STATE OF MICHIGAN

COURT OF APPEALS

TERRY CHERRY,

Plaintiff–Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant–Appellee.

August 3, 1992
9:50 a.m.

No. 135963

PUBLISHED

Before: Sawyer, P.J., and Connor and A. G. Best, II,* JJ.

CONNOR, J.

Plaintiff appeals by leave granted from a circuit court appeal. The circuit court affirmed a district court order granting summary disposition for defendant on plaintiff's complaint for first–party no–fault insurance benefits, MCR 2.116(C)(10). We affirm.

We granted leave in this case and ordered that the parties address the following issue:

> Under § 3107 of the Insurance Code [MCL 500.3107; MSA 24.13107], is an insured's right to personal protection insurance benefits for otherwise reasonably necessary products, services, and accommodations for the injured person's care, recovery or rehabilitation, based on otherwise reasonable charges, contingent on those products, services or accommodations being furnished by licensed health care providers?

The facts in this case are generally not in controversy. Plaintiff suffered injuries in an automobile accident and was referred by her treating physicians to Deborah Lincoln, a licensed, registered nurse, who practices acupuncture. The acupuncture has been beneficial to plaintiff in the treatment of her injuries, but defendant refused to pay for the services rendered by Lincoln for the reason that Lincoln is not licensed to practice acupuncture in Michigan. Defendant has otherwise paid for plaintiff's medical expenses and indicated it would pay for acupuncture treatments as recommended by plaintiff's physicians, but that it would only pay for treatments from licensed acupuncturists, or a person acting under the supervision of a medical doctor, as defined by MCL 333.16109(2); MSA 14.15(16109)(2).

Lincoln practices on her own and is self–employed, but does share office space with two physicians, neither of whom are trained to perform acupuncture treatments. One of the physicians referred plaintiff to Lincoln. Plaintiff's other physicians who were involved in the referral also are not trained in acupuncture.

Lincoln only takes patients that are referred by physicians and uses the doctors' diagnoses in determining how to treat patients. However, Lincoln independently decides where to place needles, how many treatments are required initially, and determining protocol. The referring physicians stay in contact with Lincoln by telephone or letter updates regarding progress but are not physically present during procedures.

Defendant moved for summary disposition on the ground that it did not have to pay benefits for Lincoln's services as she was not a physician and not being supervised by a physician, therefore she was operating as an unlicensed medical care provider. The trial court agreed with defendant and granted summary disposition. This decision was affirmed by the circuit court.

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

A no-fault insurer is liable only to pay for benefits subject to the no-fault act, MCL 500.3105; MSA 24.13105. A claimant who seeks to hold an insurer liable for no-fault medical benefits under MCL 500.3107(a); MSA 24.13107(a), has the burden of proving the expense was reasonably necessary, the charge was reasonable and the expense was incurred. Nasser v Auto Club Ins Ass'n, 435 Mich 33, 49-50; 457 NW2d 637 (1990).

MCL 500.3107; MSA 24.13107 ("§ 3107") grants personal protection insurance benefits for medical expenses:[1]

> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation. . . .

At issue, is whether this section should be read to require that the medical expenses incurred be provided by a lawfully licensed practitioner, even if the service is provided at a treating physician's recommendation. Our decision depends upon the Legislature's intent. Kirksey v Manitoba Public Ins Corp, 191 Mich App 12, 16; 477 NW2d 442 (1991), lv den 439 Mich 968 (1992).

Defendant argues that § 3107(a) must be read in conjunction with MCL 500.3157; MSA 24.13157. We agree. In order to give effect to the entire enactment under the rules of statutory construction, we must read § 3107(a) in conjunction with MCL 500.3157; MSA 24.13157. Guitar v Bieniek, 401 Mich 152, 158; 262 NW2d 9 (1978). That statute provides as follows:

> A physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance . . . may charge a reasonable amount for the products, services and accommodations rendered. The charge shall not exceed the amount the person or institution customarily charges for like products, services and accommodations in cases not involving insurance. [Emphasis added.]

Although it is not clear from a reading of § 3107(a) if an insurer must pay for medical expenses incurred due to treatment rendered by an unlicensed provider, reading the no fault as a whole, specifically in light of MCL 500.3157; MSA 24.13157, we believe it is clear that the Legislature intended that only treatment lawfully rendered, including compliance with licensing requirements, must be subject to payment as no-fault benefits. In Attorney General v Raguckas, 84 Mich App 618, 626; 270 NW2d 665 (1978), lv den 406 Mich 912, 1001 (1979), the Court held that acupuncture is the practice of medicine or osteopathy. The practice of medicine or the administering of medical treatment can only be lawfully engaged in by licensed physicians. MCL 333.16294; MSA 14.15(16294). Consequently, unless acupuncture is administered by a licensed physician it is not lawfully rendered. If the treatment was not lawfully rendered it is not reimburseable as a no-fault benefit.[2] We note that other jurisdictions have reached similar results. See Pavelic v Nationwide Ins, 352 Pa Super 11; 506 A2d 1310, 1311-1312 (1986); Leonard v Preferred Risk Mutual Ins Co, 247 Ga 574; 277 SE2d 675, 677 (1981).

Plaintiff has also argued on appeal that as a registered nurse, Lincoln could provide acupuncture consistent with her licensing as a registered nurse, which includes the treatment and care of patients, as provided in MCL 333.17201; MSA 14.15(17201). We disagree. Michigan has not yet recognized the independent licensing of acupuncturists. It has been held that only licensed physicians can perform acupuncture because it is a surgical procedure and the risks involved are too great to allow nonphysicians to engage in the practice. Raguckas, supra, p 626. Consequently, in the absence of specific legislation providing for the independent licensing of acupuncturists, we do not believe a registered nurse may independently practice acupuncture as part of the care or treatment rendered to patients.

The only possible exception provided by statute is when a licensed physician supervises another individual performing acupuncture. MCL 333.16109(2); MSA 14.15(16109)(2) defines what is required for such supervisory responsibilities:

(2) "Supervision" means the overseeing of or participation in the work of another individual by a health professional licensed under this article in circumstances where at least all of the following conditions exist:

(a) The continuous availability of direct communication in person or by radio, telephone, or telecommunication between the supervised individual and a licensed health professional.

(b) The availability of a licensed health professional on a regularly scheduled basis to review the practice of the supervised individual, to provide consultation to the supervised individual, to review records, and to further educate the supervised individual in the performance of the individual's functions.

(c) The provision by the licensed supervising health professional of predetermined procedures and drug protocol.

On the facts of this case, there was no supervision of Lincoln by someone both licensed as a physician and also trained or knowledgeable about acupuncture procedures.[3] Therefore we believe the lower courts correctly granted summary disposition for the reason that there was no genuine issue of material fact that defendant did not have to pay for Lincoln's services as no-fault benefits.

Affirmed.

/s/ Michael J. Connor
/s/ David H. Sawyer
/s/ A. George Best, II

[1] MCL 500.3107(a); MSA 24.13107(a) was amended and redesignated MCL 500.3107(1)(a); MSA 24.13107(1)(a), effective January 1, 1992.

[2] Making plaintiff and other insureds liable for the costs of medical care provided by unlicensed individuals may appear harsh. However, a remedy was suggested by the Supreme Court in Nasser, supra, p 55, n 10, wherein the Court held that a plaintiff should not have to pay for services rendered by an unlicensed practitioner.

[3] But see MCL 333.16215(2); MSA 14.15(16215)(2), as amended by 1990 PA 279, effective March 28, 1991.

re sentencing guidelines. The guidelines rec-
ommended a minimum range of six to 15 years
or the kidnapping conviction. The court gave
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onvictions were eight to 20 years. The mini-
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vas five to 15 years. Defendant was sentenced
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:ourt failed to state the reasons for its depar-
ure. Therefore, "we vacate defendant's entire
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Affirmed, but remanded for resentencing.

People v. Adams. (Lawyers Weekly No. MA-5307 - 8 pages) (Holbrook, J.) (Griffin, J., concurring in part and dissenting in part).

Summary by KMP.

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Domestic Relations

Child Support - Guardian Not Liable For Support

Where plaintiff and defendant were legal guardians of two children, defendant is not obligated to pay child support for the children.

Plaintiff and defendant have a child by their marriage. They were also appointed legal guardians over plaintiff's brother's two children. Plaintiff's brother and the children's mother are still alive. Their parental rights have not been terminated.

When plaintiff filed for divorce she requested support for her and defendant's child and the two wards. The court found plaintiff and defendant acted as the children's parents. Defendant was ordered to pay child support for all three children. Defendant appeals.

"MCL 552.16; MSA 25.96 provides that

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No-Fault

Medical Benefits - Unlicensed Practitioner

Where plaintiff was receiving acupuncture from a nurse outside a physician's care, the acupuncture was not an "allowable expense" payable under the no-fault act.

Plaintiff was injured in a car accident and received no-fault benefits from defendant-insurer. After the accident, plaintiff was referred to an acupuncturist by her physician. The acupuncturist is a licensed registered nurse, but she operates independently from physicians.

Defendant refused to pay the costs of plaintiff's acupuncture because the nurse was not a licensed acupuncturist. The lower courts agreed. Plaintiff appeals.

Section 3157 of the no-fault act allows payment of medical expenses provided by personnel "lawfully" rendering medical treatment. This section makes it clear that "the Legislature intended that only treatment lawfully rendered, including compliance with licensing requirements, must be subject to payment as no-fault benefits."

In Michigan, acupuncture is regarded as the practice of medicine, which only a physician or someone under his direction may perform. Michigan does not allow the licensing of independent acupuncturists, nor may licensed registered nurses provide the service themselves. As a result, the nurse in this case cannot lawfully provide acupuncture to plaintiff. Defendant justifiably refused to pay for the treatment.

Cherry v. State Farm Mut. Automobile Ins. Co. (Lawyers Weekly No. MA-5318 - 3 pages) (Connor, J.).

Summary by MJM.

[illegible] reasonably necessary and 3) actually incurred. All those requirements were satisfied. In addition, the van was a reasonable necessity. The lack of good transportation services in plaintiff's county made the van necessary.

Plaintiff may also receive mileage for travel to medical appointments, but not for personal use. Upon remand, the trial court must separate the two types of mileage. Finally, plaintiff is entitled to penalty interest for defendant's failure to pay the cost of the van and mileage, despite defendant's good faith in disputing the costs.

Davis v. Citizens Ins. Co. of Am. (Lawyers

Marquis v. Hartford Accident and Indemnity. (Lawyers Weekly No. MA-5315 - 4 pages) (Marilyn Kelly, J.) (Griffin, J., dissenting, disagrees with the award of benefits to plaintiff after she quit her new job. By awarding those benefits, the majority is compensating plaintiff for loss of earning capacity, not loss of income. This is impermissible under the no-fault law.).

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(See accompanying story on page one.)

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(Continued on Page 14)

defendant a life sentence. The minimum range for the first-degree criminal sexual conduct convictions were eight to 20 years. The minimum range for the armed robbery conviction was five to 15 years. Defendant was sentenced to 70 to 150 years for the remaining crimes. The court failed to state the reasons for its departure. Therefore, "we vacate defendant's entire sentence and remand for resentencing."

Affirmed, but remanded for resentencing.

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