STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CADILLAC INSURANCE COMPANY In Liquidation.

JENNIFER GRANHOLM, Attorney General of the State of Michigan, ex rel FRANK M. FITZGERALD, Commissioner of Insurance of the State of Michigan,

Petitioner-Appellee,

and

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION; and MICHIGAN PROPERTY & CASUALTY GUARANTEE ASSOCIATION,

Appellees,

v

CADILLAC INSURANCE COMPANY, a Michigan Corporation,

Respondent,

and

EMS ENTERPRISES, INC; ERNEST SOLOMON; PRICE BROTHERS COMPANY; GRIFFIN PIPE PRODUCTS COMPANY; and J. WEBB, INC.,

Respondents-Appellants.

UNPUBLISHED
April 29, 2003

No. 234945
Ingham Circuit Court
LC No. 89-064126-CK

In re CADILLAC INSURANCE COMPANY In Liquidation.

JENNIFER GRANHOLM, Attorney General of the State of Michigan, ex rel FRANK M. FITZGERALD, Commissioner of Insurance of the State of Michigan,

Petitioner-Appellee,

v

No. 237336
Ingham Circuit Court
LC No. 89-064126-CK

CADILLAC INSURANCE COMPANY, a Michigan Corporation,

Respondent,

and

EMS ENTERPRISES, INC; and ERNEST SOLOMON,

Respondents-Appellants.

Before: Donofrio, P.J., and Markey and Murray, JJ.

PER CURIAM.

In Docket No. 234945, respondents, EMS Enterprises, Inc., Ernest Solomon, Price Brothers Company, Griffin Pipe Products Company, and J. Webb, Inc., appeal as of right an opinion and order granting a petition authorizing the processing of insurance claims. In Docket No. 237336, respondents,[1] EMS Enterprises, Inc., and Ernest Solomon, appeal as of right an order approving the associated proposed claims adjudication procedures.

This case arises out of the insolvency of the former Cadillac Insurance Company (Cadillac). Ernest M. Solomon solely owned EMS Enterprises, Inc., which in turn entirely owned Cadillac. Cadillac conducted business in several states including Michigan, Arizona, California, and Mississippi at the time of the insolvency. Conservatorship proceedings

[1] We will use the word "respondents" throughout this opinion to refer to both sets of respondents simply for ease and clarity, despite the fact that the parties constituting respondents in each of the cases are not identical.

commenced in 1989, and the receivership was required to marshal Cadillac's assets, continue operations, and pay appropriate claims pursuant to the then in effect Chapter 78.[2] After a liquidation order was entered, the receiver sent notice of Cadillac's liquidation and proof of claim forms to "all insureds and other persons known or reasonably expected to have or be interested in claims against the Cadillac estate."

The receiver "maintained regular and consistent contact" with guaranty associations including, the California Insurance Guarantee Association (CIGA), the Mississippi Insurance Guaranty Association (MIGA), and the Arizona Property and Casualty Insurance Guaranty Association (APCIGA) (collectively the "CAM Associations") beginning in early 1990 at the inception of the insolvency proceedings. The contacts included conversations concerning the status and amount of ongoing claims paid by the guaranty funds on behalf of the Cadillac estate. Years later, on June 17, 1998, the receiver filed a petition for an order authorizing the receiver to accept for processing the claims of CIGA, MIGA, and APCIGF. The receiver further sought an order declaring that the claims of CIGA, MIGA, and APCIGF were not barred as untimely. The circuit court held that the CAM Associations need not have filed any proof of claim in order to be reimbursed by the receiver. The appeal in docket no. 234945 followed. Subsequently, the circuit court approved the claims adjudication procedures. The appeal in docket no. 237336 followed. As it relates to the CAM Associations and covered claims, the issues in both appeals are the same or equally resolved in the opinion of this Court. With respect to late filed non-covered claims, the issue of timely proof of loss is dealt with separately.

On appeal, respondents argue that the CAM Associations did not file timely claims to Cadillac's assets during the liquidation proceedings, and therefore, dispute the distribution of Cadillac's assets. Respondents further argue that the circuit court erred when it approved the associated proposed adjudication procedures claiming Chapter 78's language bars untimely claims, the deadline was binding, and that assignees and subrogees are subject to the same filing requirements.

Questions of law are reviewed de novo on appeal. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 528 NW2d 491 (2001). This Court reviews de novo the trial court's interpretation of a statute, which constitutes a question of law. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 468; 633 NW2d 418 (2001); *Saginaw Co v John Sexton Corp of Michigan*, 232 Mich App 202, 214; 591 NW2d 52 (1998). Furthermore, the circuit court's decisions on the motions below effectively constituted a decision on cross-motions for summary disposition in the case. Thus, this Court reviews a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The distribution of assets of an insolvent insurance company is controlled by statute. When Cadillac began the liquidation process in 1989, the statute in effect was Chapter 78 of the Insurance Code, MCL 500.7800 through MCL 500.7868. As noted above, Chapter 78 was

[2] Chapter 78 was repealed by 1989 PA 302 and required receiverships initiated after January 1, 1990 to commence under the newly enacted Chapter 81. MCL 500.8101. We note that MCL 500.8101(4) specifically directs that proceedings commenced prior to January 1, 1990 "shall be conducted pursuant to former Chapter 78." MCL 500.8101(4).

repealed by PA 1989, No. 302, § 2, effective immediately on January 3, 1990, and was replaced with Chapter 81 of the Insurance Code, MCL 500.8101 *et seq*.[3] Accordingly, the circuit court has applied, and we will review the issue under the former Chapter 78 of the Insurance Code. MCL 500.8101(4).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The first criterion in determining intent is the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). The fair and natural import of the terms employed, in view of the subject matter of the law, should govern. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). The Legislature is presumed to have intended the meaning it plainly expressed. *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). Courts may not speculate as to the probable intent of the Legislature beyond the language expressed in the statute. *Cherry Growers, Inc v Michigan Processing Apple Growers, Inc*, 240 Mich App 153, 173; 610 NW2d 613 (2000). If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999); *Toth v AutoAlliance International (On Remand)*, 246 Mich App 732, 737; 635 NW2d 62 (2001).

Specifically regarding insurance laws in Michigan, "[t]he Michigan Insurance Code was enacted for the benefit of the public and the insurance laws should be liberally construed in favor of policy holders, creditors and the public." *Murphy v Seed-Roberts Agency, Inc*, 79 Mich App 1, 9; 261 NW2d 198 (1977) citing *Dearborn National Ins Co v Comm'r of Ins*, 329 Mich 107, 118, 44 NW2d 892 (1950); *Comm'r of Ins v American Life Ins Co*, 290 Mich 33, 43-44, 287 NW 368 (1939). As recently as 1998, this Court has followed this longstanding principle when construing insurance laws and policies. *Depyper v Safeco Ins Co of America*, 232 Mich App 433, 441; 591 NW2d 344 (1998).

In order to transact business in the state of Michigan at the time of this case, insurers were statutorily required to be members of the Michigan Property and Casualty Guaranty Association (the association). MCL 500.7911; *Satellite Bowl v MPCGA*, 165 Mich App 768, 771; 419 NW2d 460 (1988).

At the heart of both cases on appeal is respondents argument that the CAM Associations were required, under Chapter 78 of the Insurance Code, specifically MCL 500.7842(1), to file a proof of claim form in addition to those claim forms filed by assigned claimants in order to be reimbursed for amounts they spent on covered claims on behalf of the receiver. We find that the plain language of Chapter 78 is contrary to this assertion.

The applicable statutes demonstrate no requirement of guaranty associations to file any proof of claim to protect their reimbursement rights. It is true that MCL 500.7842(1) does require claimants to file claims "on or before the last date fixed for the filing of claims in the domiciliary proceedings" and it is undisputed that the CAM Associations did not file separate or

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[3] P.A. 1989, No. 302, § 3, provides in regard to the replacement provisions, "[t]his amendatory act shall take immediate effect, and was approved January 2, 1990 and filed January 3, 1990."

"blanket" proof of claim forms. However, respondents ignore the interplay of the language of MCL 500.7842(1) with other relevant statutes.

The interaction of the relevant statutes reveals that guaranty associations are statutorily assigned the rights of the timely-filed claimants whose claims it thereafter adjusted. In other words, guaranty associations actually stand in the shoes of those individual covered claimants pursuant to MCL 500.7935(2). It clearly states, that:

> *An insured or claimant* entitled to the benefits of this chapter *shall be considered to have assigned to the association*, to the extent of any payment received from the association, *his or her rights against the estate of the insolvent insurer, rights under the policy under which his or her claim arose, and any other rights the insured or claimant may have against another person for payment of the covered claim paid by the association*. MCL 500.7935(2). [Emphasis added.]

By definition, a "covered claim" is a claim that is filed in a timely manner pursuant to MCL 500.7925. Therefore, by operation of MCL 500.7842(1), MCL 500.7925, MCL 500.7935(2), each individual claimant whose claims the CAM Associations paid had filed a timely proof of claim form, and thus the associations succeed to the rights of the underlying individual covered claimant, including the right to recover from the receivership estate. Hence, the CAM Associations need not re-file individual proof of claims forms or "blanket" proof of claim forms.

Moreover, respondents argument that MCL 500.7935 does not support the court's result because it does not provide for the assignment of any rights to out-of-state guaranty associations is error. Clearly, respondent has ignored the plain language of MCL 500.7832 and MCL 500.7837 that together specifically describe and provide for the approval and payment of covered claims, and related expenses incurred by the receiver or ancillary receiver in this state or another.

Respondent also argues that the circuit court erred when it retroactively applied Chapter 81 to this case when Chapter 78 governs the case at bar. As stated above, by operation of MCL 500.8101(4), Chapter 81 does not apply to this case. However, our reading of the circuit court's opinion and order does not support respondents' contention. We find that although the trial court did make a reference to Chapter 81 in the order, the reference was cursory and the trial court in its analysis actually applied Chapter 78. Due to the marginal extent the lower court applied Chapter 81, it is insignificant and does not change the result of this case.

By application of the interaction of the relevant statutes in this case, the circuit court erred in part when it approved the proposed claims adjudication procedures. The circuit court correctly applied Chapter 78 of the Insurance Code and did not deviate from the statutory guidelines concerning covered claims through the CAM Associations. However, respondents correctly point out the limitation of MCL 500.7842(1) as that statute is applied to late filed non-covered claims. Covered claims as defined in MCL 500.7925 do not include claims presented to the receiver after the last date fixed for the filing of claims. MCL 500.7925(1)(c). Therefore, the specific portion of the trial court's order that approves the claims adjudication procedures regarding late non-covered claims violates MCL 500.7342(1) and is vacated. The remaining

portion of the order approving the procedures for covered claims is affirmed.

Affirmed in part, vacated in part. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Christopher M. Murray