STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR JARRAD,

Plaintiff-Appellee,

v

INTEGON NATIONAL INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
January 27, 2004

No. 245068
Ingham Circuit Court
LC No. 00-092678-NF

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right the grant of summary disposition in plaintiff's favor in this no-fault action. We affirm.

Defendant argues that it was entitled to set-off plaintiff's long-term disability wage loss benefits, received through his employer's self-funded plan, because it constituted "other health and accident coverage" subject to coordination under MCL 500.3109a. We disagree. Rulings on motions for summary disposition and issues of statutory interpretation are reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

MCL 500.3109a requires a no-fault insurer to offer an insured coordinated health and accident coverage and states, in pertinent part: "An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured." MCL 500.3109a. If the insured does elect coordinated coverage, the no-fault insurer becomes secondarily responsible for certain expenses arising from an accident while the other provider, usually a health insurer, becomes primarily liable for payment of the covered loss. See *ACIA v Frederick & Herrud, Inc, (After Remand)*, 443 Mich 358, 383-384; 505 NW2d 820 (1993); *Sprague v Farmers Ins Exchange*, 251 Mich App 260, 267; 650 NW2d 374 (2002).

The dispositive issue here is the construction of the phrase "other health and accident coverage" within MCL 500.3109a. Defendant claims that plaintiff's self-funded long-term disability benefits plan, which he acquired from his employer through a collective bargaining agreement, is within the purview of this permissive coordination clause. However, our Supreme Court in *LeBlanc v State Farm Mut Automobile Ins Co*, 410 Mich 173; 301 NW2d 775 (1981),

overruled on other grounds *Jarosz v Detroit Automobile Inter-Ins Exchange*, 418 Mich 565, 579; 345 NW2d 563 (1984), construed the word "coverage" in that phrase as "a word of precise meaning in the insurance industry, [and] refers to protection afforded by an insurance policy, or the sum of the risks assumed by a policy of insurance." *Id*. at 204. The *LeBlanc* Court further held that the use of the word "coverage" "evinces an intent to provide unique treatment to health and accident insurance, as opposed to other perhaps equally duplicative 'benefits.'" *Id*. In the years since *LeBlanc*, as noted by this Court in *Spencer v Hartford Accident & Indemnity Co*, 179 Mich App 389, 398; 445 NW2d 520 (1989), the scope of coverage included within the contemplation of "other health and accident coverage" has expanded with regard to medical benefits received from typical health plans generally provided by employers. Defendant contends that such expansion of coverage has generally occurred with regard to work loss type benefit plans as well. It has not.

Defendant relies on *Rettig v Hastings Mut Ins Co*, 196 Mich App 329; 492 NW2d 526 (1992) in support of its argument that long-term disability work loss benefits are generally coordinated with no-fault work loss benefits. In that case, the issue was whether the plaintiff's long-term disability *insurance* policy, which the plaintiff had paid for through payroll deductions and which was not provided through a collective bargaining agreement, was "other health and accident coverage" under MCL 500.3109a. *Id*. at 330-331. This Court concluded that it was "other health and accident coverage" because the long-term disability benefits were provided to the plaintiff pursuant to an insurance policy. *Id*. 332-333. This Court specifically noted that the holding did not conflict with *Spencer*, *supra*, because the benefits were not paid by the plaintiff's employer and were not paid pursuant to a collective bargaining agreement—dispositive distinctions. *Id*. at 333.

This case, however, is more like *Spencer* than *Rettig*. In *Spencer*, the plaintiff received work loss benefits from his employer through a formal wage continuation plan pursuant to a collective bargaining agreement. *Id*. at 391-392. This Court noted that, although the Uniform Motor Vehicle Accident Reparations Act (UMVARA)—an act from which our no-fault act was modeled—provided for the coordination of wage continuation benefits derived from union agreements, our Legislature rejected that provision and adopted a narrower provision limited to coordinating "other health and accident coverage." *Id*. at 400. Accordingly, the defendant in *Spencer* was not entitled to set-off its payment of work loss no-fault benefits by the amount of wage continuation benefits the plaintiff received through his employment. *Id*. Similarly, here, plaintiff received wage loss benefits from his employer through a formal wage continuation plan pursuant to a collective bargaining agreement. Consistent with established precedent, we agree with the trial court and conclude that those wage continuation benefits are not "other health and accident coverage" within the contemplation of MCL 500.3109a.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper