppel. Appellants' theory is that Allstate's conduct lulled Mt. Carmel into believing that the statute of limitations defense would not be raised. Thus, appellants argue that the failure to file the claim within one year of the purported denial should be attributed to Allstate's conduct rather than to Mt. Carmel's lack of diligence. Allstate denies having engaged in any conduct that could have caused Mt. Carmel to believe that Allstate would not assert the statute of limitations to bar the claim.

The elements of promissory estoppel are: (1) a promise; (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee; (3) which in fact produced reliance or forbearance of that nature; and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. Nygard v Nygard, 156 Mich App 94, 100; 401 NW2d 323 (1986); see also Restatement Contracts, 2d, § 90, p 242. An unequivocal promise not to assert the statute of limitations defense is not required to establish equitable estoppel so long as there is conduct other than a promise that induces action of a definite and substantial character. Huhtala v Travelers Ins Co, 401 Mich 118, 132-134, n 16; 257 NW2d 640 (1977).

Two affidavits support the promissory estoppel claim. Counsel for the Nafsos swore to the fact that Allstate never formally denied liability for Naima's PIP claim. We note that the gravamen of this issue is whether Allstate's contact with Mt. Carmel establishes the elements of a promissory estoppel claim. Moreover, we agree with the trial court that the February 24, 1987, letter was a formal denial of the claim. Consequently, we fail to see the utility of this affidavit to appellants' arguments.

In another affidavit, Paul Williamson, an employee of Mt. Carmel, stated that he was advised by an employee of Allstate that Allstate would make payment for the assigned claim after it checked out some information about the people living in Naima's household. In contrast, Gloria Lewis, Allstate's representative

working on Naima's claim, stated that she told someone at Mt. Carmel that Allstate would not authorize the hospitalization of Naima and that she referred the speaker to the Nafsos' attorney on April 6, 1987.

If an employee of Mt. Carmel was told that payment would be made once Allstate finished its inquiry into Naima's household, then the first element of promissory estoppel would be established by promise. See, e.g., Huhtala v Travelers Ins Co, 401 Mich 118 (1977) (promise by the defendant's agent to pay the injured plaintiff a full and equitable settlement once her physical condition stabilized changed her cause of action from one of personal injury, with its three-year statute of limitations, into one for breach of contract on the defendant's promise, which has a six-year statute of limitations). In the alternative, if Allstate told Paul Williamson to wait until it finished its inquiry but otherwise made no promises, and then failed to notify Mt. Carmel before the one-year statute of limitations ran out, the first element of equitable estoppel may have been established by conduct. See, e.g., Hanesh v Lake States Ins Co, 147 Mich App 262, 266; 383 NW2d 179 (1985) (the defendant insurance company could not assert the one-year back rule where it forestalled settlement of an automobile injury claim by taking three years to investigate the claim). Resolution of this issue boils down to the question of whether to believe Gloria Lewis or Paul Williamson. All inferences must be drawn in favor of the nonmovant and summary disposition may not be granted unless it is impossible for the asserted claim to be supported by evidence at trial. Arbelius, supra p 18. Summary disposition is rarely appropriate in cases involving questions of credibility. Id. Accordingly, the trial court's grant of summary disposition in favor of Allstate was improper because there was a question of credibility. We conclude that Mt. Carmel is entitled to remand for the purpose of providing the opportunity to establish its promissory estoppel claim, which has a six-year statute of limitations period.[1] See Huhtala, supra, pp 133-134.

Affirmed in part, reversed in part and remanded.

/s/ T. John Lesinski
/s/ Michael J. Kelly

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Before: M.J. Kelly, P.J., and Jansen and Lesinski,* JJ.

JANSEN, J. (Dissenting)

I respectfully dissent. Contrary to the finding of the majority, I believe that the February 24, 1987, letter was, at best, ambiguous. As noted by the majority, what is required for denial of a PIP claim is a formal denial of liability. Mousa v State Auto Ins Companies, 185 Mich App 293, 295; 460 NW2d 310 (1990). The insurer must formally and explicitly deny liability. Johnson v State Farm Mutual Automobile Ins Co, 183 Mich App 752, 763; 455 NW2d 420 (1990). Because the alleged denial was ambiguous, thereby not amounting to a formal and explicit denial of liability, I am of the opinion that a question of fact exists regarding the meaning which the parties attached to this letter.

Furthermore, because the letter was ambiguous, I believe it was inappropriate for the trial court to construe it as a matter of law. In its opinion, the trial court noted that the letter did not specifically indicate a denial of claim. However, the trial court found that, based on counsel's presumed experience in the field of No-Fault Insurance, the letter did constitute a sufficient denial. I disagree with this finding. It is incumbent upon the insurer to formally and explicitly deny liability, regardless of a given attorney's experience in the field. The trial court was correct in that the letter did not "specifically indicate a denial". I believe that the ambiguous nature of the letter, coupled with the representations made by Allstate regarding the fact that it was still considering the claim, created an issue of fact regarding the meaning which the parties attached to the alleged denial of the claim.

I would reverse the order of the trial court as it applies to the Nafsos, as well as to Mt. Carmel.

/s/ Kathleen Jansenn