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S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

DANE JARED MALUSI,

Plaintiff,

v

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant/Third-Party Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant/Third-Party Defendant-Appellant.

UNPUBLISHED
February 12, 2019

No. 341435
Kent Circuit Court
LC No. 15-007986-NF

Before: METER, P.J., and SAWYER and CAMERON, JJ.

PER CURIAM.

In this dispute regarding the priority of no-fault insurers, third-party defendant Citizens Insurance appeals as of right the trial court's order granting third-party plaintiff Farm Bureau General Insurance's motion for attorney fees under MCR 2.313(C). We reverse and remand.

I. BACKGROUND

Plaintiff, Dane Malusi, was struck by a vehicle while riding his bicycle. The vehicle fled the scene and the driver was never identified. This case arises out of plaintiff's attempt to recover personal protection insurance (PIP) benefits for injuries he sustained in the accident.

At the time of the accident, plaintiff's parents held a no-fault policy with Citizens. The policy covered three vehicles, including a vehicle titled in plaintiff's name. Plaintiff was listed as an "additional insured" driver on the policy. The policy also covered "family members,"

which it defined as any "person related to [the named insureds] by blood, marriage or adoption who is a resident of [the named insureds'] household." The policy did not define "resident."

Plaintiff's parents testified that they added plaintiff's vehicle to the insurance policy with the understanding that he would have no-fault coverage through Citizens. Indeed, plaintiff's parents often provided financial assistance to plaintiff. Nevertheless, it is unclear from the record where plaintiff actually lived. On the one hand, plaintiff had an apartment in Grand Rapids that he shared with his girlfriend and two children. This is the address that plaintiff listed on his driver's license. On the other hand, the record suggests that plaintiff had a tumultuous relationship with his girlfriend. The two would often fight, during which time plaintiff would stay at his parent's home in Cedar Springs. In fact, plaintiff had spent the entire week before the accident at his parent's home. Plaintiff kept personal-care items at both locations.

Plaintiff first sought PIP benefits through Citizens. When Citizens denied his claim, he sought benefits through the Michigan Assigned Claims Plan, MCL 500.3171. Michigan Assigned Claims appointed Farm Bureau to plaintiff's claim, see MCL 500.3172(1), but plaintiff alleged that Farm Bureau failed to pay him the PIP benefits he was owed. Thus, plaintiff brought a claim against Farm Bureau for these unpaid benefits. In turn, Farm Bureau filed a third-party complaint against Citizens, claiming that Citizens was responsible for plaintiff's PIP benefits as the insurer of highest priority.

Farm Bureau then sent a request for admissions to Citizens, asking Citizens to admit that it was the insurer of highest priority. Citizens denied the request and Farm Bureau and Citizens filed competing motions for summary disposition. Citizens argued that it was not liable for plaintiff's benefits because plaintiff was not a "named insured" under the policy and was not domiciled with his parents at the time of the accident. Farm Bureau disagreed, pointing out that plaintiff was included as an "additional insured" on the policy and that the policy only required him to "reside" with his parents to be entitled to coverage. The trial court sided with Farm Bureau, concluding that plaintiff's status as an "additional insured" under the Citizens policy entitled him to PIP coverage. According to the trial court, there was also no question that plaintiff was a "resident" of his parents' home and no question that the contracting parties intended to extend coverage to plaintiff. Thus, the trial court granted Farm Bureau's motion for summary disposition and denied Citizen's motion for the same.

Farm Bureau then moved for attorney fees under MCR 2.313(C), arguing that Citizens' refusal to admit that it was the insurer of highest priority was unreasonable given that Citizens was the purveyor of the policy at issue. Citizens disagreed, arguing that it had a reasonable belief that the policy did not cover plaintiff's injuries because he was not living with his parents at the time of the accident. The trial court concluded that there was no valid legal basis for Citizens to deny its priority status and awarded Farm Bureau $18,809.50 in attorney fees. This appeal followed.

II. ANALYSIS

On appeal, Citizens does not challenge the trial court's conclusion that it was the insurer of highest priority. Rather, Citizens challenges only the trial court's award of attorney fees under MCR 2.313(C). We review for an abuse of discretion the trial court's decision to grant attorney

fees under MCR 2.313(C). See *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Id.*

MCR 2.312(A) authorizes the parties to serve on each other written requests for admissions "that relate[] to statements or opinions of fact or the application of law to fact." If a party declines to make a requested admission and the requesting party prevails on the matter, the requesting party may move for attorney fees under MCR 2.313(C). The trial court must award attorney fees unless:

> (1) the request was held objectionable pursuant to MCR 2.312,
>
> (2) the admission sought was of no substantial importance,
>
> (3) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or
>
> (4) there was other good reason for the failure to admit. [MCR 2.313(C).]

"The mere fact that the matter was proved at the trial does not, of itself, establish that the denial in response to the request for an admission was unreasonable." *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 457; 540 NW2d 696 (1995) (internal citation and block notation omitted).

Citizens argues that the trial court abused its discretion by awarding attorney fees under MCR 2.313(C) because Farm Bureau's request for Citizens to admit priority was an improper subject for an MCR 2.312 request for admission. We agree. The purpose of MCR 2.312 is "to limit areas of controversy and save time, energy, and expense which otherwise would be spent in proffering proof of matters properly subject to admission." *Id.* (internal citation and quotation marks omitted). MCR 2.312, however, cannot be used as an avenue to force an opposing party to admit that the plaintiff's claim has merit. See *id.* at 457-458. In this case, the sole claim in Farm Bureau's third-party complaint was that it was not liable for plaintiff's PIP benefits because Citizens was an insurer of higher priority. Therefore, in context, Farm Bureau's request for Citizens to admit that it was the insurer of highest priority was actually a request for Citizens to admit that Farm Bureau's claim was meritorious. As already noted, this is an inappropriate subject for a request for admissions. Accordingly, because the request for admission was improper under MCR 2.312, defendant's refusal to make the admission cannot form the basis for an award of attorney fees under MCR 2.313(C). See MCR 2.313(C)(1).

Therefore, we reverse the award of attorney fees and remand for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Thomas C. Cameron