STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,
as Subrogee of MICHAEL OLIVER and
LINDA MASSEY,

Plaintiff-Appellant/
Cross-Appellee,

February 3, 1994

v

No. 143367
LC No.90-4542-CK

ART VAN FURNITURE, INC.,
EMPLOYEE HEALTH BENEFIT PLAN,

Defendant-Appellee/
Cross-Appellant.

Before: Sawyer, P.J., and Corrigan and T. L. Brown*, JJ.

PER CURIAM.

In this subrogation action for recovery of medical expenses paid on behalf of its insureds, plaintiff appeals the partial grant of summary disposition for defendant. Defendant cross-appealed the order, which effectively granted plaintiff summary disposition of all claims not barred by the statute of limitations. We affirm in part and reverse in part.

Plaintiff insurance company provides automobile insurance under Michigan's No-Fault Act, MCL 500.3101 et seq.; MSA 24.13101 et seq. Defendant is a self-funded employee benefit plan organized pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC §1001 et seq. Defendant purchases excess or "stop-loss" insurance for claims over $50,000 (now $60,000) from the Travelers Insurance Company, whose affiliate, Travelers Plan Administrators of Michigan, Inc., administers the plan.

In 1988, two beneficiaries of defendant's plan, Michael Oliver and Linda Massey, were injured in separate automobile accidents. Both were also covered by no-fault insurance policies issued by plaintiff. Plaintiff's policies, in accordance with MCL 500.3109a; MSA 24.13109a, provided for coordination of coverage with the insureds' medical insurance. Defendant's plan, however, limited coverage for motor vehicle accident injuries to a maximum of $300, the statutory maximum deductible allowed under §3109a of the No-Fault Act.

Pursuant to the terms of its plan, defendant paid $300 on behalf of each participant, then denied all further coverage. Plaintiff paid the remaining medical expenses of Massey and Oliver and sought subrogation against defendant in 1989.

Defendant originally moved for summary disposition pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction), and in the alternative, moved to amend its answer to incorporate a defense based on MCL 500.3145; MSA 24.13145, the statute of limitations provision of the No-Fault Act. The court denied the motion for summary disposition, finding "a genuine issue as to whether defendant's Plan is insured or self[-]insured with a stop-loss insurance policy." The court held that this issue was jurisdictional because if the plan were fully self-insured, ERISA would preempt state law and divest the state court of jurisdiction. The court also allowed defendant to add the statute of limitations defense.

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*Circuit judge, sitting by assignment on the Court of Appeals.

The court then issued an "Amended Opinion." That opinion granted defendant summary disposition as to all expenses incurred before a cut-off date but ordered "that defendant shall pay plaintiff all expenses, if any, incurred on or after [the cut-off date]."

Plaintiff appealed from the order granting summary disposition as to claims incurred before the cut-off date. Defendant cross-appealed from the order denying its motion for summary disposition on jurisdictional grounds. Plaintiff then moved for peremptory reversal in this Court of the decision on the statute of limitations issue. That motion was granted in light of Auto Club Ins Ass'n v New York Life Ins Co, 440 Mich 126; 485 NW2d 695 (1992). That question, then, is no longer before this Court. The circuit court's order that defendant pay all the relevant expenses incurred after a given cut-off date has been reversed and the cut-off date is inapplicable.

Plaintiff contends that because defendant appealed only the denial of its motion for summary disposition on the jurisdiction question, if that issue is resolved in plaintiff's favor, nothing remains. Plaintiff argues that because defendant did not cross-appeal the order requiring it to pay a portion of the expenses involved, defendant cannot argue that it is not liable for any of them. We disagree.

Initially, the circuit court confused federal jurisdiction, subject matter jurisdiction and federal preemption of state law. This case originated as a subrogation complaint against defendant's plan on behalf of two plan beneficiaries. It could have been brought in either federal or state court. 29 USC 1132(e)(1) allows for concurrent jurisdiction. Defendant could also have removed the action to federal court under 28 USC 1331 (federal question jurisdiction). The circuit court, however, unquestionably had subject matter jurisdiction. Defendant's motion for summary disposition was properly denied, although for the wrong reason. Where a trial court reaches the right result for the wrong reason, this Court will affirm. See, e.g., Thompson v Dep't of Corrections, 143 Mich App 29, 31; 371 NW2d 472 (1985).

The implication of the court's holding that it could not decide the jurisdiction (preemption) issue is that the court found that defendant's plan was not fully self-insured. Because that question is dispositive of the underlying issue, i.e., which party should bear primary liability for Massey's and Oliver's medical expenses, and because it can now be decided as a matter of law (see infra), we treat the matter as if defendant had cast its cross-appeal as an appeal of the implied finding that defendant's plan is fully self-funded and its necessary implication that defendant would become liable for the expenses in question.

Although the trial court made its first ruling pursuant to MCR 2.116(C)(4) and did not identify the court rule which governed its second holding, we conclude that both decisions were actually made pursuant to MCR 2.116(C)(10). The mislabeling of a motion does not preclude review where the lower court record otherwise permits it. Wilson v Thomas L McNamara, Inc, 173 Mich App 372, 376; 433 NW2d 851 (1988).

A motion for summary disposition under MCR 2.116 (C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to it and grant summary disposition if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. AFL-CIO v Civil Service Comm, 191 Mich App 535, 546-547; 478 NW2d 722 (1991); Panich v Iron Wood Products Corp, 179 Mich App 136, 139; 445 NW2d 795 (1989).

In general, when an individual injured in a motor vehicle accident has both no-fault insurance and other health or accident coverage, the health insurer is primarily liable for the medical expenses related to the accident. Federal Kemper Ins Co, Inc, v Health Ins Administration, Inc, 424 Mich 537, 551-552; 383 NW2d 590 (1986), overruled in part 443 Mich 358, 390; 505 NW2d 820 (1993). If the defendant is not a commercial health insurer, however, but rather a self-funded ERISA plan, then state law is preempted, with the effect that the plan's terms are unaffected; see FMC Corp v Holliday, 498 US 52; 111 S Ct 403; 112 L Ed 2d 356 (1990) (subrogation provision in ERISA benefit plan could be enforced, despite a state law prohibiting subrogation actions by insurance companies).

Effect of Stop-Loss Coverage

In Auto Club Ins Ass'n v Frederick & Herrud, Inc 443 Mich 358, 389; 505 NW2d 820 (1993), the Supreme Court held that "the existence of 'stop-loss' insurance is irrelevant" to determining whether a plan is self-funded for purposes of ERISA preemption.

> MCL 500.3109a; MSA 24.13109a(1) and the cases interpreting it would have the effect of removing all discretion from the plan administrators on the issue whether to pay health benefits when other sources of payment exist. We are persuaded that this qualifies as a direct . . . effect on the plans [which is prohibited by ERISA's preemption of state law]. [Id. at 388-389]

See also Wolverine Mutual Ins Co v Rospatch Corp Employee Benefit Plan, 195 Mich App 302, 308; 489 NW2d 204 (1992), relying on this Court's decision in Auto Club Ins Ass'n v Frederick & Herrud (On Remand), 191 Mich App 471, 475; 479 NW2d 18 (1991); Lincoln Mutual Casualty Co v Lectron Products, Inc, Employee Health Benefit Plan, 970 F2d 206, 210 (CA 6, 1992) (Lectron I). Further, a no-fault carrier has no direct claim against the stop-loss insurer of an ERISA plan; Auto Club Ins Ass'n v SAFECO Life Ins Co, 833 F Supp 637, 639 (WD Mich, 1993).

Effect of ERISA Preemption

Plaintiff argues that the finding that ERISA preempts state law should not end the analysis and that the appropriate action is to remand the matter for a decision under federal common law. See Lincoln Mutual, supra at 211; Auto Club Ins Ass'n v Health & Welfare Plans, Inc, 961 F2d 588, 592-593 (CA 6, 1992); Auto-Owners Ins Co v Thorn Apple Valley, 818 F Supp 1078, 1081 (WD Mich, 1993) (holding that no-fault insurer and ERISA plan were each responsible for 50% of injured person's medical expenses). We disagree.

The Supreme Court in Frederick & Herrud, supra, concluded that:

> an unambiguous COB clause in an ERISA health and welfare benefit plan must be given its plain meaning despite the existence of a similar clause in a no-fault policy because any conflict created by the requirements of MCL 500.3109a; MSA 24.13109(1) and this Court's interpretation of the statute would have the direct effect of dictating the terms of the ERISA plans. [443 Mich 389-390.]

See also, Lincoln Mutual Casualty Co v Lectron Products, Inc, Employee Health Benefit Plan (On Remand), 823 F Supp 1385 (ED Mich, 1993) (Lectron II). After the Sixth Circuit ordered, in Lectron I, that the district court consider the conflicting coordination of benefits clauses under federal law, that court determined that the ERISA plan's exclusion should prevail. "[U]nder federal common law, the plain language, strictly construed, of the ERISA plan, not the intent of the state legislature in statutorily regulating insurance, must prevail." Id. at 1393. "[T]he state legislature is without authority under ERISA to tell the Plan what coverage it must provide." Id. at 1394.

In summary:

1. The circuit court had jurisdiction to hear this case.

2. Defendant's purchase of a stop-loss policy does not make it an "insured plan" for purposes of ERISA preemption of state law.

3. The plain language of defendant's coordination of benefits provisions must be given effect.

Insofar as the trial court's orders require defendant to pay Massey's and Oliver's medical expenses, they are reversed. No costs, neither party having prevailed in full.

/s/ David H. Sawyer
/s/ Maura D. Corrigan
/s/ Thomas Leo Brown