STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellee,

v

AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY,

Defendant-Appellant,

and

ROBERT J. MAJURIN and HEATHER MARTIN,

Defendants.

September 22, 1992

No. 127446

UNPUBLISHED

Before: Holbrook, Jr., P.J., and Sullivan and Taylor, JJ.

PER CURIAM.

This is a declaratory action, in which plaintiff no-fault insurer sought to recover from defendant medical insurer payments made by plaintiff to two insureds. Defendant appeals as of right from the circuit court's orders granting plaintiff's motion for summary disposition under MCR 2.116(C)(10) and denying defendant's motion under MCR 2.116(C)(7) and (10). We reverse.

Plaintiff provided no-fault automobile insurance to Robert J. Majurin and Heather Martin. Defendant provided each of them medical and hospitalization insurance through group plans with their respective employers. Majurin was injured in an automobile accident on August 8, 1983. Martin was injured on May 21, 1984. Defendant paid $300 toward each of their medical expenses under a coordination of benefits clause in the group policies. Plaintiff's policies also contained coordination of benefits clauses.

Plaintiff filed this action on July 28, 1989. Defendant asserted its three-year contractual limitations period to bar the claims.[1] Plaintiff argued for the application of the six-year limitation of either MCL 600.5807(8); MSA 27A.5807(8) (general contract or quasi-contract), or MCL 600.5813; MSA 27A.5813 (all other personal actions). The trial court agreed with plaintiff, ruling that this was a claim for money paid by mistake, a common law cause of action to which the six-year period applied. The court also ruled that defendant was estopped from relying on the contractual period because of its action in asserting its coordination clause to induce the insureds to submit their claims to their no-fault carriers only.

The trial court erred in both of its rulings. Plaintiff's claim is not a common law action for money paid by mistake; it is a common law subrogation action. See Auto Club Ins Ass'n v New York Life Ins Co, 440 Mich 126, 135-136; ___ NW2d ___ (1992); Federal Kemper Ins Co v Western Ins Cos, 97 Mich App 204, 208; 293 NW2d 765 (1980). There was no mistake of fact here, unlike in the cases relied on by plaintiff and the trial court, Madden v Employers Ins of Wausau, 168 Mich App 33; 424 NW2d 21 (1988), and Adams v Auto Club Ins Ass'n, 154 Mich App 186; 397 NW2d 262 (1986).

Plaintiff argues that its claim exists by operation of law, arising out of our Supreme Court's decision in Federal Kemper Ins Co v Health Ins Administration, Inc, 424 Mich 537; 383 NW2d 590 (1986). It contends that it is not, therefore, bound by the contractual limitation period which would bind the insured. Regardless of whether a right of subrogation arises by operation of law or by contract, the controlling general

principles are the same: the subrogee, upon paying an obligation owed to the subrogor as the primary responsibility of a third party, is substituted in the place of the subrogor, thereby attaining the same and no greater rights to recover against the third party. Morrow v Shah, 181 Mich App 742, 749; 450 NW2d 96 (1989).

Specifically, the insurer's subrogation action is barred by the statute of limitations if the insured's action would be so barred, unless circumstances would make that result inequitable. Federal Kemper Ins Co v Western Ins Cos, supra, pp 210-211. No such circumstances exist in this case. The three-year limitation period is a reasonable amount of time. It is, as defendant argued, a mandatory standard contract provision for health insurance policies. MCL 500.3422, 500.3610; MSA 24.13422, 24.13610. It would have barred the insureds' claims for benefits and, consequently, it barred plaintiff's subrogation claims as well.

The trial court also erred in ruling that defendant was estopped from asserting the statute of limitations. It did nothing to induce either the insureds or plaintiff to refrain from submitting a claim or bringing an action within the applicable time limit. Lothian v Detroit, 414 Mich 160, 177; 324 NW2d 9 (1982).

The trial court correctly ruled that plaintiff would, ordinarily, be entitled to reimbursement from defendant for the benefits paid to the two insureds. Federal Kemper Ins Co v Health Ins Administration, Inc, supra. It erred, however, in denying defendant's motion for summary disposition under MCR 2.116(C)(7), because plaintiff's claim was time-barred.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Joseph B. Sullivan
/s/ Clifford W. Taylor

[1] On appeal, defendant also argued that the one-year limitation period of the no-fault act, MCL 500.3145(1); MSA 24.13145(1), should apply. Defendant relied on a decision of this Court which has now been reversed by our Supreme Court. Auto Club Ins Ass'n v New York Life Ins Co, 187 Mich App 276; 466 NW2d 711 (1990), rev'd 440 Mich 126 (1992). The Court held, in a unanimous opinion, that § 3145(1) of the no-fault act does not apply to a no-fault carrier's action to recover benefits due under the insured's coordinated health and accident coverage.