STATE OF MICHIGAN

COURT OF APPEALS

JOHN VANDERKOOY and CHERYL VANDERKOOY,

Plaintiffs-Appellees,

v

ALF YOUNG,

Defendant/Cross-Defendant,

and

ENTERPRISE LEASING COMPANY OF DETROIT,

Defendant/Cross-Plaintiff-Appellant,

and

STATE FARM MUTUAL INSURANCE COMPANY,

Defendant/Cross-Defendant-Appellee.

UNPUBLISHED
February 27, 2007

No. 270980
Macomb Circuit Court
LC No. 05-000075-NI

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Enterprise Leasing Company of Detroit ("Enterprise") appeals as of right the trial court's September 26, 2005 order denying its motion for summary disposition with prejudice, and granting summary disposition in plaintiff's[1] favor based upon its finding that Enterprise is

[1] "Plaintiff" shall refer to John Vanderkooy only, as Cheryl Vanderkooy's claim is derivative in nature.

responsible for paying no-fault benefits to plaintiff. Enterprise also appeals from the trial court's February 1, 2006 opinion and order finding that plaintiff is entitled to an undetermined amount of attorney fees and interest for overdue benefit payments, and the May 19, 2006 final order awarding plaintiff a specified amount of penalty interest. Because Enterprise was the priority insurer responsible for the payment of no-fault benefits to plaintiff and it unreasonably refused to pay such benefits, we affirm.

The facts in this matter are straightforward and uncontested. Plaintiff was riding a motorcycle in Tennessee when he was involved in an accident with a vehicle driven by Alf Young. Young leased the vehicle from Enterprise, which insured the vehicle through a self-insurance policy. Plaintiff alleged that the accident was caused by Young's negligence and resulted in significant injuries to plaintiff. Plaintiff further alleged that because the vehicle driven by Young was insured through Enterprise, Enterprise was responsible for payment of personal protection insurance benefits allowable under the Michigan No-Fault Act. Plaintiff contended that in the event that Enterprise was not the priority insurer, State Farm Mutual Insurance Company ("State Farm") was liable based upon its issuance of insurance policies for motor vehicles owned by plaintiff. In a series of orders, Enterprise was found to be liable for plaintiff's no-fault benefits, penalty attorney fees, and penalty interest.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for the plaintiff's claim. *Arias v Talon Development*, 239 Mich App 265, 266; 608 NW2d 484 (2000). In evaluating a motion brought under this subrule, the Court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Spencer v Citizens Ins Co*, 239 Mich App 291, 299; 608 NW2d 113 (2000). When the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* Questions of statutory interpretation are questions of law this court also reviews de novo. *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002).

On appeal, Enterprise first argues that the trial court erred in denying its motion for summary disposition and granting summary disposition in plaintiff's favor with respect to no-fault benefits, as MCL 500.3111 does not require it to pay plaintiff personal protection insurance ("PIP") benefits under the circumstances present in this case. We disagree.

MCL 500.3111 provides:

> Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy or has provided security approved by the secretary of state under subsection (4) of section 3101.

Enterprise interprets MCL 500.3111 as requiring it to pay benefits only if plaintiff was a named insured under Enterprise's policy. However, this interpretation is inconsistent with the express language of the statute. The statute provides for benefits as long as the injured party was a named insured under *a* personal protection insurance policy. The references in this statute, then, are not to a specific insurer or insurance policy but only to an injured person and the location of the accident causing the injury. Here, it is undisputed plaintiff was involved in an out of state accident, and was a named insured under *a* personal protection insurance policy issued by State Farm. Thus, plaintiff is entitled to PIP benefits.

In asserting that it is not liable for plaintiff's PIP benefits, Enterprise mistakenly relies upon MCL 500.3111 as establishing the priority of insurers responsible for PIP benefits. That statute, however, provides only a basis for determining whether one is entitled to PIP benefits at all—not who is responsible for paying such benefits. As succinctly stated in *Auto-Owners Ins Co v State Farm Mut Auto Ins Co,* 187 Mich App 617, 619; 468 NW2d 317 (1991):

> It is clear that § 3111 provides that personal protection insurance benefits are payable for injuries suffered in accidents occurring outside Michigan to certain people. A person injured in an accident outside the State of Michigan must look to the provisions of § 3111 to determine whether he qualifies for personal injury protection benefits. To determine the priority of insurers liable for those benefits, the claimant must look to § 3114, MCL § 500.3114.

Thus, to determine whether Enterprise is, in fact, liable for the challenged PIP benefits, we look to the language of MCL 500.3114. We specifically look to the language in subsection 5, as plaintiff was on a motorcycle (exempted from the definition of "motor vehicle" pursuant to MCL 500.3101(2)(e)) and Young was driving a motor vehicle when the accident occurred.

MCL 500.3114(5) provides:

> A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:
> (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.
> (b) The insurer of the operator of the motor vehicle involved in the accident.
> (c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.
> (d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

There is no dispute that plaintiff suffered injuries arising from an accident that occurred while he was the operator or passenger of a motorcycle, and which showed evidence of involvement of Young's motor vehicle. The priority insurer, then, is the insurer of the owner or registrant of the *motor vehicle* involved in the accident. Here, that is Enterprise. The trial court thus correctly determined that Enterprise was the priority insurer for purposes of PIP benefits payable to plaintiff.

Enterprise next argues that the lower court erred in awarding plaintiff attorney fees and interest. This argument, as couched by Enterprise, however, is dependent upon a finding that Enterprise is not and was not liable for PIP benefits. Given this Court's resolution of Enterprise's liability in this matter, this argument is without merit.

Moreover, an insurer will owe penalty interest under MCL 500.3142 if it refuses to pay benefits, its interpretation of a statute relied upon for its refusal is erroneous, and it is determined to be liable for the benefits. *Nash v Detroit Auto Inter-Insurance Exchange,* 120 Mich App 568, 572; 327 NW2d 521 (1982). This is precisely the situation that occurred here.

Penalty attorney fees, provided for at MCL 500.3148, are payable if the insurer unreasonably refused to pay a claim or unreasonably delayed in making proper payment. MCL 500.3148(1); *Borgess Medical Center v Resto,* ____ Mich App ____; ____ NW2d ___ (2007). When benefits are overdue within the meaning of § 3142(2), a rebuttable presumption of unreasonableness arises and the insurer has the burden to justify its refusal or delay in paying. *Id.* Under settled case law, however, a priority dispute among no-fault insurers will not justify delay in paying a no-fault claim. *Id*.; *Bloemsma v Auto Club Ins Assoc,* 174 Mich App 692, 697; 436 NW2d 442 (1989). Because the primary reason for Enterprise's denial of benefits was a priority dispute, its denial of no-fault benefits was unreasonable and the trial court did not clearly err by awarding plaintiff attorney fees under MCL 500.3148(1). [2]

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Alton T. Davis
/s/ Deborah A. Servitto

[2] Enterprise's last argument on appeal being relevant only if this Court reversed the lower court's decision as to liability, we need not consider the same.