

STATE OF MICHIGAN
COURT OF APPEALS

PHYSIATRY AND REHAB ASSOCIATES, doing
business as COLUMBIA CLINIC PAIN & SPINE
INSTITUTE,

Plaintiff-Appellant,

and

CAPITAL HEALTHCARE,

Plaintiff,

v

MOHAMMED ALHALEMI,

Plaintiff/Third-Party Defendant-
Appellee,

and

WESTFIELD INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-
Appellee.

UNPUBLISHED
April 23, 2020
APPROVED FOR
PUBLICATION
July 16, 2020
9:05 a.m.

No. 349465
Oakland Circuit Court
LC No. 2018-170002-NF

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

Plaintiff Physiatry and Rehab Associates (“plaintiff”) appeals from an order of the circuit court granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

According to plaintiff, it provided medical services to Mohammed Alhalemi, defendant’s insured under a no-fault insurance policy, following a motor vehicle accident. Alhalemi executed an assignment of benefits on March 22, 2018, in favor of plaintiff. Before this, however, Alhalemi filed an action against defendant for the payment of personal protection insurance (PIP) benefits

under the insurance policy. This action was ultimately settled for \$45,000. This settlement was the result of a facilitation agreement entered into on June 6, 2018, and provided in pertinent part as follows:

It is hereby agreed between plaintiff(s) and defendant(s) that the following accurately sets forth the entire terms and conditions of the settlement and all claims put forward in the above captioned matter:

IT IS AGREED THAT plaintiff(s) shall execute the necessary release waiving all past, present and future no-fault benefits.

* * *

IT IS AGREED THAT the following additional terms and conditions shall apply to this settlement[:] that plaintiff will pay all liens, if any, and all medicals [sic] bill [sic] from the settlement. Plaintiff will hold harmless and indemnify the defendant from all medical providers.

The following day, Alhalemi executed a release which provided in pertinent part as follows:

FOR THE SOLE CONSIDERATION of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00), the receipt and sufficiency whereof is hereby acknowledged, MOHAMMED ALHALEMI, the undersigned, hereby releases and discharges WESTFIELD INSURANCE COMPANY . . . from *any and all past, present and future claims and demands* for no-fault personal protection insurance benefits arising out of a motor vehicle accident that occurred on or about May 1, 2017, including as follows:

(1) *All past, present, and future* claims for allowable expenses as provided for in MCL 500.3107(1)(a).

* * *

The undersigned further agrees to defend, indemnify, and hold harmless Westfield Insurance Company for any claims, demands, causes of action, etc., related to any liens, unpaid medical expenses, or other collateral benefits incurred, and the undersigned further acknowledges full responsibility to pay any such liens, expenses, and/or benefits, including, but not limited to, those asserted by Medicare, Medicaid, or any medical care provider.

This release contains the ENTIRE AGREEMENT between the parties hereto as it pertains to the undersigned's claim for no-fault automobile personal protection insurance benefits arising out of the May 1, 2017, motor vehicle accident, and the terms of this release are contractual and not a mere recital. [Emphasis added.]

The trial court dismissed plaintiff's complaint, reasoning as follows:

The Court finds that the Facilitation Agreement entered into by Alhalemi on June 6, 2018, included a provision that Alhalemi would execute the necessary release waiving all past, present and future no-fault benefits and that he would pay all liens and all medical bills from the settlement and would hold harmless and indemnify Westfield Insurance from all medical providers. The Release was executed on June 7, 2018 and released Westfield Insurance from liability from any and all past, present and future claims and demands for no-fault personal protection insurance benefits arising out of the May 2017 vehicle accident. The Court finds that summary disposition is appropriate as to the 3rd Party Complaint and pursuant to the term of the Release, Alhalemi must defend, and hold harmless Westfield against the underlying Complaint. The Court also finds that Defendant Westfield is entitled to dismissal of the Complaint because Plaintiffs have failed to show that Westfield had been notified in writing of their claim or assignment prior to the settlement.

We review the trial court's decision de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We review the proffered evidence in the light most favorable to the nonmoving party to determine if a genuine issue of material fact exists. *Id.* at 120.

We agree with the trial court's assessment. Although plaintiff makes a claim that defendant was aware of the claims, it points to no evidence to support that assertion. Indeed, the primary thrust of plaintiff's argument is that the facilitation agreement and release do not apply to the instant claims because they were not explicitly part of Alhalemi's litigation against defendant. Plaintiff seems to be asserting two conflicting positions: that defendant was not put on notice of the claims, yet at the same time was aware of the claims. But in any event, plaintiff does not point to any evidence that a copy of the assignment was delivered to defendant prior to the settlement of the claim.

Returning to plaintiff's principal argument, plaintiff suggests that the release only applies to those specific claims that Alhalemi included in the underlying litigation and to the extent that the agreement and release applied to all claims that Alhalemi had against defendant, such inclusions created an ambiguity. We disagree. While the settlement may have arisen out of the claims made in the litigation, i.e., a claim for PIP benefits, it clearly and unambiguously released all claims, past, present, and future. Moreover, Alhalemi explicitly agreed to pay all unpaid medical expenses from the settlement. As the trial court concluded, there is no way to read the release in any other manner.

Furthermore, we agree with both the trial court and defendant that plaintiff's claim is barred by MCL 500.3112, which provides in part as follows:

Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person.

In other words, plaintiff would have to have provided defendant with a copy of the assignment of benefits *before* defendant entered into the settlement agreement with Alhalemi. There is no

indication that this happened. See *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 210; 895 NW2d 490 (2017) (“This sentence allows a no-fault insurer to discharge its liability through payment to or for the benefit of a person it believes is entitled to benefits, as long as the payment is made in good faith and the insurer has not been previously ‘notified in writing of the claim of some other person.’ ”).

In sum, Alhalemi entered into a settlement which release all claims, past, present, and future that he had against defendant and agreed to pay all medical bills arising from the accident from the settlement. Moreover, plaintiff points us to no evidence that a written copy of the assignment was ever provided to defendant before the settlement agreement was entered into. Accordingly, defendant was properly granted summary disposition.

Affirmed. Defendant may tax costs.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford