

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH LEWIS,

Plaintiff-Appellant,

March 28, 1994

v

No. 155478

LC No. 91-127829 CK

JAMES FLOURNOY,

Defendant,

and

CITIZENS INSURANCE COMPANY,

Defendant-Appellee.

Before: Cavanagh, P.J., and Wahls and G.W. Crockett III,* JJ.

PER CURIAM.

Plaintiff, Joseph Lewis, appeals from an order granting summary disposition in favor of defendant Citizens Insurance Company in this no-fault benefits case. We affirm.

The facts underlying this appeal are not in dispute. On February 22, 1990, plaintiff was injured in a single-car accident in Detroit while he was a passenger in a vehicle which was owned by plaintiff's brother-in-law, defendant James Flournoy. The vehicle had previously been used by James' daughter, who resided in Missouri and maintained insurance on the vehicle in Missouri. The vehicle was not listed on defendant James Flournoy's policy of auto insurance with defendant Citizens.

The Missouri insurer initially agreed to pay PIP benefits, but it was eventually determined that that insurer was not liable, and plaintiff reimbursed it for all the payments that it had made. On September 9, 1991, plaintiff notified defendant Citizens that he was seeking PIP benefits under defendant Flournoy's policy of insurance. Citizens denied liability on the basis that the automobile was not a covered automobile under the insurance policy. Plaintiff filed suit, and Citizens raised the statute of limitations defense. The trial court granted Citizens' motion for summary disposition, and this appeal followed.

The dispositive issue on appeal is whether the trial court erred in finding that plaintiff's claim against Citizens for PIP benefits was barred by the statute of limitations.

The no-fault act provides that an action against an insurer must be brought within a year from the date of the accident causing the injury, unless written notice of the injury is given to the insurer within one year after the date of the accident. MCL 500.3145(1); MSA 24.13145(1). The purpose of that section is to protect against stale claims and protracted litigations. Pendergast v American Fidelity Fire Ins, 118 Mich App 838, 841-842; 325 NW2d 602 (1982). When an action is commenced against one party, the period of limitation is not tolled with respect to other potential parties that were not named as defendants in the suit. Hunt v Citizens Ins Co, 183 Mich App 660, 666; 455 NW2d 384 (1990).

There is no dispute in this case that Citizens was not notified of the injury until approximately nineteen months after the accident. Therefore, the action was not timely. Furthermore, the limitation period was not tolled while the action was pending against the Missouri insurer. Hunt, supra; see Pendergast, supra.

*Recorder's Court judge, sitting on the Court of Appeals by assignment.

Plaintiff's argument that tolling is warranted because it reasonably relied on the Missouri insurer's initial acceptance of liability is unpersuasive. In Pendergast, this Court held that the fact that the plaintiff, in the exercise of due diligence, could not or did not identify the appropriate insurer, was insufficient to toll the period of limitation with respect to that insurer. Id. at 842-843. We conclude that in this case, whether or not plaintiff's reliance on the Missouri insurer's acceptance of liability was reasonable, it was likewise insufficient to toll the limitation period with respect to Citizens.

Therefore, the trial court properly granted summary disposition in favor of defendant Citizens.

In light of the above conclusion, it is unnecessary to consider the question, raised by plaintiff, whether Citizens was liable to plaintiff for PIF benefits.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Myron H. Wahls
/s/ George W. Crockett III