

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BLUE CARE NETWORK OF SOUTHEAST  
MICHIGAN,

UNPUBLISHED  
May 3, 1996

Plaintiff-Appellant,

v

No. 171352  
LC No. 89-003545

DARLENE LOY and DANFORD LOY,

Defendants-Appellees.

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Before: O'Connell, P.J., and Hood and C.L. Horn\*, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendants summary disposition pursuant to MCR 2.110(C)(10). We reverse and remand.

The facts are not in dispute. On April 10, 1988, defendants' minor child was severely injured in an automobile accident. As a dependent of defendant Danford, who had health insurance through his employer, the child had health care coverage from plaintiff. Defendants did not carry no-fault insurance, but the driver of the car which injured the child was insured by Auto Club Insurance Association (ACIA). Plaintiff's policy of insurance provided for coordination benefits, but the ACIA no-fault policy did not.

Plaintiff paid the treating hospital \$63,724.14 for the child's medical care. It later learned that ACIA had given defendants \$95,956.71 in payment for the same care. Plaintiff filed suit for reimbursement. Relying on *Smith v Physicians Health Plan, Inc*, 196 Mich App 617; 493 NW2d 480 (1992), the trial court granted defendants summary disposition. The Michigan Supreme Court reversed that case in *Smith v Physicians Health Plan, Inc*, 444 Mich 743; 514 NW2d 150 (1994).

Plaintiff argues that the reversal of *Smith* mandates reversal of summary disposition in favor of defendants. We agree. The Michigan Supreme Court held that a no-fault insured who has elected uncoordinated benefits under a no-fault policy is not entitled to receive duplicate payment for medical expense from a health insurer where the health insurer's policy contains a coordination of benefits clause. *Id.*, p 746. In this case, although the ACIA policy was an uncoordinated no-fault policy, plaintiff's policy contained a coordination of benefits clause. We therefore reverse the trial court's order granting defendants summary disposition. *Id.*

Plaintiff also argues that the reversal of *Smith* requires that it be granted summary disposition. We disagree. The reversal of *Smith* does not automatically require that summary

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

disposition be granted to plaintiff. Moreover, because defendants raised fifteen affirmative defenses which appear to be factually based and require further consideration by the trial court, we conclude that plaintiff is not entitled to summary disposition. We therefore remand this matter to the trial court for further proceedings.

Reversed, and remanded. We do not retain jurisdiction.

/s/ Peter J. O'Connell  
/s/ Harold Hood  
/s/ Carl L. Horn