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STATE OF MICHIGAN
COURT OF APPEALS

In re Guardianship OF MARY ANN MALLOY.

DARREN FINDLING, Coguardian of MARY ANN MALLOY, a legally protected person, and DARREN FINDLING LAW FIRM, PLC,

FOR PUBLICATION
October 13, 2022
9:05 a.m.

Plaintiffs-Appellees,

and

PATRICK MALLOY, Coguardian of MARY ANN MALLOY, a legally protected person, and KATHREN MALLOY,¹

Plaintiffs,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

No. 358006
Oakland Probate Court
LC No. 2020-393904-CZ

In re Guardianship of DANA JENKINS.

¹ The probate court’s April 2019 Order Regarding Modification of Guardianship identified Kathren Malloy and Darren Findling as coguardians. A May 21, 2021 Letters of Guardianship filed with the probate court identified Patrick Malloy as a coguardian with Darren Findling. The Letters of Guardianship were filed after entry of the order appealed in this matter. Accordingly, both Kathren Malloy and Patrick Malloy are listed as plaintiffs, though it does not appear that Kathren Malloy is currently a coguardian of Mary Ann Malloy.

DARREN FINDLING, Guardian of DANA
JENKINS, a legally incapacitated person, and
DARREN FINDLING LAW FIRM, PLC,

Plaintiffs-Appellees,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

No. 358021
Oakland Probate Court
LC No. 2020-393903-CZ

Before: SWARTZLE, P.J., and CAVANAGH and REDFORD, JJ.

REDFORD, J.

In the cases before the Court, in the context of two persons who are the subject of guardianships necessitated by two different motor vehicle accidents, we address the powers and duties of a guardian under MCL 700.5314, and the distinction between the delegation of a duty and a power of a guardian under MCL 700.5103 and MCL 700.5106.

The matters arise out of separate motor vehicle accidents after which guardianships were established for the two wards. This Court ordered the consolidation of these two appeals. *In re Guardianship of Mary Ann Malloy*, unpublished order of the Court of Appeals, entered July 5, 2022 (Docket Nos. 358006 and 358021). In Docket No. 358006, defendant appeals by leave granted² the probate court's order granting the Malloy plaintiffs'³ motion for partial summary disposition, and denying defendant's countermotion for summary disposition. In Docket No. 358021, defendant appeals by leave granted⁴ the probate court's order granting the Jenkins

² On March 23, 2022, our Supreme Court, in lieu of granting leave to appeal, remanded this case to this Court for consideration as on leave granted. *In re Guardianship of Malloy*, ___ Mich ___; 970 NW2d 886 (2022).

³ Regarding Docket No. 358006, because multiple individuals in this matter share the last name of Malloy, for clarity, we will refer to plaintiff, Darren Findling, as "plaintiff"; plaintiff, Darren Findling Law Firm, PLC, as "plaintiff firm"; plaintiff, Patrick Malloy, as "Patrick"; plaintiff, Kathren Malloy, as "Kathren"; and the ward, Mary Ann Malloy, as "Malloy." Further, we collectively refer to plaintiffs, Darren Findling, Darren Findling Law Firm, PLC, Patrick Malloy, and Kathren Malloy, as the "Malloy plaintiffs."

⁴ On March 23, 2022, our Supreme Court, in lieu of granting leave to appeal, remanded this case to this Court for consideration as on leave granted. *In re Guardianship of Jenkins*, 970 NW2d 889 (Mich, 2022).

plaintiffs⁵ motion for partial summary disposition and denying defendant's counter-motion for summary disposition.

Because we conclude that the trial court correctly determined that many of the duties performed on behalf of the wards were able to be delegated by the court-appointed guardian, we affirm in part. Because there is a factual question as to whether or not actions taken on April 23, 2019 and April 24, 2019, on behalf of both wards were delegable by the court-appointed guardian, we reverse in part, and remand for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

A. DOCKET NO. 358006

On August 10, 1979, Malloy suffered serious injuries including a traumatic brain injury from a motor vehicle accident. She is a legally incapacitated individual. She lived with her mother, who served as her coguardian and caregiver for approximately 40 years after the 1979 accident, though Malloy moved to a group home for 24-hour care and supervision after her mother sustained a fall. Plaintiff, Patrick, and Kathren, were later named Malloy's coguardians. The court appointed plaintiff, an attorney and professional fiduciary, as Malloy's legal guardian. Defendant is Malloy's no-fault insurer. Plaintiff provided legal and guardianship services for Malloy through plaintiff firm. Malloy's estate incurred fees and costs totaling \$8,040.45 for services provided by her coguardians and plaintiff firm. Defendant refused to pay for the legal and guardianship services for Malloy provided by plaintiff and plaintiff firm. In six letters sent to plaintiff between August 13, 2019 and July 23, 2020, defendant indicated that it would "not consider reimbursement without additional information" because it did "not appear Ms. Malloy's guardian performed the guardianship services being claimed."

The Malloy plaintiffs filed a complaint against defendant in Oakland Probate Court, requesting that defendant pay Malloy's coguardians or plaintiff firm fees and costs associated with the care, recovery, and rehabilitation of Malloy in the amount of \$8,040.45 plus interest, attorney fees, and costs. The Malloy plaintiffs alleged that defendant was "responsible for payment of fiduciary and attorney fees and costs incurred which are allowable expenses and that are reasonably necessary" for Malloy's care, recovery, or rehabilitation pursuant to MCL 500.3107. Further, the Malloy plaintiffs asserted that defendant refused to pay the proper no-fault benefits to the estate of Malloy, Malloy's coguardians, and plaintiff firm. Defendant filed an answer and asserted in its affirmative defenses that the "services allegedly provided by [the Malloy] Plaintiffs were not lawfully rendered."

The Malloy plaintiffs moved for partial summary disposition under MCR 2.116(C)(9) and (C)(10), arguing that fees and costs for a ward's guardianship "are allowable expenses compensable by the No-Fault Insurance Carrier under the no[-]fault act no matter who provides

⁵ Regarding Docket No. 358021, we refer to plaintiff, Darren Findling, as "plaintiff"; plaintiff, Darren Findling Law Firm, PLC, as "plaintiff firm"; and the ward, Dana Jenkins, as "Jenkins." Further, we collectively refer to plaintiffs, Darren Findling and Darren Findling Law Firm, PLC, as the "Jenkins plaintiffs."

them.” Further, the Malloy plaintiffs asserted that a guardian “may employ an attorney, perform work themselves, and/or employee [sic] others, and all of those services are compensable under the no-fault act, MCL 500.3101 *et seq.*, if they are for the care, recovery and rehabilitation of the ward.” Defendant responded to the Malloy plaintiffs’ motion for partial summary disposition and filed a countermotion for partial summary disposition pursuant to MCR 2.116(I)(2). Defendant argued that no authority—including MCL 700.5103 or MCL 700.5106—supported the Malloy plaintiffs’ claim that plaintiff could delegate his guardianship duties to employees at his firm. The probate court granted the Malloy plaintiffs’ motion for partial summary disposition, reasoning that plaintiff did not violate MCL 700.5103 because he delegated only duties and not his guardianship powers, and he remained responsible for the delegated duties.⁶

B. DOCKET NO. 358021

On November 20, 2013, Jenkins suffered a traumatic brain injury as a pedestrian in a motor vehicle accident. The court appointed plaintiff, an attorney and professional fiduciary, as Jenkins’s legal guardian because Jenkins is a legally incapacitated individual. Defendant is the no-fault insurer for Jenkins. Plaintiff and plaintiff firm provided legal and guardianship services to Jenkins, and Jenkins’s estate incurred fees and costs in the amount of \$28,853.59 between March 27, 2019 and February 1, 2020. Defendant refused to pay for services provided by plaintiff and plaintiff firm on behalf of Jenkins. In six letters sent to plaintiff between August 16, 2019 and June 17, 2020, defendant indicated that it would “not consider reimbursement” for “[g]uardian services completed by someone other than” plaintiff.

The Jenkins plaintiffs filed a complaint against defendant in Oakland Probate Court, requesting that defendant pay plaintiff or plaintiff firm fees and costs associated with the care, recovery, and rehabilitation of Jenkins. The Jenkins plaintiffs alleged that defendant was “responsible for payment of fiduciary and attorney fees and costs incurred which are allowable expenses and that are reasonably necessary” for Jenkins’s care, recovery, or rehabilitation pursuant to MCL 500.3107. Further, the Jenkins plaintiffs asserted that defendant had refused to pay the proper no-fault benefits to Jenkins’s estate, plaintiff, and plaintiff firm. Defendant answered the Jenkins plaintiffs’ complaint. Defendant asserted that the “services allegedly provided by [the Jenkins] Plaintiffs were not lawfully rendered.” The Jenkins plaintiffs moved for partial summary disposition pursuant to MCR 2.116(C)(9) and (C)(10), making virtually identical arguments as those made by the Malloy plaintiffs in their motion for partial summary disposition. Defendant responded to the Jenkins plaintiffs’ motion for partial summary disposition and filed a countermotion for partial summary disposition pursuant to MCR 2.116(I)(2) similar to the response and countermotion filed by defendant in Docket No. 358006. The probate court heard the Jenkins plaintiffs’ motion along with the Malloy plaintiffs’ motion, and the court granted both motions in favor of the Malloy plaintiffs and Jenkins plaintiffs, and denied defendant’s countermotions for summary disposition.

⁶ The Oakland Probate Court heard the Malloy plaintiffs’ motion for partial summary disposition at the same time as the Jenkins plaintiffs’ motion for partial summary disposition. The court granted both motions.

II. STANDARDS OF REVIEW

“This Court reviews de novo a trial court’s decision on a motion for summary disposition.” *Powell-Murphy v Revitalizing Auto Communities Environmental Response Trust*, 333 Mich App 234, 242; 964 NW2d 50 (2020) (citation omitted). A party may move for summary disposition when the “opposing party has failed to state a valid defense to the claim asserted against him or her.” MCR 2.116(C)(9). “When deciding a motion under MCR 2.116(C)(9), which tests the sufficiency of a defendant’s pleadings, the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim.” *Slater v Ann Arbor Public Schs Bd of Ed*, 250 Mich App 419, 425; 648 NW2d 205 (2002). “Pleadings include only complaints, cross-claims, counterclaims, third-party complaints, answers to any of these, and replies to answers.” *Id.* “Summary disposition under MCR 2.116(C)(9) is proper when the defendant’s pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff’s right to recovery.” *Id.* at 425-426. When the trial court considers documentation beyond the pleadings, a motion for summary disposition is properly reviewed under MCR 2.116(C)(10). *McJimpson v Auto Club Group Ins Co*, 315 Mich App 353, 357; 889 NW2d 724 (2016).

A trial court may properly grant a motion for summary disposition pursuant to MCR 2.116(C)(10) “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.” *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). “If the moving party properly supports his or her motion, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists.” *Redmond v Heller*, 332 Mich App 415, 438; 957 NW2d 357 (2020). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Id.* (quotation marks and citation omitted). “Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.” *Lowrey*, 500 Mich at 7, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (quotation marks omitted). “If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.” *Lowrey*, 500 Mich at 7, quoting *Quinto*, 451 Mich at 363 (quotation marks omitted). Our “review is limited to the evidence that had been presented to the circuit court at the time the motion was decided.” *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009). We review questions of statutory interpretation de novo. *Sterling Hts Pain Mgt, PLC v Farm Bureau Gen Ins Co of Mich*, 335 Mich App 245, 249 n 1; 966 NW2d 456 (2020).

III. ANALYSIS

Because the arguments of defendants, the Malloy plaintiffs, and the Jenkins plaintiffs, and the applicable statutes and legal reasoning in both consolidated cases in this matter are virtually identical, we address both appeals together.

Defendant essentially argues that it could refuse to pay and has no liability to pay no-fault benefits to the Malloy plaintiffs and the Jenkins plaintiffs because guardianship services were

provided to Malloy and Jenkins by individuals other than plaintiff. Specifically, defendant contends that plaintiff alone could provide guardianship services and because he had his law firm staff perform his duties he cannot obtain no-fault benefits for such services because MCL 700.5103 only allows a guardian to delegate his role to another person for 180 days if the guardian executed a power of attorney to the person and notified the court. Defendant contends that because of plaintiff's failure to comply with MCL 700.5103, the guardianship services were not lawfully rendered. We disagree.

These appeals require us to interpret the no-fault act and the way it intersects with the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, and determine whether the probate court properly applied the law. "The primary goal of statutory interpretation is to ascertain the legislative intent that may be reasonably inferred from the statutory language." *Dep't of Talent & Economic Dev/Unemployment Ins Agency v Great Oaks Country Club, Inc*, 507 Mich 212, 226; 968 NW2d 336 (2021) (quotation marks and citation omitted). "Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning . . ." *Id.* at 226 (quotation marks and citation omitted). "[C]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012) (quotation marks and citation omitted). "Provisions must be read in the context of the entire statute so as to produce a harmonious result." *Mericka v Dep't of Community Health*, 283 Mich App 29, 38; 770 NW2d 24 (2009). "When the Legislature uses different words, the words are generally intended to connote different meanings." *US Fidelity & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 14; 795 NW2d 101 (2009). "If a statute does not define a word, it is appropriate to consult dictionary definitions to determine the plain and ordinary meaning of the word." *Epps v 4 Quarters Restoration, LLC*, 498 Mich 518, 529; 872 NW2d 412 (2015).

The no-fault act provides that "an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." MCL 500.3105(1). MCL 500.3107(1)(a) provides that "personal protection insurance benefits are payable for . . . (a) [a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." "[I]f a person is so seriously injured in an automobile accident that it is necessary to appoint a guardian . . . for that person, the services performed by the guardian . . . are reasonably necessary to provide for the person's care" and are allowable expenses under MCL 500.3107. *Heinz v Auto Club Ins Ass'n*, 214 Mich App 195, 198; 543 NW2d 4 (1995).

EPIC governs the appointment of a guardian for an incapacitated person and sets forth in MCL 700.5314 a guardian's powers and duties. MCL 700.5314 plainly distinguishes between a guardian's powers and duties. The two terms are not interchangeable. A guardian's powers to the extent granted by the court under MCL 700.5306 include the power to establish the ward's residence, MCL 700.5314(a); give consent or approval to enable the ward to receive medical care, mental health care, professional care, counseling, treatment, or service, MCL 700.5314(c); execute, reaffirm, revoke a ward's do-not-resuscitate order with some requirements, MCL 700.5314(d); execute, reaffirm, revoke a ward's nonopiod directive, MCL 700.5314(f); execute, reaffirm, revoke a physician's orders for scope of treatment for the ward with some requirements, MCL 700.5314(g); take action to compel persons responsible to support the ward, to pay money

for the ward's welfare, and apply money and property for the ward's support, care, and education, MCL 700.5314(i).

A guardian's duties include being responsible for the ward's care, custody, and control and communicating and consulting with the ward if possible before making decisions, MCL 700.5314. A guardian also has the duty to make provisions for the ward's care, comfort, maintenance, and when appropriate education, secure services for the ward's mental and physical well-being, care for and protect the ward's personal and real property or dispose of it if in the ward's best interest, MCL 700.5314(b). Further, if a guardian executes a do-not-resuscitate order, the guardian has the duty to visit, communicate, and consult with the ward and consult directly with the ward's attending physician, MCL 700.5314(d). Similarly, respecting physician orders for scope of treatment, a guardian has the duty to visit, communicate, and consult with the ward about such orders, MCL 700.5314(h). A guardian has the duty to report at least annually the ward's condition and the ward's estate to the court, MCL 700.5314(j). Under MCL 700.5106, among other duties, a professional guardian appointed by the court has the duty to "ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided."

MCL 700.5103 governs a guardian's delegation of powers and in relevant part provides:

(1) By a properly executed power of attorney, . . . a guardian of a . . . legally incapacitated individual may delegate to another person, for a period not exceeding 180 days, any of the . . . guardian's powers regarding care, custody, or property of the . . . ward

* * *

(4) If a guardian for a . . . legally incapacitated individual delegates any power under this section, the guardian shall notify the court within 7 days after execution of the power of attorney and provide the court the name, address, and telephone number of the attorney-in-fact.

Defendant contends that plaintiff had the obligation but failed to satisfy any of the requirements set forth in MCL 700.5103 by not executing and granting powers of attorney to his law firm staff members to act as guardian, by not providing the probate court with names or contact information of his staff members, and by delegating his entire role as guardian to his law firm staff. To support its argument that plaintiff violated MCL 700.5103, defendant asserts that, under EPIC, MCL 700.1101 *et seq.*, a guardian's duties and power to act are indivisible. According to defendant, MCL 700.5314⁷ delineates a guardian's powers and duties, and this statute establishes

⁷ MCL 700.5314 provides, in part:

If meaningful communication is possible, a legally incapacitated individual's guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court

that duties flow from powers because it directs the guardian to perform certain tasks and melds these duties with the power to do so. We disagree.

Defendant's interpretation of EPIC overlooks the statutory language in which the Legislature makes distinctions between "duties" and "powers." The probate court highlighted that EPIC uses the word "power" in MCL 700.5103(1) and the word "duties" in MCL 700.5106(6). As noted above, "[w]hen the Legislature uses different words, the words are generally intended to connote different meanings." *US Fidelity & Guaranty Co*, 484 Mich at 14.

Defendant seeks to rely on Michigan's State Court Administrative Office (SCAO) form PC 633 which cites MCL 700.5103, which states that a guardian delegating his or her powers to "notify the court when you delegate duties under a durable power of attorney." SCAO recommendations, memorandums, interpretations, and forms, however, are not binding authority. See *Chelsea Investment Group, LLC v Chelsea*, 288 Mich App 239, 260; 792 NW2d 781 (2010) (stating that "an agency's interpretation is not binding on this Court and it cannot overcome the statute's plain meaning.").

EPIC does not define "power" or "duties." According to *Black's Law Dictionary*, "power" is defined as

1. The ability to act or not act; esp., a person's capacity for acting in such a manner as to control someone else's responses.
2. Dominance, control, or influence over another; control over one's subordinates.
3. The legal right or authorization to act or not act; a person's or organization's ability to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another. [*Black's Law Dictionary* (11th ed)].

Black's Law Dictionary defines "duty" as

1. A legal obligation that is owed or due to another and that needs to be satisfied; that which one is bound to do, and for which somebody else has a corresponding right. [*Black's Law Dictionary* (11th ed)].

Accordingly, when granted a power pursuant to EPIC by a court, a guardian is authorized and holds the legal right to alter the "rights, duties, liabilities, or other legal relations" of the ward.

Regarding Docket No. 358006, plaintiff largely delegated the performance of duties to other individuals to assist in his care of his wards. He did not delegate powers. Therefore, he did not violate MCL 700.5103 as defendant contends. Specifically, billing records of plaintiff and plaintiff firm indicate that services performed by others—that is, other individuals at plaintiff firm

under section 5306, the guardian is responsible for the ward's care, custody, and control, but is not liable to third persons because of that responsibility for the ward's acts. In particular and without qualifying the previous sentences, a guardian has all of the following powers and duties, to the extent granted by court order

who were delegated tasks by plaintiff to perform on behalf of Malloy—including attending meetings with Malloy’s doctors, attending guardianship visits, attending team meetings with Malloy’s family, telephone conferences with Patrick and Kathren, and meeting at a Social Security Administration office. Defendant points out in its brief on appeal that other tasks that plaintiff delegated included preparing Malloy’s annual guardian report, overseeing Malloy’s work program, and attending a hearing to modify Malloy’s guardianship. Virtually every task delegated to staff members by plaintiff did not alter the “rights, duties, liabilities, or other legal relations” of Malloy. *Black’s Law Dictionary* (11th ed). Rather, these delegated tasks, such as telephone conferences with Patrick and Kathren, were merely “legal obligation[s] that [were] owed or due to [Malloy] and that [needed] to be satisfied.” *Black’s Law Dictionary* (11th ed).

However, we agree with defendant that there is a genuine issue of material fact regarding whether plaintiff violated MCL 700.5103 when he delegated tasks that altered the “rights, duties, liabilities, or other legal relations” of Malloy without complying with the requirements of MCL 700.5103. Specifically, there is a genuine issue of material fact that preparing for a hearing to modify Malloy’s guardianship on April 23, 2019, and attending an April 24, 2019 hearing regarding the petition to modify Malloy’s guardianship altered Malloy’s rights and legal relations. Plaintiff appears to have assigned these two tasks to employees at his law firm but it is unclear whether and to what extent plaintiff engaged the services of the law firm or individuals and if he did so on behalf of the ward. Because these hearings involved adding and removing Malloy’s coguardians, these tasks altered Malloy’s rights and legal relations—an act fitting the definition of a power. *Black’s Law Dictionary* (11th ed). Therefore—because plaintiff did not prepare for or attend the April 24, 2019 hearing himself—there is a genuine issue of material fact regarding whether plaintiff delegated his guardianship powers as to these two tasks and, in doing so, violated MCL 700.5103. Because there is a genuine issue of material fact as to whether plaintiff delegated his guardianship powers as to the preparation for and attendance at a hearing to modify Malloy’s guardianship, there is also a genuine issue of material fact as to whether these services were “lawfully rendered” within the meaning of the no-fault act and whether these services are compensable under the no-fault act. Therefore, the probate court erred in granting partial summary disposition in favor of the Malloy plaintiffs with regard to these two tasks.

Similarly, regarding Docket No. 358021, plaintiff largely delegated duties—and not powers—to other individuals as it relates to Jenkins’s guardianship. Therefore, he did not violate MCL 700.5103 as to nearly all delegated tasks. Specifically, the Jenkins plaintiffs’ billing records indicate that services performed by individuals other than plaintiff on behalf of Jenkins included attending guardianship visits and communicating with Jenkins. Defendant also notes in its brief on appeal that services provided on behalf of Jenkins by individuals other than plaintiff included coordinating Jenkins’s care needs, reviewing medical reports, meeting with Jenkins’s doctors, meeting with individuals from Jenkins’s banks, and meeting with officials from the Social Security Administration. Similar to Docket No. 358006, virtually every task delegated to these staff members by plaintiff did not alter the “rights, duties, liabilities, or other legal relations” of Jenkins. *Black’s Law Dictionary* (11th ed). Nearly all of these delegated tasks were merely “legal obligation[s] that [were] owed or due to [Jenkins] and that [needed] to be satisfied.” *Black’s Law Dictionary* (11th ed).

However, we again agree with defendant that a genuine issue of material fact exists regarding whether plaintiff violated MCL 700.5103 by delegating tasks that altered the “rights,

duties, liabilities, or other legal relations” of Jenkins without complying with the requirements of MCL 700.5103. Specifically, viewing the evidence in a light most favorable to defendant, there is a genuine issue of material fact regarding whether preparing for a hearing to modify Jenkins’s guardianship on April 23, 2019, and attending an April 24, 2019 hearing regarding the petition to modify Jenkins’s guardianship altered Jenkins’s rights and legal relations. Plaintiff appears to have assigned these two tasks to employees at his law firm but it is unclear whether and to what extent plaintiff engaged the services of the law firm or the individuals and if he did so on behalf of the ward. Because these hearings involved modifying Jenkins’s guardianship and adding or removing a guardian, these tasks altered Jenkins’s rights and legal relations—an act fitting the definition of a power. *Black’s Law Dictionary* (11th ed). Therefore, because plaintiff did not prepare for or attend the April 24, 2019 hearing himself, there is a genuine issue of material fact regarding whether plaintiff delegated his guardianship powers as to these two tasks and, in doing so, violated MCL 700.5103. Because a genuine issue of material fact exists as to whether plaintiff improperly delegated his guardianship powers to modify Jenkins’s guardianship, there is also a genuine issue of material fact as to whether these services were “lawfully rendered” and whether these services are compensable under the no-fault act. Therefore, the probate court erred in granting summary disposition in favor of the Jenkins plaintiffs with regard to these two tasks.

Defendant also argues that the probate court erred in determining that a guardian’s duties and power to act were divisible. Defendant asserts that the probate court’s determination “threw discord between MCL 700.5103 and [MCL 700.5314.]” Defendant notes that MCL 700.5103’s “reference to a guardian’s ‘powers’ naturally includes the guardian’s duties in light of the indivisible nature of the two under EPIC.” We disagree.

As previously discussed MCL 700.5314 distinguishes between the powers and duties of a guardian. Although both duties and powers are discussed in MCL 700.5314, duties and powers of a guardian bear separate qualities that comport with the definitions described above. For example, while MCL 700.5314(a) lists the establishment of “the ward’s place of residence” as a power of the guardian, this establishment is referring to a guardian’s “ability to alter . . . the rights, duties, liabilities, or other legal relations” of the ward. *Black’s Law Dictionary* (11th ed). Conversely, the portion of the statute instructing the guardian to “visit the ward within [three] months after the guardian’s appointment” establishes a duty—that is, a “legal obligation that is owed” to the ward. *Black’s Law Dictionary* (11th ed). Accordingly, defendant’s contention that “powers” and “duties” are inseparable lacks merit. Further, there is no discord between MCL 700.5103 and MCL 700.5314. The references to both powers and duties in MCL 700.5314 also demonstrates that the Legislature intended that these two terms have different meanings under EPIC, and do not constitute the same things.

Further, as both the Malloy and Jenkins plaintiffs’ briefs point out, MCL 700.5106 demonstrates that the Legislature anticipated that a guardian would employ or task other individuals with caring for a ward. MCL 700.5106(5) and (6) provide:

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward’s care visits the ward within 3 months after the professional guardian’s appointment and not less than once within 3 months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided.

MCL 700.5106 expressly permits that “an individual associated with the professional guardian” may be “responsible for the ward’s care” and that a professional guardian “shall ensure that there are a sufficient number of employees assigned to the care of wards” in order to carry out the necessary duties. The plain language of the statute demonstrates that the Legislature contemplated that individuals other than the guardian would perform duties on behalf of a ward.

Accordingly, the probate court was correct in part and erred in part.

Specifically, a genuine issue of material fact exists regarding whether plaintiff delegated tasks that altered the “rights, duties, liabilities, or other legal relations” of Malloy and Jenkins when he allowed other individuals to prepare for and attend hearings regarding the modification of Malloy’s and Jenkins’s guardianships. Because “an insurer is required to pay benefits only for treatment lawfully rendered,” there also remains a genuine issue of material fact regarding whether defendant is responsible for the payments for these two tasks in each case. *Sterling Hts Pain Mgt, PLC*, 335 Mich App at 249.

Respecting all other contested matters, the probate court properly granted plaintiffs’ motions and denied defendant’s motions.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ James Robert Redford

/s/ Brock A. Swartzle

/s/ Mark J. Cavanagh