STATE OF MICHIGAN

COURT OF APPEALS

DAVID BAKER, a Legally Incapacitated Person, by BETH BAKER, his Guardian,

Plaintiff/Counter-Defendant/Appellee,

v

AUTOMOBILE CLUB OF MICHIGAN, d/b/a AAA MICHIGAN,

Defendant/Counter-Plaintiff/Third-Party Plaintiff/Appellant,

and

AUTO OWNER'S INSURANCE COMPANY and HOMEOWNER'S INSURANCE COMPANY,

Third-Party Defendants.

UNPUBLISHED
March 6, 2012

No. 295812
Saginaw Circuit Court
LC No. 06-059173-NO

DAVID BAKER, a Legally Incapacitated Person, by BETH BAKER, his Guardian,

Plaintiff/Counter-Defendant/Appellee,

v

AUTOMOBILE CLUB OF MICHIGAN, d/b/a AAA MICHIGAN,

Defendant/Counter-Plaintiff/Third-Party Plaintiff/Appellant,

and

AUTO OWNER'S INSURANCE COMPANY and HOMEOWNER'S INSURANCE COMPANY,

No. 296340
Saginaw Circuit Court
LC No. 06-059173-NO

Third-Party Defendants.

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

I concur with the majority's affirmance of the denial of summary disposition and the remand for a determination of taxable costs.

I dissent from the majority's reversal of the trial court's decision to grant plaintiff attorney fees under MCL 500.3148(1). The trial court granted attorney fees based upon its findings that the no-fault benefits for Baker's residential treatment were overdue and had been unreasonably denied or delayed. Given these findings, plaintiff was properly awarded fees under section 3148(1). Neither the statute nor court rule provide that the issue whether payments were overdue cannot be made post-verdict by the court where the factfinder was not asked to make the determination.

/s/ Douglas B. Shapiro