

STATE OF MICHIGAN
COURT OF APPEALS

NAHID SOLTANPOUR,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 25, 2000

No. 201499

Wayne Circuit Court

LC No. 94-418414-CK

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to defendant under MCR 2.116(C)(10) on plaintiff's claim for wage loss benefits stemming from an automobile accident. We reverse and remand.

In 1977, plaintiff was awarded a certificate from the University of Alabama, which indicates that she had "completed the established course of instruction for Physical Therapist Assistant." We are told that plaintiff returned to her native Iran after graduation, but was unable to leave until late 1980 or early 1981 due to the outbreak of the Iran/Iraq War.¹ While in Iran, plaintiff received a Bachelor of Science degree in Physical Therapy from Tavanbakhshi University. Upon her return to the United States, plaintiff initially worked as a Physical Therapist Assistant at St. Joseph Hospital in Pontiac, Michigan. After her credentials arrived from Iran in 1991, plaintiff applied for and received a temporary physical therapist license issued by the Michigan Board of Physical Therapy.

In January 1992, plaintiff obtained full-time employment with Orthopedic Rehabilitation, Inc. Apparently, Orthopedic Rehabilitation employs professionals like plaintiff to perform outpatient physical therapy. For a significant part of her employment with Orthopedic Rehabilitation, plaintiff worked at a Detroit nursing home. On October 16, 1992, plaintiff was injured in an automobile accident as she was heading to work at that nursing home. At the time of the accident, defendant was plaintiff's no-fault insurer. In June 1994, plaintiff filed a claim against defendant under § 3142 of the No-Fault Act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*, after defendant initially denied her claim for wage loss benefits and reimbursement for certain medical expenses. Even though defendant began at some point

to pay benefits to plaintiff, the lawsuit continued. The case was mediated on March 23, 1995, with the panel unanimously awarding plaintiff \$42,000. The documentation before us indicates that both parties rejected the evaluation.²

Later, defendant filed its motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant argued that because plaintiff's temporary physical therapy license had expired on January 31, 1991, and because plaintiff had failed on four occasions to pass the required test for obtaining a permanent physical therapy license, plaintiff was not only barred from receiving any further wage loss compensation, but had actually been overpaid by defendant. The trial court agreed, granting defendant summary disposition on plaintiff's wage loss claim "for the period of wage loss payments beyond January of 1993, when plaintiff's license expired." Subsequently, plaintiff agreed to voluntarily dismiss her remaining claim for \$1,500 in medical expenses without prejudice.

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

The No-Fault Act provides for the payment of personal protection insurance benefits for "[w]ork loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured." MCL 500.3107(1)(b); MSA 24.13107(1)(b). The claimant's actual loss of income is reduced by fifteen percent because statutory wage loss benefits are not taxable income. *Id.* "The legislative purpose in providing work-loss benefits to an injured person . . . is to compensate him (and his dependents by providing protection from economic hardship caused by the loss of the wage earner's income as a result of an automobile accident." *Perez v State Farm Mut Insurance Co*, 418 Mich 634, 640; 344 NW2d 773 (1984). Accord *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). Loss of income "is not restricted to the injured person's wage level at the time of injury." *MacDonald v State Farm Mut Ins Co*, 419 Mich 146, 151; 350 NW2d 233 (1984), quoting the drafter's comments to § 1(a)(5) of the Uniform Motor Vehicle Accident Reparations Act (UMVARA).³ Depending upon the circumstances, adjustments either up or down can be made where appropriate. *Id.*

In the case at hand, the central question is whether plaintiff's loss of her temporary physical therapist license removed her from the work force so that defendant no longer owed her work loss benefits. *Marquis, supra* at 650. Section 17820 of the Public Health Code⁴ provides:

A person shall not engage in the practice of physical therapy *unless licensed or otherwise by this article*. A person shall engage in the actual treatment of an individual only upon the prescription of an individual holding a license, other than a subfield license, issued under part 166, 170, 175, or 180, or the equivalent license issued by another state. [MCL 333.17820; MSA 14.15(17820) (emphasis added, footnote omitted).]

Section 16215 provides in pertinent part:

(1) A licensee who holds a license other than a health profession subfield license may delegate to a licensed *or unlicensed individual who is otherwise qualified by education, training, or experience* the performance of selected acts, tasks, or functions where the acts, tasks, or functions fall within the scope of practice of the licensee's profession and will be performed under the licensee's supervision. . . .

(5) An individual who performs acts, tasks, or functions delegated pursuant to this section does not violate the part which regulates the scope of practice of that health profession. [MCL 333.16215(1), (5); MSA 14.15(16215)(1), (5) (emphasis added).]

As plaintiff correctly observes, while the loss of her temporary license meant that she could not work as a "physical therapist," as that term is defined under the governing article of the Public Health Code,⁵ she was not disqualified from working in the field of physical therapy. Nothing in the statutory scheme prevents it. Indeed, as the above statutes clearly indicate, the Public Health Code contemplates and authorizes unlicensed persons to practice physical therapy in the appropriate supervised setting. MCL 333.16215(1); MSA 14.15(16215)(1). Although she had failed to pass her licensing exam, the record indicates that plaintiff is qualified by education, training, and experience to perform physical therapy. *Id.* In fact, plaintiff did work for many years in the field both before and after she failed the exam.

Accordingly, we hold that because plaintiff's loss of her temporary license did not remove her from the work force in her chosen field, defendant was obligated to pay her actual wage loss benefits. Those benefits, however, should be adjusted to reflect any change which resulted from the loss of the temporary license. Finally, per the parties stipulation, plaintiff is free to pursue her claim of medical benefits on remand.

Reversed and remanded. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

¹ The Iran-Iraq War began when Iraq invaded its neighbor in September 1980.

² There was some confusion below on whether plaintiff had actually rejected the mediation award. Contrary to the documentary evidence, the court noted at a hearing held on November 5, 1996, that plaintiff contended she actually had wanted to accept the award, and had never given her attorney the authority to reject it. The court never directly addressed the merits of the dispute. However, in its subsequent questioning of plaintiff regarding her decision to dismiss without prejudice her claim for remaining medical expenses and to pursue her appellate options regarding the court's grant of summary disposition to defendant, the court made clear to plaintiff that under such a settlement, defendant would preserve its right to pursue a claim for overpayment of wage loss benefits and mediation sanctions.

³ The Michigan No-Fault Act is patterned on the UMVARA. *MacDonald, supra* at 151.

⁴ MCL 333.1101 *et seq.*; MSA 14.15(1101) *et seq.*

⁵ MCL 333.17801(1)(a); MSA 14.15(17801)(1)(a) defines a "physical therapist" as being "an individual licensed under this article to engage in the practice of physical therapy." "Practice of physical therapy is defines as meaning

the evaluation of, education of, consultation with, or treatment of an individual by the employment of effective properties of physical measures and the use of therapeutic exercises and rehabilitative procedures, with or without assistive devices, for the purpose of preventing, correcting, or alleviating a physical or mental disability. . . . [MCL 333.17801(1)(b); MSA 14.14(17801)(1)(b).]