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STATE OF MICHIGAN

COURT OF APPEALS

CARVAN JACKSON,

Plaintiff-Appellant,

v

MEEMIC INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 17, 2020

No. 349527
Wayne Circuit Court
LC No. 18-005446-NF

Before: RIORDAN, P.J., and O'BRIEN and SWARTZLE, JJ.

PER CURIAM.

In this action for recovery of personal-protection-insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq.*,[1] plaintiff appeals as of right from the trial court's entry of summary disposition in favor of defendant. We affirm.

I. BACKGROUND

Plaintiff was injured in an automobile accident in May 2017, and defendant was his no-fault insurer. Plaintiff was hospitalized because of his injuries, and he remained in nursing care until May 2018 when he was discharged to his home. Plaintiff then sued, alleging that defendant had failed to provide PIP benefits to which plaintiff was entitled. In late October 2018, plaintiff's wife suffered a stroke. She was hospitalized for approximately one week, after which she received inpatient treatment in a rehabilitation facility for approximately 42 days.

[1] After the trial court entered its order granting defendant's motion for summary disposition, the no-fault act was substantially amended by 2019 PA 21, effective June 11, 2019. "Amendments of statutes are generally presumed to operate prospectively unless the Legislature clearly manifests a contrary intent." *Tobin v Providence Hosp*, 244 Mich App 626, 661; 624 NW2d 548 (2001). Neither party has urged any such retroactive application in this case. Therefore, in this opinion, we will apply and refer to the provisions of the no-fault act that were in effect when this case commenced.

Plaintiff filed this suit through his retained counsel on May 15, 2018, and continued to rely on retained counsel until plaintiff personally filed a responsive pleading over his own signature on February 13, 2019. This filing occurred after the trial court had entered a stipulated order granting the motion to which plaintiff was responding. Defendant subsequently filed an emergency motion to adjourn the scheduling order with the agreement of plaintiff's retained counsel, but plaintiff personally filed a response opposing that motion. On March 20, 2019, plaintiff personally filed a response to defendant's motion for partial summary disposition, and on the same day his retained counsel filed a withdrawal of plaintiff's personal response to the emergency motion to adjourn. By filing pleadings over his own signature while represented by retained counsel, plaintiff violated MCL 600.1430, which provides that "[n]o person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case."

In response to plaintiff's personal filings, defendant filed an emergency motion for contempt of court, arguing that plaintiff had disrupted the proceedings and designated himself as authorized to practice law. Plaintiff, in his personally filed response, argued that he was not engaged in the unauthorized practice of law, and that his trial attorney and opposing counsel had improperly entered into an agreement regarding defendant's motion for adjournment of the scheduling order.

During the contempt hearing, the trial court provided plaintiff opportunities to consider whether he wished to continue to be represented by his retained attorney, and plaintiff ultimately decided to terminate his attorney-client relationship. The trial court permitted plaintiff's counsel to withdraw, and allowed plaintiff 21 days to obtain new counsel or proceed *in propria persona*. Additionally, the court ordered plaintiff to pay $1,000 in attorney fees to defendant's trial counsel because plaintiff's actions in personally filing pleadings while he was represented by retained counsel resulted in delays and confusion.

Defendant moved for summary disposition of plaintiff's claims based on a fraud-exclusion provision in the insurance policy, arguing that plaintiff signed and submitted fraudulent claims for replacement and attendant-care services provided by his wife during the time when she could not have provided those services because she was receiving medical treatment for her stroke. In response to the trial court's questions, plaintiff conceded that he submitted presigned forms for these claims, and that his wife never provided those services. The trial court granted summary disposition in favor of defendant.

This appeal followed.

II. ANALYSIS

A. SELF-REPRESENTATION

Plaintiff first argues that in ordering him to pay attorney fees to opposing counsel, the trial court erroneously judged him guilty of the unauthorized practice of law and otherwise violated his constitutional right to proceed *in propria persona*. This argument is without merit.

"We review a trial court's issuance of a contempt order for an abuse of discretion." *Porter v Porter*, 285 Mich App 450, 454; 776 NW2d 377 (2009). We also review for an abuse of

discretion a trial court's award of attorney fees and costs. *Souden v Souden*, 303 Mich App 406, 414; 844 NW2d 151 (2013). That standard applies generally to a trial court's exercise of its inherent authority to sanction litigants as needed to promote the orderly and expeditious disposition of the business before it. See *Maldonado v Ford Motor Co*, 476 Mich 372, 376, 388; 719 NW2d 809 (2006). "An abuse of discretion occurs when the decision is outside the range of principled outcomes." *Hardrick v Auto Club Ins Ass'n*, 294 Mich App 651, 659-660; 819 NW2d 28 (2011). "This Court also reviews de novo issues of constitutional and statutory law." *Janer v Barnes*, 288 Mich App 735, 737; 795 NW2d 183 (2010).

MCL 600.1701 provides, in relevant part as follows:

> The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.
>
> (h) All persons for assuming to be and acting as officers, attorneys, or counselors of any court without authority . . . , or for any other unlawful interference with or resistance to the process or proceedings in any action.

Further, "trial courts possess the inherent authority to sanction litigants and their counsel." *Maldonado*, 476 Mich at 376. "This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id*. A trial court may award legal fees to a party who has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation." *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005).

An individual's right to act as his own advocate in legal proceedings is well established. Const 1963, art 1, § 13 provides that "[a] suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney." The Legislature codified this right, providing that "[e]very person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person." MCL 600.1430. But, pertinent to this case, that statute adds that "[n]o person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case."

Plaintiff protests that the trial court failed to address his claims that his former trial counsel failed to represent his interests or that there was a breakdown in the attorney-client relationship. These arguments are not supported by the record. The trial court readily permitted plaintiff to end his relationship with retained counsel, and specifically addressed plaintiff's concerns when it advised plaintiff that it did not believe that his trial counsel "was trying to sell [plaintiff] out," and it believed that plaintiff's trial counsel had his "best interest at heart."

On appeal, plaintiff adds to his complaints over trial counsel's performance that the latter "confessed" that he "made an arrangement" with opposing counsel not to oppose a motion for partial summary disposition. We are not disposed to entertain any such fact-sensitive advocacy that was not presented below. See *In re Beers*, 325 Mich App 653, 677; 926 NW2d 832 (2018). We further conclude that no further development of this argument is in order. The trial court permitted plaintiff to terminate the attorney-client relationship, and plaintiff points to no prejudice that he suffered regarding any such "arrangement."

Moreover, plaintiff fails to address the basis or propriety of the trial court's decision to impose sanctions. Although defendant argued below that plaintiff's personal filings violated MCL 600.916, the trial court did not specify that, or any other, statutory prohibition when it ruled that plaintiff's personal submission of filings while he had retained counsel was "contrary to the law." Yet, "[a] trial judge is presumed to know the law." *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612; 773 NW2d 267 (2009). It is evident that the trial court had in view MCL 600.1430, which prohibits a person from prosecuting or defending a "civil action in person, when he has an attorney in such case." Plaintiff does not acknowledge MCL 600.1430, let alone suggest that it improperly restricts the right to self-representation.

Plaintiff invokes our state Constitution's recognition of the right to self-representation only by referencing it in a subheading. In doing so, plaintiff accurately quotes Const 1963, art 1, § 13 as providing that an individual may "prosecute or defend his suit, either in his own proper person or by an attorney," but fails to appreciate that, by recognizing the right to proceed personally "or" with legal counsel, this constitutional provision is fully consistent with the requirement of MCL 600.1430 that a civil litigant choose between those two approaches.

For these reasons, plaintiff has shown neither that the trial court erred in sanctioning him, nor that his right to self-representation was infringed in any way.

B. FRAUD

The trial court granted defendant's motion for summary disposition on the grounds that plaintiff had triggered the fraud-exclusion in the insurance policy when he signed and submitted claims for replacement and attendant-care services provided by his wife that included the period during which she was receiving medical treatment for her stroke. Plaintiff challenges that decision, arguing that the trial court was confused regarding the difference between replacement-service and attendant-care claims. Plaintiff also argues that the trial court failed to consider reasonable inferences from the evidence that refuted defendant's fraud theory. Neither of these arguments addresses the bases for the trial court's decision.

"We review a trial court's decision on a motion for summary disposition de novo." *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013). "A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of the plaintiff's claim and should be granted, as a matter of law, if no genuine issue of any material fact exists to warrant a trial." *Doe v Henry Ford Health Sys*, 308 Mich App 592, 596-597; 865 NW2d 915 (2014).

Not in dispute is that the subject insurance policy included a provision according to which the "entire Policy" was rendered "void" in the event that any insured person "intentionally

concealed or misrepresented any material fact or circumstance relating to . . . any claim made under it."

> To void a policy because the insured has wilfully misrepresented a material fact, an insurer must show that (1) the misrepresentation was material, (2) that it was false, (3) that the insured knew that it was false at the time it was made or that it was made recklessly, without any knowledge of its truth, and (4) that the insured made the material misrepresentation with the intention that the insurer would act upon it. A statement is material if it is reasonably relevant to the insurer's investigation of a claim. [*Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 424-425; 864 NW2d 609 (2014) (cleaned up).]

Fraudulent conduct may be inferred from circumstantial evidence. *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 458; 559 NW2d 379 (1996).

In invoking the fraud exclusion below, defendant made issue of claims for services that plaintiff's wife allegedly provided during a period when plaintiff was indisputably in nursing care. In response, plaintiff pointed out that there was a distinction between replacement and attendant-care services, and argued that his claims for replacement services that his wife performed while he was in a nursing facility were appropriate given that she was performing services that he would have performed if he were not injured. The trial court apparently agreed with plaintiff because it granted defendant's motion for summary disposition on other grounds. Nothing in the record suggests that the trial court suffered from any confusion regarding the nature of replacement and attendant-care services, let alone that any such confusion had any bearing on the decision to grant defendant's motion for summary disposition. Plaintiff's appellate argument is thus inapt.

Defendant asserted fraud based on the deposition testimony of plaintiff's wife that she suffered a stroke on October 22, 2018, which caused her to spend approximately one week in a hospital followed by 42 days in a rehabilitation center. Yet, plaintiff submitted a claim for replacement and attendant-care services indicating that his wife provided such services for the entire month of October 2018, including the period late in the month when she was incapacitated by her stroke and attendant convalescence.

The trial court asked plaintiff why he submitted claim calendars showing his wife "performing services when she had a stroke and she's in the hospital," and plaintiff conceded that he and his wife "predated signing" those calendars. The trial court stated that it would grant defendant's motion for summary disposition based on "the information that was presented at" the deposition of plaintiff's wife because there was "clearly fraud."

On appeal, plaintiff does not raise, or attempt to argue, any challenge to the substantive bases underlying the trial court's decision to grant defendant's motion for summary disposition in connection with plaintiff's wage-loss claims. Plaintiff does not suggest that there is any question that his wife was incapacitated by a stroke for several weeks starting in latter part of October 2018, as she testified at her deposition. Nor does plaintiff make issue of his admission that he and his wife predated the signed services claim calendars at issue, or of his having later submitted calendars revised to avoid attributing compensable actions to his wife in the immediate aftermath of her stroke.

Although we note our Supreme Court's recent opinion in *Meemic v Fortson*, __ Mich __, __; __ NW2d __ (2020) (Docket No. 158302), we conclude that the analysis set forth in that case does not apply here, where the false statements were made by the injured person seeking PIP benefits, not by third-party attendant-care providers. Furthermore, we conclude that this Court's analysis in *Haydaw v Farm Bureau Ins Co*, __ Mich App __, __; __ NW2d __ (2020) (Docket No. 345516), does not apply here, where the false statements were made in the form of a direct claim for payment of benefits under the insurance contract.

Affirmed.

/s/ Michael J. Riordan
/s/ Colleen A. O'Brien
/s/ Brock A. Swartzle