STATE OF MICHIGAN

COURT OF APPEALS

TYRONE ALLEN,

Plaintiff-Appellee/
Cross-Appellant,

v

FARM BUREAU INSURANCE COMPANY,

Defendant/Third-Party
Plaintiff-Appellee/
Cross-Appellee,

and

FARMERS INSURANCE EXCHANGE,

Defendant/Third-Party
Defendant-Appellant/
Cross-Appellee.

FOR PUBLICATION
May 12, 1995
10:05 a.m.

No. 166824
LC No. 92-028942-NI

Before: Neff, P.J., and Sawyer and Markey, JJ.

NEFF, P.J.

Plaintiff and third-party defendant Farmers Insurance Exchange (Farmers) appeal as of right in this no-fault insurance case, from the circuit court's order granting summary disposition to defendant Farm Bureau Insurance Company (Farm Bureau), and to Farmers. We affirm.

I

Plaintiff was injured when the car in which he was a passenger was involved in an accident. Because plaintiff could not identify the insurer responsible for paying no-fault benefits for his injuries, he filed a claim for personal protection insurance benefits under the no-fault act with Farm Bureau, as the assignee of the Assigned Claims Facility.

A

Although Farm Bureau paid plaintiff's medical claims, it denied plaintiff's claim for wage loss benefits. As a result, plaintiff initiated this suit one year after his accident. During the course of discovery, Farm Bureau discovered that the driver of the car in which plaintiff was injured was covered by a policy issued by Farmers, and thus, Farmers was a higher priority insurer under the no-fault act.

Accordingly, Farm Bureau initiated a third-party suit against Farmers for reimbursement of the benefits it paid to plaintiff. Farm Bureau's suit was filed more than one year after plaintiff's accident. Shortly thereafter, and again, more than one year after his accident, plaintiff amended his complaint to add Farmers as a defendant in his action seeking wage loss benefits.

B

1

After Farmers was added to this litigation, Farm Bureau filed a motion for summary disposition under MCR 2.116(C)(10), arguing that Farmers was a higher priority insurer, and that any sums paid by Farm Bureau to plaintiff were the responsibility of Farmers. The trial court agreed, and granted Farm Bureau's motion. The parties do not dispute this ruling on appeal.

2

After the court decided Farm Bureau's motion for summary disposition, it considered Farmers' summary disposition motion. Farmers argued that both Farm Bureau's and plaintiff's suits were time barred by § 3145(1) of the no-fault act, which establishes a one-year statute of limitations for the recovery of personal protection insurance benefits. MCL 500.3145(1); MSA 24.13145(1). The trial court agreed with respect to plaintiff, and dismissed plaintiff's complaint. It is from this order that plaintiff appeals.

With regard to Farm Bureau's suit, however, the court determined that the two-year statute of limitations in § 3175(3) of the no-fault act, applied. That statutory provision provides:

> An action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant. [MCL 500.3175(3); MSA 24.13175(3).]

Accordingly, the trial court ordered Farmers to pay Farm Bureau $29,355.39, the amount of benefits Farm Bureau paid to plaintiff. It is from this order that Farmers appeals.

II

With respect to Farmers' appeal, Farmers argues that § 3145(1) applies because Farm Bureau is the subrogee of plaintiff, and as such stands in the shoes of plaintiff. Thus, according to Farmers, to the extent plaintiff's cause of action against it is barred by the limitation period in § 3145(1), so too is Farm Bureau's.

Conversely, Farm Bureau argues, and the lower court agreed, that it brought its claim for reimbursement not as a subrogee of plaintiff, but independently, pursuant to its statutory right to reimbursement under MCL 500.3172(1); MSA 24.13172(1). Thus, according to Farm Bureau, the two-year limitation period in § 3175(3) applies. We agree.

A

In order to determine which limitation period applies, the trial court was required to interpret the relevant statutory provisions of the no-fault act. Accordingly, we review de novo the lower court's determination. People v Young, 206 Mich App 144, 154; 521 NW2d 340 (1994).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. People v Stanaway, 446 Mich 643, 658; 521 NW2d 557 (1994). If reasonable minds can differ as to the meaning of a statute, judicial construction is appropriate. Dep't of Social Services v Brewer, 180 Mich App 82, 84; 446 NW2d 593 (1989). When two statutory provisions appear to be in conflict, and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails. Gebhardt v O'Rourke, 444 Mich 535, 542-543; 510 NW2d 900 (1994).

B

An examination of the statutory provisions here in question demonstrates that the one-year limitation in § 3145(1) does not apply to Farm Bureau's claim for reimbursement.

Section 3145(1) provides in pertinent part:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of the injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.

If only this statute existed, we would agree with Farmers that Farm Bureau would be subrogated to plaintiff's rights and remedies.

However, the no-fault act provides assignee insurers with an independent right of recovery:

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if . . . no personal protection insurance applicable to the injury can be identified . . . . In such case unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and the insurer to which the claim is assigned . . . is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility. [MCL 500.3172(1); MSA 24.13172(1). Emphasis added.]

Thus, Farm Bureau's statutorily created right to reimbursement is independent of the party to whom it paid benefits, here, plaintiff.

C

After recognizing this statutorily created right, Farm Bureau, and the lower court, then reasoned that the two year limitation period in § 3175(3) must apply. We agree.

1

Section 3175(3) is a limitation period for actions brought by an assignee insurer for indemnity or reimbursement. Thus, because it is specific to reimbursement actions such as this one, it must prevail over § 3145(1). See Gebhardt, supra.

Further, if we accepted the position that the one-year limitation period in § 3145(1) applies, then assignee insurance companies could be left without a remedy against a defaulting insurer.

It is entirely within the realm of possibility that an injured person would wait the full year to make a claim under the assigned claims plan. In such a situation, the assignee insurer would be without a remedy against a defaulting insurer because the one-year limitation in § 3145(1) would already have run with respect to both the injured person, and the assignee insurer as subrogee of the injured person. Such an interpretation of the no-fault act would create an absurd result, which is in contravention of well settled rules of statutory construction. See Rowell v Security Steel Processing Co, 445 Mich 347, 354; 518 NW2d 409 (1994).

2

Although Farmers cites Allstate Ins Co v Faulhaber, 157 Mich App 164; 403 NW2d 527 (1987), for the proposition that the reference to "third parties" in § 3175(3) is limited to tortfeasors, we do not discern that holding from our reading of Faulhaber. The issue there was whether to apply the limitation period in § 3175(3) retroactively. While the factual scenario of Faulhaber did include an insurance company suing either an uninsured motorist or a tortfeasor, this Court did not limit § 3175(3) to the facts of that case.

3

We also disagree with Hunt v Citizens Ins Co, 183 Mich App 660; 455 NW2d 384 (1990), to the extent it held that the one year limitation period in § 3145(1) is applicable to an assignee insurer seeking reimbursement from another insurer under the assigned claims plan of the no-fault act. Although this Court in Hunt arguably reached such a conclusion, it does not appear that that specific issue was before the Court. Rather, the Court, when discussing the defaulting insurer's liability to the assignee insurer, grouped the assignee insurer and the injured person together, in essence assuming subrogation without discussion. Therefore, we decline to follow the implied holding of Hunt.

4

Accordingly, we agree with the trial court that when read together, §§ 3172(1) and 3175(3) create a two-year statute of limitations in reimbursement actions between insurers under the assigned claims plan of the no-fault act.

III

In plaintiff's cross-appeal, he argues that the lower court erred in determining that his cause of action against Farmers was time barred because he failed to notify Farmers of his claim within one year as required by § 3145(1). We disagree.

Although we earlier declined to follow the implied reasoning in this Court's opinion in Hunt, supra, we are persuaded that the ultimate holding in that case was correct. In Hunt, this Court determined that the statute of limitations in § 3145(1) was not tolled where, as here, the injured party filed a claim through the assigned claims plan of the no-fault act within the one-year time period, but failed to notify the higher priority insurer within the limitation period. Hunt, supra at 666.

This Court in Hunt relied, in part, on Pendergast v American Fidelity Fire Ins Co, 118 Mich App 838; 325 NW2d 602 (1982), in which case this Court was also asked to consider whether the one-year limitation period in § 3145(1) should be tolled. While the factual scenario in Pendergast is admittedly different from that in the instant case, we nonetheless find the reasoning in Pendergast to be persuasive:

> While it is true that the one-year period of limitation is relatively short, it seems consonant with the legislative purpose in the no-fault act in encouraging claimants to bring their claims to court within a reasonable time and the reciprocal obligations of insurers to adjust and pay claims seasonably. The statute attempts to protect against stale claims and protracted litigation.

* * *

> The legislative intent is clear and unambiguous. The Courts should not enlarge nor alter the reciprocal rights and obligations of claimant and insurer under such circumstances. [Pendergast, supra at 841-843. Footnotes and citations omitted.]

We note that plaintiff does not argue that although Farmers is a higher priority insurer, Farm Bureau, as assignee under the assigned claims plan, was required to pay his wage loss benefits, to the extent they were justified, and then seek reimbursement from Farmers. Had plaintiff done so, a different result may have obtained.

Nevertheless, on the basis of the issues before us, we affirm the trial court's ruling that plaintiff's claim against Farmers is barred by the one year statute of limitations in § 3145(1).[1]

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Jane E. Markey

[1] We decline to address plaintiff's request to apply equitable estoppel in this case. Not only does that doctrine not apply to the facts of this case, see Schmude Oil Co v Omar Operating Co, 184 Mich App 574, 581-582; 458 NW2d 659 (1990), but in addition, plaintiff did not raise that argument below.