STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU INSURANCE GROUP,

Plaintiff-Appellee,

v

CHARLOTTE CHAIR COMPANY,

Defendant-Appellant,

and

SHARI PERSONS,

Defendant.

October 29, 1992

No. 130290

UNPUBLISHED

Before: Weaver, P.J., and Wahls and Taylor, JJ.

PER CURIAM

Defendant Shari Persons was injured in an auto accident on October 4, 1984. At the time Persons was covered by a no-fault insurance policy issued by plaintiff, Farm Bureau Insurance Group. This policy contained a coordination of benefits clause, MCL 500.3109a; MSA 24.13109(1), which subordinated plaintiff's policy to any other health and accident insurance or plan. Persons was also covered by defendant, Charlotte Chair Company, which had an employee benefit plan that provided it was subordinate to injuries covered by a policy of no-fault insurance.

On October 25, 1988, plaintiff filed suit against Charlotte and Persons seeking reimbursement for medical expenses mistakenly paid by plaintiff. The trial court granted summary judgement in favor of plaintiff. Charlotte then appealed to this court.

In our prior opinion we held that plaintiff's claim was barred by the one-year limitation contained in the no-fault act, MCL 500.3145(11); MSA 24.14145(1), relying on Auto Club Ins Ass'n v New York Life Ins Co, 187 Mich App 276; 466 NW2d 711 (1991). The Supreme Court's reversal of that case in Auto Club v New York Life Ins, 440 Mich 126; 485 NW2d 695 (1992) requires us to issue a new opinion.

Because Charlotte is not a no-fault insurer, § 3145(1) does not apply, and Charlotte cannot invoke the act's reduced limitation period. Rather, the claim is governed by the six-year period of limitation generally applicable to contract actions. Auto Club, supra. After finding the suit was not barred by the statute of limitations, we now need to address the other issues raised by defendant on appeal.

Charlotte first argues that it does not, as a matter of law, have primary responsibility for payment of Person's medical expenses. Though this issue was not properly preserved, we grant review because the issue is one of law concerning which the necessary facts have been presented. Richards v Pierce, 162 Mich App 308; 412 NW2d 725 (1987).

The Employee Retirement Income Security Act (ERISA), 29 USC § 1001 et seq, preempts state regulation of uninsured self-funded employee benefit plans. GMC Corp v Holliday, 498 US 52; 112 L Ed 2d 356; 111 S Ct 403 (1990). The plan here is a self-funded employee benefit plan. As state regulation is precluded, Charlotte does not automatically have primary liability for Person's medical expenses under the coordination of benefits provision of the no-fault act, MCL 500.3109a; MSA 24.13109(1). Auto Club Ins Ass'n v Frederick & Herrud, Inc (On Remand), 191 Mich App 471; 479 NW2d 18 (1991).

Charlotte also contends the court erred in granting plaintiff summary disposition, arguing the resignation of employment and waiver of seniority document signed by Persons bars plaintiff from suing Charlotte.

Giving the benefit of reasonable doubt to the nonmovant, this court must determine whether a record might be developed which will leave open an issue upon which reasonable minds could differ and thus whether plaintiff was entitled to judgement as a matter of law. MCR 2.116(c)(10). All inferences are to be drawn in favor of the nonmovant. Ragen v Hastings Mutual Ins Co, 166 Mich App 225; 420 NW2d 111 (1987).

Persons signed a document[1] titled "Resignation of Employment" and "Waiver of Seniority" on June 15, 1988. In granting plaintiff's summary disposition motion, the court ruled this document did not bar plaintiff's claim because Person's right to file a claim had vested.

The scope of a release is governed by the intent of the parties as it is expressed in the release. Rodriguez v Solar of Michigan, Inc, 191 Mich App 483; 478 NW2d 914 (1991). However, this Court looks beyond the language of the release to determine its fairness and the intent of the parties upon executing it. Trongo v Trongo, 124 Mich App 432; 335 NW2d 60 (1983).

Defendant had entered into evidence the affidavit of Thomas Dugan, which stated that "The exception does not refer to disputed claims arising out of coverage before termination of employment, and the release is intended to apply to such disputed claims."

Given the different interpretations possible of the release and the affidavit, we conclude there is an issue of fact, and the trial court erred by granting summary disposition in favor of plaintiff.

We reverse and remand for further proceedings in accord with this opinion.

/s/ Elizabeth A. Weaver
/s/ Myron H. Wahls
/s/ Clifford W. Taylor

[1] I . . . hereby resign my employment with CHARLOTTE COMPANY and waive all rights to seniority that I may have had with this employer.

This resignation and waiver of seniority, however, excepts all vested rights to group insurance benefits, insurance conversion privileges, unemployment compensation benefits, pension or other vested rights and benefits, none of which are hereby waived or modified.

This resignation and waiver of seniority is executed incidental to an agreement to redeem liability in a workers' compensation claim that I have brought against my employer. In the event that the redemption agreement is not approved, finalized, and fully paid, this resignation and waiver of seniority will be null and void, and of no effect whatsoever.

This resignation and waiver of seniority is intended to resolve any and all disputes concerning any rights I may claim to possess against my employer and is not intended to imply that any employment, seniority, fringe benefits or pension/profit sharing rights have existed or, should be reinstated beyond the time they were actually terminated. (Emphasis added.)