STATE OF MICHIGAN

COURT OF APPEALS

ROBERT S. SPOTTEN,

Plaintiff,

v

STATE FARM INSURANCE COMPANIES,

Defendant-Appellee/Cross-Appellee,

and

LINCOLN GENERAL INSURANCE,

Defendant-Appellant/Cross-Appellee,

and

CONNECTICUT INDEMNITY CO,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
October 27, 2005

No. 256263
Berrien Circuit Court
LC No. 02-003906-NF

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant-Appellant, Lincoln General Insurance (Lincoln), filed its claim of appeal following the entrance of a Stipulation and Order of Voluntary Dismissal which closed the case in this declaratory judgment action. On appeal, Lincoln argues that this Court should reverse the trial court's order and order that either defendant-appellee, State Farm Insurance Companies (State Farm), or defendant-appellee, Connecticut Indemnity Insurance Co. (Connecticut), owes personal injury protection benefits (PIP) to the non-participating plaintiff, Robert S. Spotten,[1]

[1] Plaintiff is a Michigan resident and registrant in Michigan of a tractor-trailer truck involved in (continued…)

and also that Lincoln be reimbursed for the settlement it paid to plaintiff. Because we conclude that Lincoln does not have standing to appeal the trial court's final order, we affirm.

The underlying substantive facts are not at issue in this case. The lawsuit arises out of plaintiff's claim for first party no-fault benefits following a motor vehicle accident involving his Michigan registered tractor-trailer truck. Plaintiff is an owner/operator in the trucking industry. Shortly after signing an independent contract agreement with Nationwide Transport Services, Inc. (Nationwide), plaintiff was involved in a rear-end collision accident in Chicago, Illinois. Subsequently, plaintiff filed a complaint seeking declaratory relief as a result of a controversy regarding which of three carriers, Connecticut, State Farm, and Lincoln, was obligated to provide Michigan no-fault benefits to plaintiff.

All three codefendants filed separate motions for summary disposition. Initially, the trial court granted only State Farms' motion, finding no material fact at issue. After requesting and receiving supplemental briefs on the issue of liability from the remaining parties, and again entertaining oral argument on the motions for summary disposition, the trial court found that Lincoln had the highest priority for paying PIP benefits to plaintiff, and therefore that Lincoln was plaintiff's PIP carrier. The trial court further found that Connecticut was plaintiff's secondary or residual PIP carrier. The trial court denied Lincoln's summary disposition motion, granted in part and denied in part Connecticut's motion for summary disposition, and granted in part and denied in part plaintiff's counter-motion for summary disposition.

Plaintiff later settled his claim with Lincoln and the trial court entered a "Stipulation and Order of Voluntary Dismissal" closing the case. Plaintiff, Connecticut, and Lincoln signed the order wherein plaintiff agreed to voluntarily dismiss the cause of action. The order further stated that all parties agreed that the stipulation expressly preserved any party's right to appeal the trial court's rulings on the previous motions for summary disposition.[2] It is from this final order that Lincoln appeals. Plaintiff did not appeal and is not participating in this appeal.

At the outset, both Connecticut and State Farm challenge Lincoln's standing to appeal. Connecticut and State Farm argue that because Lincoln did not file a cross-claim against Connecticut or State Farm and plaintiff chose not to appeal the summary disposition orders, Lincoln does not have jurisdiction to assert plaintiff's appellate rights and does not have standing to appeal. Whether a party has standing to assert a claim is a question of law, which we review de novo. *Nat'l Wildlife Fed'n v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004); *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 527; 695 NW2d 508 (2004).

Generally, to have standing, "a party must have a legally protected interest that is in jeopardy of being adversely affected." *In re Foster*, 226 Mich App 348, 358; 573 NW2d 324 (1997). A party raising a claim must have "'some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.'" *Id*., quoting *Bowie v*

(…continued)

an out-of-state motor vehicle accident.

[2] State Farm was not a party to the stipulated order and the order concerns appealable issues between plaintiff and defendants. Again, plaintiff elected not to participate in this appeal.

Arder, 441 Mich 23, 42-43; 490 NW2d 568 (1992), quoting 59 Am Jur 2d, Parties, § 30, p 414. And, it is well-settled that "one party cannot claim another party's appellate opportunities." *Winters v National Indemnity Co*, 120 Mich App 156, 159; 327 NW2d 423 (1982). In applying this rule of law, this Court specifically declared that a defendant insurer had no standing to appeal the grant of summary judgment in favor of a codefendant insurer where the defendant filed no cross-claims against the codefendant and the plaintiff accepted the trial court's ruling. *Id*.

Clearly, the present case is indistinguishable from *Winters*. Since Lincoln did not file a cross-claim against either codefendant and plaintiff accepted the trial court's ruling, we must conclude that Lincoln lacks standing to appeal the summary disposition granted in favor of Connecticut and State Farm.[3] *Winters, supra*.

Because this case is resolved by application of *Winters, supra*, we are precluded from considering any further issues in this appeal.

Affirmed.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Pat M. Donofrio

[3] We note that in plaintiff's declaratory judgment action, Lincoln did not request other declaratory relief with respect to State Farm and Connecticut. MCR 2.605(F).