STATE OF MICHIGAN

COURT OF APPEALS

LAVERNE MAGER, as guardian of TIMOTHY G. COTE, and TIMOTHY G. COTE,

Plaintiffs-Appellees,

v

TIMOTHY ANDREW LLOYD-LEE and JACQUELINE LLOYD-LEE,

Defendants,

and

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee,

and

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
November 2, 2006

No. 264796
Marquette Circuit Court
LC No. 04-041876-NF

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

This case involves a priority dispute for the payment of personal protection insurance (PIP)[1] benefits to plaintiff Timothy Cote under Michigan's no-fault automobile insurance act. MCL 500.3101 *et seq*. Defendant-appellant Auto-Owners Insurance Company (Auto-Owners) appeals by leave granted the trial court's order determining that Auto-Owners was higher in priority than defendant-appellee Farmers Insurance Exchange (Farmers). We reverse and remand.

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[1] Personal protection insurance benefits are abbreviated PIP by convention. See *McKelvie v Auto*
(continued…)

In March 2004, Cote was walking to a store when he was allegedly struck by a truck operated by defendant Timothy Lloyd-Lee. In September 2004, plaintiffs sued Timothy and Jacqueline Lloyd-Lee for non-economic damages caused by the accident. Plaintiffs also alleged claims for PIP benefits against Farmers as the insurer of the truck involved in the accident. In the alternative, plaintiffs alleged that Cote was a resident ward of New Horizons, Inc (New Horizons), and, therefore, that Cote was entitled to PIP benefits under the no-fault policy issued to New Horizons by Auto-Owners.

At the time of the accident, Cote was a member of the Fairweather Lodge, which is a community mental health program for brain damaged and mentally challenged individuals.[2] The Fairweather Lodge program is managed by Pathways, which is a community mental health authority. Participants in the Fairweather Lodge program are provided a case manager from Pathways. The case manager assists the member with day-to-day living, provides some counseling and helps the participant obtain social services such as food stamps, social security and Medicaid.

New Horizons was originally a program within Pathways that was spun off into a separate for-profit corporation. New Horizons owns and maintains the building occupied by the Fairweather Lodge program and also provides janitorial and carpet cleaning services to the general public.[3] The participants in the Fairweather Lodge program are the owners of New Horizons. In addition, some participants are also employees of New Horizons. New Horizons has no corporate officers, but has a board of directors that includes two employees of Pathways. New Horizons was created to enable the members to own and operate their own home and to provide employment opportunities.

In June 2005, Auto-Owners and Farmers both moved for summary disposition under MCR 2.116(C)(10). The trial court held a hearing on the motion in July 2005. At the hearing, Farmers argued that New Horizons was so intertwined with Pathways that the trial court should disregard the separate existence of New Horizons for determining whether the services provided establish that Cote was a resident ward of New Horizons. Auto-Owners countered that whether Cote was a resident ward of New Horizons should be determined solely by Cote's relationship to New Horizons. Auto-Owners further argued that this relationship did not support the conclusion that Cote was a resident ward of New Horizons. The trial court agreed with Farmers and determined that the services provided by Pathways could be considered in determining whether Cote was a resident ward of New Horizons for purposes of the provision of PIP benefits. The

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(…continued)

Club Ins Assoc, 459 Mich 42, 44 n1; 586 NW2d 395 (1998).

[2] Cote, who was 42 by the time of this appeal, suffered a closed head injury when he was eighteen. The injury left Cote with some paralysis, memory problems, vision problems and behavior changes. Cote's mother, plaintiff Laverne Mager, is his guardian and conservator.

[3] The relationship between Fairweather Lodge and New Horizons is not entirely clear from the record. Tammy O'Brien, who is the program supervisor for Pathways, testified at her deposition that Fairweather Lodge is merely a program. However, at his deposition, Douglas Morton, who is the chief executive officer for Pathways, testified that Fairweather Lodge was a separate corporate entity whose employment arm is New Horizons.

trial court then concluded that Cote was a resident ward of New Horizons under the terms of the policy and, therefore, that, as New Horizons' insurer, Auto-Owners was responsible for the payment of PIP benefits to Cote. The trial court entered an order to that effect in August 2005. Auto-Owners then appealed the order by leave granted.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Moore v Cregeur*, 266 Mich App 515, 517; 702 NW2d 648 (2005). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Cawood v Rainbow Rehabilitation Centers, Inc*, 269 Mich App 116, 119; 711 NW2d 754 (2005). Summary disposition is appropriate under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." This case also involves the interpretation and application of the no-fault act and contract terms. The proper interpretation of a contract is a matter of law that this Court reviews de novo. *Clark v DaimlerChrysler Corp*, 268 Mich App 138; 706 NW2d 471 (2005). Likewise, this Court reviews de novo the proper interpretation of a statute. *Hamade v Sunoco, Inc (R&M)*, 271 Mich App 145; 721 NW2d 233 (2006).

Under Michigan's no-fault act, every "owner or registrant of a motor vehicle required to be registered in this state" must have personal protection insurance. MCL 500.3101(1). An insurer who elects to provide automobile insurance is liable to pay PIP benefits subject to the provisions of the no-fault act. MCL 500.3105(1). Under MCL 500.3114 and MCL 500.3115 an insurer may become liable for the payment of PIP benefits to someone other than an insured. In addition to providing persons with the right to file PIP claims against insurers, these sections also set out priorities that govern claims by a person injured in an automobile accident where the person may be entitled to make PIP claims against multiple insurers. See *Belcher v Aetna Casualty & Surety Co*, 409 Mich 231, 251; 293 NW2d 594 (1980) (noting that sections 3114 and 3115 constitute both entitlement provisions and priority provisions). MCL 500.3115(1) addresses claims for PIP benefits by persons who, as is the case with Cote, were injured while not occupying a motor vehicle.

MCL 500.3115(1) states that, except as provided in MCL 500.3114(1),

> . . . a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim [PIP] benefits from insurers in the following order of priority:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident.
>
> (b) Insurers of operators of motor vehicles involved in the accident.

MCL 500.3114(1) provides that, except under situations not relevant here, "a personal protection insurance policy described in [MCL 500.3101(1)] applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident."

Courts have interpreted the reference to MCL 500.3114(1) in MCL 500.3115(1) as requiring an insured to seek compensation from his or her own no-fault insurer before seeking compensation from the insurers of the owners or operators of the vehicles involved in the accident. See *Underhill v Safeco Ins Co*, 407 Mich 175, 191-192; 284 NW2d 463 (1979);

Esquivel v American Fidelity Fire Ins Co, 90 Mich App 56, 59-60; 282 NW2d 240 (1979). Hence, before Cote may claim payment of PIP benefits from Farmers as the insurer of the owner or registrant of the vehicle involved in the accident, Cote must first, where applicable, seek benefits from his own insurer or the insurer of his spouse or a relative of either domiciled in the same household.

In the present case, Auto-Owners argues that the trial court erred when it determined that Cote was a resident relative of New Horizons as that term is defined under the policy issued by Auto-Owners to New Horizons. Specifically, Auto-Owners contends that the trial court erred when it disregarded the separate legal existence of New Horizons and Pathways in order to conclude that Cote was a ward of New Horizons. We agree.

Under the terms of the policy issued to New Horizons by Auto-Owners, the term "relative" is defined as "a person who resides with and is related to the named insured by blood, marriage, or adoption," but also includes "a ward or foster child who resides with the named insured."[4] The named insured in the Auto-Owners policy is New Horizons. Hence, in order to be entitled to benefits under the Auto-Owners policy issued to New Horizons, Cote must have been a relative of New Horizons at the time of the accident. It is apparent that Cote was not related to New Horizons by blood, marriage or adoption and was not a foster child. Therefore, Cote would only be entitled to PIP benefits under New Horizons' policy if he were a ward of New Horizons.

Although, the common and ordinary meaning of the term "ward" is a person "'under the protection or tutelage of a person,'" *Hartman v Ins Co of North America*, 106 Mich App 731, 739; 308 NW2d 625 (1981), quoting *Webster's Third New Int'l Dictionary* (1965), a resident of a corporate group home can be a ward of the corporation, *United States Fidelity & Guaranty Co v Citizens Ins Co*, 241 Mich App 83, 88-89; 613 NW2d 740 (2000). In order to determine whether a resident is a ward, it is necessary to "examine the factual context" of the case. *Hartman*, *supra* at 739. The primary inquiry concerns the nature and extent of the control exercised by the group home's personnel over the individual members of the group home. *Id.*; *United States Fidelity & Guaranty Co*, *supra* at 88-89.

In the present case, New Horizons did not exercise any control over Cote's day-to-day activities. Indeed, the primary relationship between New Horizons and Cote was one of landlord and tenant. Hence, examining this relationship alone, Cote cannot be deemed a ward of New Horizons. Notwithstanding the limited nature of the relationship between New Horizons and

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[4] Although MCL 500.3114(1) states that a personal protection insurance policy described under MCL 500.3101(1) applies to "the person named in the policy, the person's spouse, and a relative of either domiciled in the same household," nothing within this provision precludes an insurer from extending PIP benefits to a broader range of persons. Instead, the statutory language appears to set a minimum standard of coverage for PIP policies. Therefore, it is appropriate to examine the definitions within the Auto-Owners policy to ascertain who is an insured for purposes of PIP benefits.

Cote, the trial court determined that Cote was a ward of New Horizons. The trial court reached this conclusion by treating New Horizons and Pathways as though they were one entity.

It is a general principle that Michigan courts will respect the existence of separate entities. *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 650; 364 NW2d 670 (1984). The fiction of distinct corporate existence is a convenience introduced into the law to serve the ends of justice. *Id.* "However, when this fiction is invoked to subvert justice, it may be ignored by the courts." *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). Although there is no single rule delineating when the separate existence of a corporate entity may be disregarded, see *id.*, a court is warranted in disregarding the separate existence of a corporation where: (1) the corporate entity is a mere instrumentality of another individual or entity, (2) the entity was used to commit a wrong or fraud, and (3) where there is an unjust injury or loss to the plaintiff, *Rymal v Baergen*, 262 Mich App 274, 293-294; 686 NW2d 241 (2004). In the present case, there is no indication that the separate existence of New Horizons was used to commit a wrong or fraud.

We further disagree with Farmers' contention that *Pfaffenberger v Pavilion Restaurant Co*, 352 Mich 1; 88 NW2d 488 (1958) is applicable to the facts of this case. The Court in *Pfaffenberger* noted that a separate corporate existence could be disregarded to establish an agency relationship between two corporate entities under the rule stated in *Herman v Mobile Homes Corp*, 317 Mich 233; 26 NW2d 757 (1947). See *id.* at 6. In *Herman*, our Supreme Court noted that a showing of fraud is not necessary to disregard the separate existence of a corporate entity where one corporation exercised such dominion over the other that the dominating corporation should be held to be a principal of the other. *Herman*, *supra* at 244-247. Although it is clear that Pathways has some influence over the operations of New Horizons, we do not agree that it amounts to complete dominion over New Horizons' affairs. Furthermore, this case does not involve an attempt to hold Pathways liable for the actions of New Horizons, but rather an attempt to extend New Horizons' insurance coverage to include persons who receive services from Pathways. See *Allstate Ins Co v Citizens Ins Co of America*, 118 Mich App 594, 600-603; 325 NW2d 505 (1982) (refusing to disregard the separate existence of a corporate entity to extend insurance coverage). In the absence of compelling equities in favor of disregarding the separate existence of New Horizons, see *Kline v Kline*, 104 Mich App 700, 702-703; 305 NW2d 297 (1981), we simply cannot conclude that Pathways activities and relationship with Cote should be considered in determining whether Cote was a ward of New Horizons.

When the relationship between Cote and New Horizons is considered in isolation, it is apparent that Cote was not a ward of New Horizons. Consequently, Cote was not a relative of New Horizons and, as a result, was not insured under the policy issued to New Horizons by Auto-Owners. Instead, because Cote did not have a no-fault policy of his own and was not covered under the no-fault policy of a spouse or relative, under MCL 500.3115(1) Cote was required to seek PIP benefits from the insurer of the owner or registrant of the motor vehicle involved in the accident, which is Farmers.

For these reasons, we reverse the decision of the trial court and vacate the trial court's August 5, 2005 order granting Farmers' motion for summary disposition and denying Auto-

Owners' motion for summary disposition. Further, we remand this case to the trial court for entry of summary disposition in favor of Auto-Owners. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Michael R. Smolenski