STATE OF MICHIGAN

COURT OF APPEALS

ANNA FOSTER and FRED FOSTER,

Plaintiffs-Appellants,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendants-Appellees.

February 22, 1993

No. 140866

UNPUBLISHED

Before: Griffin, P.J., and Shepherd and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs, Anna Foster and Fred Foster, appeal as of right the order granting summary disposition for defendant, Auto Club Insurance Association (ACIA), in this no-fault suit for uninsured motorist benefits. We affirm.

On May 23, 1985, plaintiff Anna Foster was injured when the automobile she was driving was rear-ended by an automobile driven by Terry Alick. Plaintiff then struck the automobile in front of her. In June 1985 plaintiff filed an application for medical expenses and work loss benefits with defendant. Defendant paid no-fault benefits until an independent medical examiner determined that plaintiff was no longer disabled.

Plaintiff filed a complaint against defendant on April 14, 1986, seeking a resumption of no-fault benefits. The suit resulted in a mediation award of $19,000. In exchange for the award, plaintiff executed a release of her no-fault claims against defendant on August 22, 1988.

Plaintiffs filed a lawsuit against Alick in September 1987. Plaintiffs were unable to serve process on him, and filed a second action in May 1988. After plaintiffs unsuccessfully attempted to serve process on Alick, the court entered an order allowing for substitute service of process. The suit resulted in a default judgment against Alick in the amount of $163,550.

Plaintiffs filed a claim with defendant for uninsured motorist benefits in September 1990, more than five years after the accident. Defendant denied plaintiffs' claim because plaintiffs had not timely demanded arbitration to determine whether plaintiff was entitled to recover damages from the uninsured motorist and the amount of the payment. The policy required that a demand for arbitration be made within three years of the date of the accident.

Plaintiffs first argue that an agreement to arbitrate does not prevent bringing a suit at law. Because plaintiffs did not raise this argument before the trial court, this issue is not properly before us and we decline to address it. McKelvie v City of Mt Clemens, 193 Mich App 81, 86; 483 NW2d 442 (1992).

Next, plaintiffs argue that the court erred in granting summary disposition to defendant. They contend that the three-year time limitation provided in the arbitration clause is unreasonable and should be tolled until it is determined that the tort-feasor is uninsured.[1] Plaintiffs urge the adoption of a "discovery rule" of accrual for a cause of action under an uninsured motorist policy. This Court rejected such an argument in Sallee v Auto Club Ins Ass'n, 190 Mich App 305; 475 NW2d 828 (1991). Uninsured motorist coverage is not required by the No-Fault Act, and its availability is governed by the contract between the parties. The express terms of the insurance contract specifically state that the claims period begins to run from the date of the accident.

Lastly, because defendant disputes plaintiffs' injuries, plaintiff's claim falls within the arbitration clause of defendant's policy.[2]

Affirmed.

/s/ Richard Allen Griffin
/s/ John H. Shepherd
/s/ E. Thomas Fitzgerald

[1] Plaintiffs alleged that they did not discover that Alick was uninsured until they attended a creditor's hearing on September 21, 1990, after being informed that Alick filed for bankruptcy. We note, however, that the accident report listed the insurance carriers for both plaintiff's vehicle and the vehicle in front of her. The report listed Alick's insurance carrier as "unknown," but did list his address, driver's license number, license plate number, and vehicle identification number.

[2] Defendant was not a party to the action between plaintiffs and Alick.