STATE OF MICHIGAN

COURT OF APPEALS

SCOTTIE D. WATSON,

Plaintiff-Appellant,

v

WASTE MANAGEMENT OF MICHIGAN, INC. and PACIFIC EMPLOYERS INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
January 4, 2005

No. 250070
Wayne Circuit Court
LC No. 02-232029-NF

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured while driving a vehicle owned by his employer, defendant Waste Management, and insured by defendant Pacific. He filed a worker's compensation claim, which was handled by Waste Management's claims service administrator, Gallagher Bassett Services. More than a year later, plaintiff filed this action for no-fault insurance benefits. Defendants moved to dismiss, asserting that the claim was filed after the one-year limitations period expired. The trial court agreed and dismissed the action.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is barred by the statute of limitations is a question of law that is reviewed de novo on appeal. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997). The burden of proving that a claim is time-barred is on the party asserting the defense. *Kuebler v Equitable Life Assurance Soc'y of the United States*, 219 Mich App 1, 5; 555 NW2d 496 (1996).

MCL 500.3145(1) provides in part:

> An action for recovery of personal protection insurance benefits . . . 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 . . . has been given to the insurer within 1 year after the accident or 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 one 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 one which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

There is no dispute that plaintiff did not file suit within one year of the date of the accident and that Pacific did not pay no-fault benefits. Therefore, plaintiff can maintain this action only if the insurer received notice within one year of the accident.

Waste Management received timely notice of the claim. That was not sufficient to constitute notice to Pacific. *Boss v Wolverine Ins Co*, 123 Mich App 175, 177-178; 333 NW2d 212 (1983). If an employer's worker's compensation carrier and no-fault insurance carrier and one and the same, notice of the injury and other information required under § 3145(1) provided to the insurer in connection with a worker's compensation claim may or may not be sufficient to toll the one-year limitations period. Compare *State Farm Mut Auto Ins Co v Ins Co of North America*, 166 Mich App 133, 139-140; 420 NW2d 120 (1988), with *Spayde v Advanced Foam Sys, Inc*, 124 Mich App 454, 458; 335 NW2d 1 (1981). It is undisputed that no insurer was given notice of the injury. The only entity besides Waste Management to receive notice was Gallagher, the worker's compensation claims administrator.

Plaintiff contends that Pacific was Waste Management's worker's compensation carrier as well as its no-fault carrier and that Gallagher was Pacific's agent. Therefore, analogizing to *State Farm, supra,* plaintiff concludes that notice of the information required by § 3145(1) provided to Pacific's agent in connection with the worker's compensation claim was sufficient to constitute the notice required under § 3145(1) and toll the limitations period. We need not determine whether Gallagher was Pacific's agent or whether State Farm applies equally to an insurer's agent as well as to an insurer because the evidence clearly shows that Pacific did not provide worker's compensation insurance for Waste Management.

The evidence shows that Pacific is one of a number of Philadelphia companies affiliated under the umbrella of Ace USA. One of the other affiliated companies is Indemnity Insurance Company of North America. Insurance documents clearly show that Pacific provided Waste Management's no-fault insurance and that Indemnity provided Waste Management's worker's compensation insurance. Plaintiff contends that a question of fact exists as to the identity of Waste Management's worker's compensation carrier because in a document filed with the state, a Gallagher employee identified Pacific as the worker's compensation carrier. We disagree. Apart from the fact that there is no evidence to show that the employee's identification of the insurer had any basis in fact, the policy document itself clearly shows that Pacific was not the worker's compensation carrier. Therefore, the trial court did not err in granting defendants' motion.

Affirmed.

/s/ William B. Murphy
/s/ Kirsten Frank Kelly