STATE OF MICHIGAN

COURT OF APPEALS

MARISA DEMEGLIO, by her Next Friend,
SUSAN DEMEGLIO,

Plaintiff-Appellee
and Cross-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant
and Cross-Appellee.

November 2, 1993
9:10 a.m.
FOR PUBLICATION

No. 147586
LC No. 90-401380

Before: Weaver, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Defendant appeals from the order of the circuit court granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff cross appeals from the same order denying plaintiff interest and attorney fees. We affirm in part and reverse in part.

Plaintiff was injured when her bicycle was struck by an automobile. Plaintiff, a resident of Pennsylvania, was visiting her grandparents in Michigan at the time of the accident. Plaintiff received $10,000 in medical benefits under a no-fault policy issued to her parents under Pennsylvania law by State Farm Mutual Automobile Insurance Company. Defendant provided no-fault insurance coverage to the owner of the automobile. With respect to plaintiff's claim, defendant refused to pay any benefits to plaintiff not in excess of the $10,000 medical benefit paid by State Farm.

Plaintiff brought this action, and eventually moved for summary disposition pursuant to MCR 2.116(C)(10), contending that defendant was not entitled to set-off under § 3109 of the no-fault act, MCL 500.3109; MSA 24.13109, of the amount paid under the Pennsylvania policy. The circuit court granted plaintiff's motion, holding that defendant was not entitled to set-off under § 3109 of the medical benefits received by plaintiff because those benefits were not governmental benefits within the meaning of MCL 500.3109; MSA 24.13109. The circuit court further held that plaintiff was not entitled to interest or attorney fees.

Defendant contends that the circuit court incorrectly determined that defendant was not entitled to set off the amount paid under the Pennsylvania policy pursuant to MCL 500.3109; MSA 24.13109. We agree with the circuit court that payments by a private insurance company for medical expenses made pursuant to an automobile insurance contract issued under the laws of another state are not benefits as that term is used in § 3109 and therefore may not be set off under that section. Section 3109 provides, in pertinent part:

> (1) Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury.

This section has been given a restrictive interpretation. In LeBlanc v State Farm Mutual Automobile Ins Co, 410 Mich 173, 190; 301 NW2d 775 (1981), our Supreme Court held that § 3109 encompasses government benefits that serve the same purpose as no-fault benefits and are paid as a result of the same

accident. See also Jarosz v DAIIE, 418 Mich 565, 577; 345 NW2d 563 (1984). The benefits paid by State Farm in this case serve the same purpose and arise from the same accident, but are not state mandated government benefits.

Section § 3109 contemplates benefits arising from a "collateral governmental source." LeBlanc, supra, 202. Government benefits which must be set off under § 3109 include social security disability benefits, Profit v Citizens Ins Co of America, ___ Mich ___; ___ NW2d ___ (Docket No. 90904, decided September 29, 1993), slip op 5, social security survivors' loss benefits, Michigan workers' compensation benefits and federal military medical benefits. See Id., slip op, 6-7; Tatum v Governmental Employees Ins Co, 431 Mich 663, 668; 431 NW2d 391 (1988); LeBlanc, supra, 190. While some benefits, such as worker's compensation benefits, do not involve the state as a payor, the commonality in these benefits is that they are not directly financed by the beneficiary. By contrast, no-fault benefits payable pursuant to a private contract of insurance purchased by the insured are simply not government benefits as defined in LeBlanc. Defendant argues that this results in plaintiff receiving duplicate benefits. While eliminating duplication of benefits is a goal of § 3109, Pompa v Auto Club Ins Assoc, 199 Mich App 653, 658; 502 NW2d 378 (1993), our Supreme Court permits duplicate coverage to stand where set-off is not mandated by the statute. See LeBlanc, supra; Tatum, supra; Jarosz, supra, 585.

Plaintiff cross appeals, contending that the trial court erred by denying plaintiff attorney fees pursuant to MCL 500.3148; MSA 24.13148. The circuit court denied plaintiff attorney fees, finding that there was not an unreasonable delay in defendant's payment of benefits. As we cannot say that the circuit court's finding is clearly erroneous, we will not set aside the finding. United Southern Assurance Co v Aetna Life & Casualty Ins Co, 189 Mich App 485, 492-493; 474 NW2d 131 (1991).

Plaintiff also contends that the circuit court erred by denying plaintiff interest on overdue benefits pursuant to MCL 500.3142; MSA 24.13142 and on the judgment pursuant to MCL 600.6013; MSA 27A.6013. Defendant agrees that, if plaintiff is entitled to judgment, she is also entitled to interest pursuant to those sections. We also agree.

The order of the circuit court is reversed to the extent that plaintiff was denied interest, and remanded for entry of an order awarding plaintiff interest. In all other respects, the order is affirmed.

/s/ Elizabeth A. Weaver
/s/ William B. Murphy
/s/ Kathleen Jansen