

STATE OF MICHIGAN
COURT OF APPEALS

LANESHA MCQUEEN,

Plaintiff-Appellant,

and

RENALI TRANSPORT, LLC,

Intervening Plaintiff,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

October 28, 2014

No. 317753

Wayne Circuit Court

LC No. 11-008509-NF

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Plaintiff, Lanesha McQueen, appeals as of right the trial court's order granting summary disposition for defendant, Auto Club Insurance Association, thereby dismissing plaintiff's claim for no-fault benefits for injuries sustained in two separate motor vehicle accidents. The trial court concluded that there was an identified higher priority insurer liable to pay benefits to plaintiff pursuant to MCL 500.3114. We affirm.

Plaintiff was injured in two separate motor vehicle accidents on October 1, 2010, and December 12, 2010. At the time of both accidents, plaintiff was residing with her mother, who had a no-fault insurance policy with defendant. In the first accident, plaintiff was a passenger in her mother's vehicle when it was rear-ended. In the second accident, plaintiff was a passenger in a medical transportation van of Renali Transport, LLC,¹ when that was rear-ended. Defendant paid plaintiff no-fault benefits following the first accident. However, because plaintiff was a passenger in a transportation van in the second accident, it refused to pay plaintiff benefits arising from that accident, asserting that the insurer of the van was the higher priority insurer, and plaintiff was required to file a claim with that insurer. Plaintiff filed a complaint, alleging that defendant refused to pay any benefits from the first and second accident, including wage

¹ The intervening plaintiff, Renali Transport, is not a party to this appeal.

loss, medical expenses, prescription expenses, attendant care benefits, replacement service benefits, and mileage. Defendant moved for summary disposition, arguing that the injuries supporting plaintiff's claim arose from the second accident, for which defendant was not liable to pay benefits. Although the trial court did not make specific factual findings, it appears implicit in her decision to grant defendant summary disposition that it determined that plaintiff's injuries arose from the second accident, and thus, defendant was not the proper insurer to sue. On appeal, plaintiff argues that the priority defense was not a valid defense and that there was a genuine issue of material fact regarding which accident caused her injuries.

We review de novo a trial court's decision on a motion for summary disposition. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009). "A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim[.]" and will be granted where there is no genuine issue of material fact. *Id.* at 474-474. "In determining whether a genuine issue of material fact exists, the court must consider all documentary evidence in a light most favorable to the nonmoving party." *Id.* at 475. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

Issues of statutory interpretation are questions of law that we also review de novo. *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 515; 821 NW2d 117 (2012). "The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language." *Id.* (quotation marks and citation omitted). "Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Id.* (quotation marks and citation omitted). This is the most reliable evidence of the Legislature's intent. *Id.* (citation omitted).

Under the no-fault act, a personal protection insurance provider is liable to pay benefits for accidental bodily injury arising out of the use of a motor vehicle. MCL 500.3105(1). Personal protection benefits include allowable expenses, replacement services, and work loss. MCL 500.3107(1); see also *Douglas v Allstate Ins Co*, 492 Mich 241, 257-258; 821 NW2d 472 (2012).

MCL 500.3114 provides for the priority of insurers liable for personal protection insurance benefits:

(1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 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.

(2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a

passenger in the following, unless that passenger is not entitled to personal protection insurance benefits under any other policy:

(a) A school bus, as defined by the department of education, providing transportation not prohibited by law.

(b) A bus operated by a common carrier of passengers certified by the department of transportation.

(c) A bus operating under a government sponsored transportation program.

(d) A bus operated by or providing service to a nonprofit organization.

(e) A taxicab insured as prescribed in section 3101 or 3102.

(f) A bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.

* * *

(4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

(b) The insurer of the operator of the vehicle occupied.

The plain language of MCL 500.3114 generally requires a person who suffers bodily injury while the occupant of a motor vehicle to claim benefits from his or her own insurance policy or through his or her spouse or household relative. If the injured person does not have an available insurance policy in this regard, then he or she must claim benefits from the owner or registrant of the occupied vehicle or the operator. *Amerisure Ins Co v Coleman*, 274 Mich App 432, 435; 733 NW2d 93 (2007). However, “except as provided” in subsection (1) and (4) makes it clear that subsection (2) maintains priority even over one’s own insurer when the person is injured in a motor vehicle operated in the business of transporting passengers, such as the medical transportation van involved in the second accident in this case. Thus, to the extent plaintiff claims benefits for injuries arising out of the second accident, she was required to file a claim against the insurer of the transportation van, not defendant.

Plaintiff argues that there is a genuine issue of fact regarding which accident caused her injuries, and thus, summary disposition was not appropriate. However, a review of the record reveals that plaintiff sought benefits for injuries arising out of the second accident. Although the parties made inconsistent statements in all lower court pleadings as to when plaintiff’s injuries occurred, the documentary evidence supporting the pleadings indicates that plaintiff’s injuries from the first accident had subsided before the second accident occurred.

The emergency room medical records show that plaintiff suffered a back and neck sprain or strain after the first accident, but there was no mention of any injury to her knee. She did attend some physical therapy, but it was of her own doing and not physician recommended. An independent examination conducted by Dr. Nathan Gross less than two months after the accident showed no abnormalities. Dr. Gross stated that plaintiff was clear for work and did not have any restrictions. He did appear to be perplexed by her knee, given that she could extend it fine while standing, but not while lying down. However, plaintiff failed to seek an orthopedic exam, as requested, and there was no mention of knee pain when she was treated in the emergency room. It was not until June 2011, after defendant terminated her benefits related to the first accident, that plaintiff sought an orthopedic exam. Dr. Stefan Glowacki, the orthopedic surgeon, did not disable plaintiff until July 6, 2011, due to numerous injuries that, according to the emergency room report and Dr. Gross, were not present following the first accident. Further, the only medical bills in the record are attached to defendant's motion for summary disposition and are for services rendered after the second accident. Based on this record, it is clear that plaintiff's claim for benefits was based on injuries all arising from the second accident.

Even if these injuries involved aggravation of preexisting injuries from the first accident, as plaintiff alleges, they still arose out of the second accident and the use of the medical transportation van. See *Wilkinson v Lee*, 463 Mich 388; 617 NW2d 305 (2000) (stating that aggravation of preexisting injuries is an injury under the no-fault act). Thus, plaintiff must look to the insurer of the transportation van for no-fault benefits pursuant to MCL 500.3114.

Plaintiff also argues that there is question of fact whether defendant paid all benefits arising from the first accident. According to defendant, it paid \$21,370.15 in medical expense reimbursement, \$124.36 in wage loss, and \$1,200 in replacement services following the first accident. Although the record does not contain documentary evidence supporting this, plaintiff never challenged this. In fact, plaintiff admitted that defendant paid some no-fault benefits from the first accident. Plaintiff, however, did not submit any evidence showing how the benefits defendant paid were unreasonable, nor did she submit any documentation showing the allowable expenses or wage loss she had incurred beyond what defendant had paid. See *Douglas*, 492 Mich at 267-270 (stating that the plain language of the no-fault requires allowable expenses to be incurred before an insurer is liable to pay them).

Further, at no time did plaintiff specifically challenge the reasonableness of the benefits paid. The first time reasonableness was mentioned was in plaintiff's objection to the proposed order, for which she only challenged the payments made to Renali Transport, which was not specifically plead. "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in [the] pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Innovative Adult Foster Care*, 285 Mich App at 475 (internal quotation marks and citation omitted). Plaintiff failed to provide any documentary evidence supporting her claim, and thus, failed to meet her burden. Accordingly, the trial court did not err by granting summary disposition in this regard, because there was no evidence that defendant's payments following the first accident were unreasonable.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Donald S. Owens