STATE OF MICHIGAN

COURT OF APPEALS

TAMMY COFFEY,

Plaintiff-Appellee,

v

LAKE STATES INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
May 22, 1998

No. 200589
Arenac Circuit Court
LC No. 96-005096 CK

Before: Holbrook, Jr., P.J., and Gribbs and R.J. Danhof,* JJ.

PER CURIAM.

In this no-fault insurance benefits case, defendant appeals by leave granted from an order of the circuit court denying its motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

On February 10, 1994, plaintiff was driving on an icy road when she accidentally slid into a ditch and was injured. Shortly thereafter, on February 21, 1994, plaintiff filed an application for personal injury protection insurance benefits from defendant, her no-fault insurer. Defendant provided these benefits until October 14, 1994, when, based on medical evaluations of plaintiff's condition, it terminated the benefits and formally notified plaintiff of the termination. On February 9, 1996, plaintiff commenced this lawsuit against defendant seeking reinstatement of her benefits.

The sole issue presented in this appeal is whether plaintiff's complaint was time-barred under the one-year period of limitations set forth in MCL 500.3145(1); MSA 24.13145(1), which 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 injury as provided herein has been given to the insurer within 1 year after the accident or

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

> unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

Defendant argued below, and now on appeal, that § 3145(1), as interpreted by case law, dictates that an action for benefits must be filed by an insured within one year of an accident, unless the limitations period is tolled during the time between an insured's initial application for benefits and the insurer's unambiguous denial of benefits. Because plaintiff filed her lawsuit more than one year after defendant's unambiguous denial of benefits, defendant argues that her lawsuit was untimely regardless of any tolling that may have occurred. Plaintiff responded that § 3145(1) is clear on its face and contains two relevant time frames: a statute of limitations and a one-year-back limitation on allowable benefits. In other words: (1) a claimant must file a lawsuit within one year of an accident, unless he or she has given written notice of the accident to the insurer within one year of the accident or has previously received accident-related benefits from the insurer, in which case he or she can file a lawsuit at any time within one year of his or her most recent loss; and (2) a claimant cannot recover benefits for any losses that occurred more than one year before the commencement of the suit. Because plaintiff notified defendant of her accident in a timely manner and subsequently received benefits from defendant, plaintiff argues that she was allowed to commence a lawsuit within one year of her most recent allowable loss. Plaintiff alleged in her complaint, and testified at deposition, that she had continued to suffer debilitating injuries as a result of the accident. Plaintiff therefore argued that her lawsuit was timely, although she conceded that she could not recover any benefits for losses incurred more than one year before the commencement of her lawsuit.

The trial court agreed with plaintiff's interpretation of the statute, as do we. As applied to the facts of this case,[1] the language of § 3145(1) is clear on its face:

> Since some payments have already been made by defendant, plaintiffs could properly commence an action for personal protection insurance benefits at any time after the most recent allowable expense was incurred. Plaintiff's recovery, however, is limited to only those losses incurred within one year prior to the date on which their action was commenced. [*Bohlinger v Detroit Automobile Inter-Ins Exchange*, 120 Mich App 269, 274; 327 NW2d 466 (1982).]

See also *Kransz v Meredith*, 123 Mich App 454, 458; 332 NW2d 571 (1983); *English v Home Ins Co*, 112 Mich App 468, 474; 316 NW2d 463 (1982); *Allstate Ins Co v Frankenmuth Mutual Ins Co*, 111 Mich App 617, 621; 314 NW2d 711 (1981).

Accordingly, because plaintiff notified defendant of her injuries in a timely manner and subsequently received benefits from defendant, she was permitted to file this lawsuit *at any time*

within one year of her most recent allowable loss, subject to recovery of benefits under the one-year-back rule. At the time plaintiff filed her complaint, she alleged that she continued to suffer allowable expenses and wage loss as a result of accident-related injuries; therefore, her lawsuit was not time-barred under § 3145(1).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Roman S. Gribbs
/s/ Robert J. Danhof

[1] Given that plaintiff concedes applicability of the one-year-back rule to her case, and these facts do not raise an issue of tolling with respect to that rule, we find the cases relied on by defendant to be inapposite. See, e.g., *Lewis v DAIIE*, 426 Mich 93, 101; 393 NW2d 167 (1986); *Welton v Carriers Ins Co*, 421 Mich 571, 576; 365 NW2d 170 (1984).