

STATE OF MICHIGAN
COURT OF APPEALS

DONNA ALBRIGHT and BRUCE ALBRIGHT,

July 1, 1992

Plaintiffs-Appellants,

v

No. 132123

BUTTERWORTH HMO, a corporate assumed name of
BUTTERWORTH HEALTH PLAN,

UNPUBLISHED

Defendant-Appellee.

Before: Shepherd, P.J., and Connor and Michael J. Sapala,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order of August 1, 1990, granting summary disposition for defendant, MCR 2.116(C)(10), for no genuine issue of material fact. We affirm.

Plaintiffs were injured in an automobile accident on June 17, 1989. Plaintiffs alleged that benefits were due them for accidental bodily injury as a result of the accident under defendant's certificate of coverage and that defendant had refused to pay after receiving reasonable proof in support of the benefits for medical expenses and services.

Defendant moved for summary disposition of plaintiffs' complaint for the reason that defendant's certificate of coverage provided for both coordination of benefits and nonduplication of benefits, thereby prohibiting any double recovery of medical expenses. By affidavit, defendant established that plaintiffs had recovered all of their medical expenses due to the accident from their no-fault insurer, pursuant to an automobile insurance policy that did not provide for coordination of benefits. Plaintiffs did not dispute the issues of fact as established by defendant in its motion for summary disposition.

Plaintiffs have raised only one issue on appeal for our resolution: whether the trial court erred in granting summary disposition for defendant because the coordination-of-benefits provision in defendant's HMO contract is invalid under the Coordination of Benefits Act, MCL 550.251 *et seq.*; MSA 24.13671 *et seq.* Plaintiffs argue that MCL 550.253(2); MSA 24.13673(2) prohibits the provision complained of in defendant's contract for coordination of benefits. MCL 550.253(2); MSA 24.13673(2) provides as follows:

Any such policy or certificate which contains a coordination of benefits provision shall provide that benefits under the policy or certificate shall not be reduced or otherwise limited because of the existence of another nongroup contract which is issued as a hospital indemnity, surgical indemnity, specified disease, or other policy of disability insurance as defined in section 3400 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.3400 of the Michigan Compiled Laws.

Plaintiffs argue that a no-fault policy falls within the definition of a "policy of disability insurance" under MCL 500.3400; MSA 24.13400, thereby making MCL 550.253(2); MSA 24.13673(2) applicable to this case to prohibit defendant's coordination clause.

Defendant contends that under MCL 500.3601; MSA 24.13601 and MCL 500.3610a; MSA 24.13610(1), defendant's certificate of coverage is a group disability insurance policy specifically authorized to provide for the coordination of benefits with automobile medical payments insurance.¹ Those statutes provide in relevant part as follows:

*Recorder's Court judge, sitting on the Court of Appeals by assignment.

Group disability insurance is hereby declared to be that form of voluntary disability insurance covering not less than 5 employees or members, with or without their eligible dependents, written under a master policy issued to any governmental corporation, unit, agency, or department thereof, or to any corporation, copartnership, individual employer, or any association, upon application of any executive officer or trustee of such association having a constitution or bylaws, and formed in good faith for purposes other than that of obtaining insurance where officers, members, employees, or classes or departments thereof may be insured for their individual benefit . . . [MCL 500.3601; MSA 24.13601.]

(1) A group disability insurance policy may contain provisions for the coordination of benefits otherwise payable under the policy with benefits payable for the same loss under other group insurance; automobile medical payments insurance; or coverage provided on a group basis by hospital, medical, or dental service organizations, by union welfare plans, or employee or employer benefit organizations.

(2) If a group disability insurance policy contains a coordination of benefits provision, the benefits shall be payable pursuant to the coordination of benefits act. [MCL 500.3610a; MSA 24.13610(1).]

The issue before this Court is which of the two acts apply, the Coordination of Benefits Act or the portion of the Insurance Code of 1956 addressing group disability insurance, MCL 500.3610a; MSA 24.13610(1).

Another panel of this Court rejected plaintiffs' argument that MCL 550.253(2); MSA 24.13673(2) would bar defendant from coordinating benefits with no-fault automobile insurance. In Estabrook v Lincoln Nat'l Life Ins Co, 172 Mich App 450, 452-454; 432 NW2d 733 (1988), the Court held that MCL 550.253(2); MSA 24.13673(2) did not bar coordination with a no-fault policy because the Legislature enacted the Coordination of Benefits Act contingent upon the enactment of MCL 500.3610a; MSA 24.13610(1). Consequently, the panel believed it was clear that the Legislature intended that MCL 500.3610a; MSA 24.13610(1) control the coordination of group disability policies with nongroup no-fault policies, notwithstanding the more general provisions of the Coordination of Benefits Act. Id., pp 453-454.

Plaintiffs maintain that the Estabrook decision is inapplicable because defendant only provided a "certificate" of coverage rather than a "policy" of insurance. Plaintiffs note that the Coordination of Benefits Act, MCL 550.253(2); MSA 24.13673(2) applies to both "policies" and "certificates."² Plaintiff contends that because this distinction is not made in MCL 500.3610a; MSA 24.13610(1) the latter statute is not applicable and we must look to the more general provisions of the Coordination of Benefits Act. We disagree.

As the panel in Estabrook, supra, noted, MCL 500.3610a; MSA 24.13610(1) was intended to apply to the entire Coordination of Benefits Act, and was not intended to merely supplant MCL 550.253; MSA 24.13673. So long as defendant's plan meets the definition of a "group disability insurance policy," the provisions of MCL 500.3610a; MSA 24.13610(1) would still apply in this case despite the definitions found at MCL 550.252; MSA 24.13672.

The definition for disability insurance under the Insurance Code of 1956 is contained in MCL 500.606; MSA 24.1606:

"Disability" insurance is insurance of any person against bodily injury or death by accident, or against disability on account of sickness or accident including also the granting of specific hospital benefits and medical, surgical and sick-care benefits to any person, family, or group, subject to such limitations as may be prescribed with respect thereto . . .

We believe defendant's plan qualifies as disability insurance given the broad language defining disability insurance in MCL 500.606; MSA 24.1606 which encompasses the granting of any medical or accident benefits.

Defendant's plan would also qualify under the definition of a "policy of disability insurance" contained in the Insurance Code of 1956 since the terms policy and contract are used interchangeably. MCL 500.3400; MSA 24.13400 provides in pertinent part as follows:

(1) The term "policy of disability insurance" as used in this chapter includes any policy or contract of insurance against loss resulting from sickness or from bodily injury or death by accident, or both, including also the granting of specific hospital benefits and medical, surgical and sick-care benefits to any person, family or group, subject to the exclusions set forth or referred to in this section.

Consequently, we believe the trial court correctly granted summary disposition in this case under the authority of MCL 500.3610a; MSA 24.13610(1) which allows defendant to coordinate its payment of benefits with no-fault insurance.³ Plaintiffs' decision not to coordinate benefits under their no-fault policy made the no-fault insurer primary. See Gibbard v Auto-Owners Ins Co, 179 Mich App 54, 57; 445 NW2d 182 (1989), lv den 434 Mich 912 (1990).

Affirmed.

/s/ John H. Shepherd
/s/ Michael J. Connor
/s/ Michael F. Sapala

¹ By the affidavit of Diane Hopper, an employee of defendant's administrator, defendant established that it was approved by the Commissioner of Insurance as a revised group member certificate providing medical and hospital services in December 1988.

² MCL 550.252; MSA 24.13672 defines "group disability plan", and "policy" and provides five definitions of what constitutes a "certificate." The parties agree that it is the definition of "certificate" provided in subsection (a)(iv) that applies to defendant's plan.

(a) "Certificate" means any of the following:

* * *

(iv) A health maintenance contract issued by a health maintenance organization in connection with a group disability benefit plan under which health maintenance services are provided, either directly or through contracts with affiliated providers, to a group of subscribers.

* * *

(c) "Group disability benefit plan" means a program making health . . . benefits available to covered persons because of the covered person's membership in or connection with a particular organization or group, which benefits are provided through 1 or more policies or certificates.

* * *

(i) "Policy" means a group disability insurance policy issued by an insurer in connection with a group disability benefit plan which provides for hospital, medical, surgical, dental, or sick care benefits.

³ In furtherance of their position, plaintiffs argue that a no-fault policy falls within the definition of a "policy of disability insurance" under MCL 500.3400; MSA 24.13400, thereby making MCL 550.253(2); MSA 24.13673(2) applicable to this case. Defendant however argues that a no-fault policy is liability insurance by definition, therefore MCL 500.3400(2)(a); MSA 24.13400(2)(a) specifically excludes no-fault insurance. Given our conclusion that the Coordination of Benefits Act does not apply, we need not reach this portion of the parties' arguments.