STATE OF MICHIGAN

COURT OF APPEALS

GREGORY KING,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant.

March 24, 1993

No. 124582

Before: Corrigan, P.J., and Weaver and Connor, JJ.

PER CURIAM.

On November 1, 1986, plaintiff was severely injured in an automobile accident. Defendant insurer paid over $100,000 for plaintiff's medical expenses.

Plaintiff filed suit alleging that because of the accident, he incurred "medical expenses, earning losses, and other expenses which the defendant is obligated to pay." Defendant responded to plaintiff's complaint with an answer, affirmative defenses, and a jury demand with the jury fee paid. Defendant's affirmative defenses stated that 1) defendant had paid all benefits plaintiff was entitled to; 2) "[p]laintiff was not temporarily unemployed as defined by the Michigan No-Fault Act," and 3) plaintiff had "failed to give reasonable proof. . . of his alleged wage loss."

On February 1, 1989, plaintiff moved to strike, and for partial summary disposition on, defendant's "not temporarily unemployed" affirmative defense. Defendant also moved for partial summary disposition on this issue.

The trial court's June 30, 1989, opinion and order denied defendant's motion and granted plaintiff's motion. The court held, as a matter of law, that plaintiff was temporarily unemployed and entitled to wage-loss benefits. The court's opinion did not discuss the amount of damages to which plaintiff would be entitled.

The praecipe for plaintiff's motion for entry of judgment indicates that the motion was granted, and contains the following handwritten notation of the trial judge:

> Look at work records, if working 2-3 months prior to accident then grant [plaintiff's] request for 170.00 a week for 36 months. Court reviewed documents - Oct. 11, 1989.

The trial court's computer records indicate that at a September 20, 1989, settlement conference, the court set trial for November 13, 1989. When no one appeared for defendant on the trial date, the court entered a default for plaintiff and requested an offer of proof as to plaintiff's damages. Plaintiff's counsel stated that "the only issue that was going to be tried today was the issue of replacement services." After hearing plaintiff's testimony, the court granted plaintiff's request for $21,900 (36 months at $20 per day) of replacement services damages.

On November 17, 1989, defendant filed a motion to set aside default and default judgment. On November 21, 1989, plaintiff filed a motion for entry of default judgment regarding replacement services. On November 22, 1989, defendant filed a motion for summary disposition as to replacement services only.

On December 1, 1989, the trial court entered orders which denied defendants' motions for summary disposition and to set aside default and default judgment, and granted plaintiff's motion for default judgment regarding replacement services.

The final judgment by the trial court incorporated the previous judgments for wage loss and replacement services, totaling $81,151.14.

Defendant now appeals. We reverse and remand.

I

Defendant first argues the court erred in finding that plaintiff was temporarily unemployed at the time of the accident. For purposes of the motions for summary disposition on this issue, the parties stipulated to the facts that: 1) plaintiff was not employed on November 1, 1986, when the accident occurred; 2) prior to the accident, plaintiff's most recent employment was at Royal Nursing Home, from May to August, 1985; 3) when he began work at Royal, plaintiff was receiving unemployment compensation following a March 8, 1985, layoff from the Detroit AFL/CIO Home Weatherization Program; and 4) following his layoff from Royal in August, 1985, plaintiff applied for work with fourteen employers (named in the stipulation) and contacted numerous other employers who did not accept his application.

Because the trial court decided this issue as a matter of law, based on stipulated facts, this Court's review is de novo. See Szabo v DAIIE, 136 Mich App 9; 355 NW2d 619 (1983). The Michigan No-fault Act provides that persons injured in auto-related accidents can receive personal protection insurance for:

> Work loss consisting of loss of income from work an injured person would have performed during the first three years after the date of the accident if he or she had not been injured ... MCL 500.3107(b); MSA 24.13107

The Act further provides that:

> Subject to the provisions of section 3107(b), work loss for an injured person who is temporarily unemployed at the time of the accident or during the period of disability shall be based on earned income for the last month employed full time preceding the accident. [MCL 500.3107a; MSA 24.13107a.]

Thus, the question here is whether, under the facts stipulated to by the trial court, summary disposition could be granted on the issue of whether plaintiff's fourteen month unemployment was temporary.

Plaintiff cannot recover under § 3107(b) because he was not employed at the time of the accident. See McDonald v State Farm Ins Co, 419 Mich 146; 350 NW2d 233 (1984), including Justice Cavanaugh's dissent at page 154. Section 3107a was added to the no-fault act to allow temporarily unemployed persons to recover work-loss benefits. Section 3107a identifies an amount which is deemed by that section to be the work loss for temporarily unemployed persons. It allows persons temporarily unemployed at the time of an automobile accident to recover benefits notwithstanding that they have no existing wage, and it allows those already receiving work-loss benefits to continue receiving benefits for those temporary periods when they would have had no wage had the accident not occurred. The legislative analysis of HB 4221 which created § 3107a reveals a legislative concern with those who but for their disability could have received unemployment compensation as a substitute income. McDonald v State Farm Ins Co, 419 Mich 146; 350 NW2d 233 (1984).

Summary disposition can only be granted under MCR 2.116(c)(10) when there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

Here, there is a genuine issue of material fact as to whether plaintiff's unemployment was temporary. To hold otherwise would require this Court to establish a bright line rule relating only to the number of months for which plaintiff was unemployed prior to the accident, which we consider inappropriate. In other cases where a plaintiff's temporary unemployment is at issue, this Court has considered work history, duration of unemployment, plaintiff's stated intent to secure employment and a wide variety of evidence supporting this intent. See Clute v General Accident Assurance Co of Canada, 179 Mich App 527; 446 NW2d 839 (1989), lv den 435 Mich 857 (1990), Cole v DAIIE, 137 Mich App 603; 357 NW2d 898 (1984); Szabo v DAIIE, 136 Mich App 9; 355 NW2d 619 (1983); and Oikarinen v Farm Bureau Mutual Ins Co of Michigan, 101 Mich App 436; 300 NW2d 589 (1980), lv den 411 Mich 908 (1981).

We strike the grant of summary disposition on this issue and remand for further proceedings.

II

Defendant next asserts the court erred in denying its motion to set aside the default entered for plaintiff on the issue of replacement services.

A motion to set aside a default or a default judgment generally may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1).

Here, the trial court's computer records indicate that at a September 20, 1989 settlement conference, the court set trial for November 13, 1989. Although oral notice to an attorney who is before the court is proper, MCR 2.501, the requirement that attorneys and parties must be given twenty-eight days' notice of trial assignments, MCR 2.501(c), was not met. This improper notice constitutes good cause to set aside the default judgment.

Defendant also met the requirement of filing an affidavit of facts showing a meritorious defense. Specifically, defendant incorporated into that affidavit its November 22, 1989 motion for summary disposition which alleged plaintiff had previously denied having incurred any replacement services.

While understanding the trial court's frustration with the defendant attorneys' lackadaisical performance of their duties to their client, we conclude the court erred in denying defendant's motion to overturn the default judgment.

III

Finally, defendant argues the court violated its due process rights. However, defendant neglects to specify how the trial court's actions violated the constitutional provisions cited. An issue is not properly presented on appeal if it is given only cursory treatment with little or no citation of supporting authority. Community National Bank v Michigan Basic Property Ins Ass'n, 159 Mich App 510; 407 NW2d 31 (1987), lv den 429 Mich 876 (1987). For the same reason we decline to address defendant's request that the case be reassigned to a different judge.

We reverse the order granting partial summary disposition on plaintiff's wage-loss claim, reverse the order denying defendant's motion to set aside the default entered against it on the issue of replacement services, and remand for further proceedings. We note that nothing in this opinion should be construed as reaching the merits of this suit. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Elizabeth A. Weaver
/s/ Michael J. Connor