STATE OF MICHIGAN

COURT OF APPEALS

JAMES JOSEPH GRANDSTAFF,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE and ANDREWS UNIVERSITY,

Defendants-Appellees,

and

ROBERT KALUA and SYLVIA KALUA,

Defendants.

UNPUBLISHED
July 7, 1995

No. 169113
LC No. 92-004446-NO

Before: Doctoroff, P.J., and Holbrook, Jr. and Corrigan, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's denial of attorney fees and sanctions for overdue personal protection benefits payments from defendant Farmers Insurance Exchange under the No-Fault Act, MCL 500.3101 et seq; MSA 24.13101 et seq. We affirm.

Plaintiff suffered a severe closed head injury on May 20, 1991, in an automobile accident. Plaintiff was a passenger in a car owned by defendants Sylvia and Robert Kalua. Defendant Farmers is plaintiff's no-fault carrier; plaintiff's policy with defendant Farmers contains a coordination of benefits provision that makes plaintiff's health care coverage the first source for payment of any medical expenses incurred in treating injuries sustained in an automobile accident. Plaintiff received health insurance through defendant Andrews University at the time of the accident. The university health plan is a church plan that is self-funded by the General Conference of Seventh-Day Adventists. It is an ERISA-exempt health plan.

Plaintiff presented defendant Farmers with all of his medical expenses relating to the accident on February 5, 1993. The bills totalled $178,308.29. Defendant Farmers did not pay plaintiff's claim; instead, it moved for summary disposition in the trial court. It argued that defendant Andrews, not defendant Farmers, was primarily responsible for plaintiff's medical bills due to the coordination of benefits clause in plaintiff's no-fault policy with Farmers. Defendant Farmers also contended that any benefits it owed to plaintiff were not overdue until 30 days after it received reasonable proof of the fact of and the amount of expenses that were not covered by plaintiff's health plan with defendant Andrews. Plaintiff joined in defendant Farmers' motion for summary disposition, as plaintiff, too, wished the court to determine which defendant was obligated to pay his outstanding medical expenses. In addition, plaintiff requested that the court declare defendant Farmers liable for sanctions because defendant Farmers did not pay his medical expenses within 30 days of February 5, 1993, the date that plaintiff gave defendant Farmers an itemized list of all his medical expenses incurred in the accident.

The trial court granted defendant Farmers' motion for summary disposition, and found that defendant Andrews was primarily liable for plaintiff's medical expenses. Regarding sanctions, the trial court ruled that plaintiff should not be awarded interest and attorney fees. It reasoned that defendant Farmers' benefits payments to plaintiff were not overdue because defendant Andrews, the primary insurer, had not yet determined the amount it owed under its health plan to plaintiff, and thus defendant Farmers, which was only secondarily liable for plaintiff's medical bills, could have no "reasonable proof of loss" of the claim against it. Defendant Andrews informed defendant Farmers on September 21, 1993, that the Andrews plan covered $128,177.17 of plaintiff's medical bills. By November 15, 1993, defendant Farmers had paid the remainder of plaintiff's outstanding bills. The trial court entered a declaratory order incorporating its ruling on defendant Farmers' motion for summary disposition and its ruling on the sanctions issue. The court thereafter made its order final under MCR 2.604(A).

Because defendant Andrews is an ERISA-exempt health plan, Michigan no-fault law applies. Auto Club Ins Assoc v Frederick & Herrud, Inc, 443 Mich 358, 390; 505 NW2d 820 (1993). Further, the parties agree that defendant Andrews, a self-funded church health plan, is "other health and accident coverage" within the meaning of the Michigan No-Fault Act, MCL 500.3109a; MSA 24.13109a. Under the Michigan no-fault scheme, health insurers are primarily liable for payment of an insured's medical expenses when the insured elects to coordinate no-fault personal injury protection benefits with health insurance. Tousignant v Allstate Ins Co, 444 Mich 301, 307; 506 NW2d 844 (1993); Federal Kemper Ins Co v Health Ins Admin, Inc, 424 Mich 537, 551; 383 NW2d 590 (1986). Thus, the trial court correctly ruled that defendant Farmers was only secondarily liable for plaintiff's medical bills.

Plaintiff first contends that the trial court erred in holding that he was not entitled to interest under MCL 500.3142; MSA 24.13142 from defendant Farmers for overdue personal protection benefits because he had not presented defendant Farmers with reasonable proof of loss. We do not disturb a trial court's findings of fact under the No-Fault Act unless they are clearly erroneous. DeMeglio v Auto Club Ins Assoc, 202 Mich App 361, 365; 509 NW2d 526 (1993); English v Home Ins Co, 112 Mich App 468, 476; 316 NW2d 463 (1982). At the time of plaintiff's suit, overdue personal protection insurance benefits bore a 12% interest rate.[1] MCL 500.3142; MSA 24.13142. Such payments are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and the amount of loss sustained. Id. The issue in this case is when defendant Farmers received reasonable proof of the fact and amount of loss sustained by plaintiff, and thus whether the payments to plaintiff were overdue and subject to interest. Plaintiff contends that defendant Farmers received reasonable proof of loss when plaintiff handed all of his medical bills to defendant Farmers' representative on February 3, 1993. Defendant Farmers asserts that it only received notice of both the fact and amount of loss on September 21, 1993, when defendant Andrews determined how much of the total $178,308.29 in medical bills it would pay, as defendant Farmers, the secondary insurer, was only responsible for the difference. In other words, until defendant Andrews determined how much of plaintiff's loss it would cover, defendant Farmers had no reasonable proof of the amount of loss sustained by plaintiff that was covered under plaintiff's no-fault policy.

We agree with defendant Farmers and the trial court. A no-fault insurer is not penalized with interest under the No-Fault Act unless the insured's medical expenses are not paid within 30 days after the insurer receives reasonable proof of the fact and of the amount of loss sustained. Grossheim v Associated Truck Lines, Inc, 181 Mich App 712, 715-716; 450 NW2d 40 (1989). Interest is awarded whenever benefits payments are overdue, regardless of the good faith of the insurer in withholding benefits. Id.

In this case, defendant Farmers did not receive reasonable proof of the fact and amount of loss until September 21, 1993. It is true that defendant Farmers received proof of the fact of loss on

February 3, 1993, when plaintiff gave defendant Farmers' representative an itemized list of medical expenses incurred in treating injuries recieved in the car accident. However, defendant Farmers had no reasonable proof of the amount of loss for which it would be responsible on this date. As set forth above, defendant Farmers was only secondarily liable to plaintiff for any medical expenses resulting from the automobile accident. Thus, defendant Farmers had no reasonable proof of the amount of personal protection benefits to which plaintiff was entitled under his Farmers no-fault plan unless and until plaintiff was deemed not completely covered for these expenses under his Andrews health plan, the primary source for plaintiff's medical expenses. Defendant Andrews informed defendant Farmers on September 21, 1993, that plaintiff was only partially covered by its health plan for these medical expenses, in the amount of $128,177.17. At this point, defendant Farmers had a concrete figure representing the amount of loss that was to be paid as personal protection benefits under plaintiff's no-fault policy. Consequently, it was on this date that defendant Farmers received reasonable proof of loss, and the 30 day time limit began to run.[2] Accordingly, this Court cannot say that the trial court's finding that defendant Farmers' payments were not overdue as of 30 days past February 3, 1993, was clearly erroneous.

Plaintiff next contends that the trial court erred in refusing to award him attorney fees for defendant Farmers' overdue personal protection benefits payments. A claimant is entitled to attorney fees under the No-Fault Act when personal protection benefits are overdue if the insurer was unreasonable in refusing to pay the claim. MCL 500.3148; MSA 24.13148. Thus, unlike interest, attorney fees are awarded to the insured for overdue payments only if the insurer withholds payments unreasonably. Grossheim, supra at 716. We have concluded, however, that defendant Farmers' payment of personal protection benefits to plaintiff was timely. Thus, we affirm the trial court's ruling on those grounds without reaching the reasonableness issue.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Maura D. Corrigan

[1] This section of the no-fault act has since been amended. The current statute provides that overdue payments bear interest at the rate set by MCL 600.6013(6); MSA 27A.6013(6), and that interest paid under this subsection is offset by interest payable under MCL 600.6013(6); MSA 27A.6013(6).

[2] Defendant Farmers paid the difference between the total amount of plaintiff's bills and the amount covered by defendant Andrews' health plan by November 15, 1993 -- within 30 days after receiving these figures from defendant Andrews.