STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER G. SAROLI,

Plaintiff-Appellee,

v

HASTINGS MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
July 10, 2001

No. 217613
Macomb Circuit Court
LC No. 98-001210-NF

Before: Hood, P.J., and Doctoroff and K.F. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from a trial court order granting plaintiff's motion for summary disposition, denying defendant's motion for summary disposition, and ordering defendant to pay plaintiff's outstanding medical expenses, as well as costs and attorney fees. We affirm.

Defendant first argues that the trial court erred by granting plaintiff's motion for summary disposition and awarding plaintiff attorney fees. We disagree. We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Id*. Furthermore, we review a trial court's finding of an unreasonable refusal to pay or delay in paying insurance benefits for clear error. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999). Clear error exists where we are left with a definite and firm conviction that a mistake has been made. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000).

Pursuant to MCL 500.3148(1); MSA 24.13148(1), an attorney is entitled to a reasonable fee for representing a claimant in an action for personal protection insurance benefits when an insurer unreasonably refuses to pay a claim or unreasonably delays in making payment. *Attard, supra* at 317. If an insurer refuses to make payments or delays payments, a rebuttable presumption of unreasonableness arises that places the burden on the insurer to justify the refusal

or delay. *Id*. If the refusal or delay is the product of a legitimate question of statutory construction, constitutional law, or factual uncertainty, it will not be deemed unreasonable. *Id*. However, a priority dispute among insurers will not excuse an insurer's delay in making timely payments. *Bloemsma v Auto Club Ins Ass'n*, 174 Mich App 692, 697-698; 436 NW2d 442 (1989).

In this case, plaintiff had a health insurance policy through Healthsource Provident ("Healthsource"), a self-funded plan governed by the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq*. On May 21, 1997, Mark Hooton, in-house counsel for Healthsource, sent a letter to Ginger Horton, defendant's adjuster, advising her that defendant was responsible for paying primary insurance benefits to plaintiff. Hooton stated in his letter that he enclosed copies of the plan documents, although defendant claims not to have received a copy of the ERISA policy at that time. Regardless of whether a copy of the insurance policy was provided to defendant, the letter clearly notified defendant that it was required to pay primary benefits for plaintiff's medical expenses. Therefore, as of defendant's receipt of Hooton's May 21, 1997 letter, defendant was obligated to pay plaintiff's outstanding medical bills within thirty days after receiving proof of the losses pursuant to MCL 500.3142(2); MSA 24.13142(2). If defendant intended to contest priority with Healthsource, the priority dispute would not excuse untimely payments. *Bloemsma, supra* at 697-698.

Defendant also argues that it continued to pay plaintiff's medical expenses until February 12, 1998, when it was erroneously advised that Healthsource was responsible for paying primary benefits. However, the evidence showed that many of the medical expenses plaintiff incurred after May 21, 1997, when defendant became aware of its priority status, went unpaid for extended periods of time. Specifically, plaintiff was treated by Shapiro Orthopaedics on June 27, 1997, however, defendant did not pay for plaintiff's treatment until September 28, 1998. In addition, invoices for independent medical examinations conducted on October 6, 1997, and November 6, 1997, were not paid until April 24, 1998, and May 12, 1998. Furthermore, plaintiff was treated at Hutzel Hospital on October 8, 1997, but defendant did not pay the hospital until September 10, 1998, resulting in the hospital turning plaintiff's account over to a collection agency. It is apparent that defendant failed to fulfill its obligation to pay plaintiff's medical expenses within thirty days after receiving proof of the expenses.

Defendant also maintains that attorney fees were inappropriate because it never disputed that it was responsible for making primary payments. Rather, defendant claims that it simply wanted to ensure that the language in the ERISA policy required defendant, and not plaintiff's health insurance carrier, to pay primary benefits. However, defendant's argument merely reveals the existence of a priority dispute, which does not excuse an insurer's failure to make timely payment. *Bloemsma, supra* at 697-698. Because defendant unreasonably refused to pay primary benefits to plaintiff after it was notified of its priority status, the trial court properly granted plaintiff's motion for summary disposition and awarded plaintiff costs and attorney fees. MCL 500.3148(1); MSA 24.13148(1); *Attard, supra* at 317.

Defendant next argues that the amount of attorney fees assessed against defendant was unreasonable. We review a trial court's finding regarding a reasonable fee for an abuse of discretion. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113-114; 593 NW2d

595 (1999). An abuse of discretion exists when an unbiased person, considering the facts upon which the trial court relied, would conclude that there was no justification or excuse for the decision. *Detroit/Wayne Co Stadium Authority v 7631 Lewiston, Inc*, 237 Mich App 43, 47; 601 NW2d 879 (1999).

A trial court has discretion to award reasonable attorney fees, regardless of the actual fees incurred by a plaintiff. *Head, supra* at 114. If a party challenges the reasonableness of a fee request, the court should conduct an evidentiary hearing. *Head, supra* at 113. However, the failure to conduct a hearing is not error where the parties created a sufficient record to review the issue, and the court fully explained the reasons for its decision. *Id*. Factors to consider when assessing the reasonableness of an attorney's fee are: (1) the professional standing and experience of the attorney, (2) the skill, time and labor involved, (3) the amount in question and the results achieved, (4) the difficulty of the case, (5) the expense incurred, (6) the nature and length of the professional relationship with the client, (7) the likelihood that, if apparent to the client, the acceptance of the particular employment will preclude other employment by the attorney, (8) the fee normally charged in the locality for similar legal services, and (9) the time limitations imposed by the client or circumstances. *Id*. at 114; *In re Condemnation of Private Property for Highway Purposes*, 209 Mich App 336, 341-342; 530 NW2d 183 (1995).

Here, the parties agreed to forgo an evidentiary hearing regarding the reasonableness of plaintiff's counsel's hourly rate and the amount of time that counsel charged on the case. The trial court simply stated its findings on the record that the rate of $200 per hour was reasonable, and the time charged on the case was reasonable. The court did not explain its reasoning for arriving at its decision, however, in determining the reasonableness of an attorney fee, a trial court need not detail its findings as to each factor considered. *Michigan National Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993). Defendant argues that the fee was unreasonable because defense counsel was paid only $85 per hour for handling the same file. We do not agree that the fact that defense counsel was paid a substantially lower rate than plaintiff's counsel rendered plaintiff's attorney's hourly rate unreasonable. Plaintiff submitted a list of various facilitators' hourly rates to the trial court, and plaintiff's counsel's fee was not unusually excessive when compared to others on the list. The fee normally charged in the same locality for similar legal services is a proper consideration. *In re Condemnation, supra* at 341-342. Because plaintiff's rate was in accordance with other attorneys' rates, the trial court did not abuse its discretion by finding that $200 per hour was a reasonable fee.

Defendant also argues that the amount of time charged was unreasonable because it agreed to pay primary benefits on July 8, 1998, and it should not be required to pay attorney fees for any time charged after that date. As previously discussed, defendant was on notice of a priority dispute as early as May 21, 1997, when it received Hooton's letter, and defendant was obligated to pay primary benefits at that time. If defendant had paid benefits as it was required, plaintiff would not have been compelled to file suit and would not have incurred the legal fees as issue. Defendant's own failure to timely pay benefits resulted in plaintiff incurring the legal fees which defendant now contests. Because plaintiff's legal fees were generated as a result of

defendant's own wrongdoing, the trial court did not abuse its discretion by finding that the amount of time charged was reasonable.

Affirmed.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Kirsten Frank Kelly