STATE OF MICHIGAN

COURT OF APPEALS

FERNDALE REHABILITATION CENTER,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 18, 2021

No. 351746
Oakland Circuit Court
LC No. 2019-171641-NF

Before: TUKEL, P.J., and JANSEN and CAMERON, JJ.

PER CURIAM.

In this no-fault action, plaintiff appeals as of right the trial court's order granting defendant's motion to dismiss on the basis of fraud. We affirm.

I. FACTUAL BACKGROUND

This case arises out of a motor vehicle accident that occurred on April 10, 2018. Richard Thirlkill was a passenger in an uninsured vehicle that was struck by another vehicle after it failed to stop at a red light. Thirlkill declined medical assistance after the accident, but later claimed injuries to his back, neck, and shoulders. Accordingly, he filed an application with the Michigan Automobile Insurance Placement Facility (MAIPF), which provides personal injury protection benefits (PIP) under the Michigan Assigned Claims Plan (MACP). In the application, Thirlkill denied having any preexisting medical conditions, that he was taking any medications, or that he was eligible to receive Social Security benefits. Thirlkill also sought a claim of replacement services to MACP. MACP assigned Thirlkill's claim for benefits to defendant. Thirlkill, meanwhile, received medical treatment at plaintiff's clinic. Thirlkill later assigned his rights to coverage to plaintiff. Plaintiff filed a claim for benefits against defendant, which defendant denied. The present litigation ensued.

Defendant conducted a deposition of Thirlkill as part of the discovery process. At the deposition, Thirlkill testified at length about his numerous medical conditions which included, among others, an apparent addiction to prescription painkillers, a vein insufficiency, diabetes, and a gunshot wound. He also testified that, as a result of these conditions, a family friend, Marcus Wilson, provided him replacement services. Thirlkill further stated that since either 2000 or 2001

he received Social Security Disability payments. Thirlkill disclosed that as a result of his medical conditions, he took a number of prescription medications. He also admitted to using heroin "on and off."

Defendant moved for summary disposition under MCR 2.116(C)(10) alleging Thirlkill had provided false information as part of his PIP claim and his claim for replacement services and, as a result, plaintiff's entire claim for PIP benefits must be denied. Plaintiff contended that even though Thirlkill's answers on his claim for PIP benefits and replacement services differed from the information provided at deposition, there was no false information because Thirlkill "freely" admitted to his medical conditions at deposition and provided defendant open access to his medical records. Plaintiff also asserted that any discrepancy related to Thirlkill's responses on the application for PIP benefits, was an unintentional mistake by Thirlkill. Finally, plaintiff argued that the responses on the application for PIP benefits were immaterial to the claim because they concerned medical conditions unrelated to those sustained in the vehicle accident. The trial court granted defendant's motion for summary disposition stating, "there's no question that Thirlkill committed a fraudulent insurance act in his application to the [MACP] and therefore he's ineligible for payments of benefits under the [MACP] pursuant to MCL 500.3173a." This appeal followed.

II. STANDARD OF REVIEW

On appeal, plaintiff argues that the trial court erred in granting summary disposition in favor of defendants because the statements at issue made by Thirlkill in the application for PIP benefits did not amount to a fraudulent insurance act where did not knowingly assert false information and because the medical information in the application was not material to the litigation. We disagree.

We review a trial court's decision to grant or deny a motion for summary disposition de novo. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We "review a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Summary disposition is appropriate . . . if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West*, 469 Mich at 183. "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.*

This case requires us to consider provisions of the no-fault act, MCL 500.3101 *et seq.*—accordingly, "this Court reviews de novo issues of statutory construction." *Nason v State Employees' Retirement Sys*, 290 Mich App 416, 424; 801 NW2d 889 (2010). "The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature . . . ." *Tevis v Amex Assurance Co*, 283 Mich App 76, 81; 770 NW2d 16 (2009). "If the language is clear and unambiguous, this Court must enforce the statute as written. . . . Unless defined by statute, words and phrases are to be given their plain and ordinary meaning, and this Court may consult a dictionary to determine that meaning." *Tree City Props LLC v Perkey*, 327 Mich App 244, 247; 933 NW2d 704 (2019).

III. ANALYSIS

Initially, we point out that this case involves an assignment of rights to benefits because Thirlkill executed an agreement assigning to plaintiff "all rights to collect benefits directly from insurance company for the service or services that [Thirlkill has] received; and all rights to proceed against the insurance company obligated to provide benefits of which [Thirlkill is] due." "An assignee stands in the shoes of the assignor and acquires the same rights as the assignor possessed." *First of America Bank v Thompson*, 217 Mich App 581, 587; 552 NW2d 516 (1996). Thus, for purposes of this appeal, plaintiff holds the same rights as Thirlkill held before the assignment to plaintiff. If Thirlkill is not entitled to recovery of benefits, then neither is plaintiff.

Under the no-fault act, a claim is ineligible for benefits if the party asserting the claim commits a fraudulent insurance act.[1] MCL 500.3173a(2). MCL 500.3173a of the no-fault act provides, in pertinent part:

> (1) The Michigan automobile insurance placement facility [MAIPF] shall review a claim for personal protection insurance benefits under the assigned claims plan, shall make an initial determination of the eligibility for benefits under this chapter and the assigned claims plan, and shall deny a claim that the [MAIPF] determines is ineligible under this chapter or the assigned claims plan.
>
> (2) A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

Defendant contends that Thirlkill committed a fraudulent insurance act when he answered "no" to questions on the application for PIP benefits regarding the existence of prior medical conditions and receipt of Social Security benefits. Defendant further alleges that Thirlkill committed a fraudulent insurance act when he sought coverage for replacement services when those services were already being paid for through the State of Michigan.

In *Candler v Farm Bureau Mut Ins Co of Mich*, 321 Mich App 772, 775-782; 910 NW2d 666 (2017), this Court examined the context in which a claimant is deemed ineligible for PIP benefits under the fraud provision of MCL 500.3173a(2). In *Candler*, the plaintiff was injured after a hit-and-run accident. *Candler*, 321 Mich App at 775. The plaintiff submitted a claim for

[1] The no-fault act, MCL 500.3101 *et seq*., underwent substantial revisions when it was amended by 2019 PA 21 effective June 11, 2019. Even though the order relevant to this appeal was recorded on November 13, 2019, the complaint was filed on February 5, 2019—thus, the prior version of the no-fault act controls in this case. See *Spectrum Health Hosp v Farm Bureau Mut Ins Co of Mich*, ___ Mich App ___, ___ n 3; ___ NW2d ___ (2020) (Docket Nos. 347553 and 348440); slip op at 3.

PIP benefits through the MACP and the claim was eventually assigned to the defendant insurance company. *Id.* Among the plaintiff's claims to the defendant was documentation purporting to show the plaintiff's receipt of attendant care or replacement services by the plaintiff's brother. *Id.* at 776. However, the plaintiff never received the services and it was later shown that the plaintiff had forged his brother's signature to the documentation. *Id.* The defendant insurance company moved for summary disposition in the lower court arguing that the forgery and false statements related to attendant care and replacement services amounted to fraudulent insurance acts under MCL 500.3173a. *Id.* The trial court denied the motion for summary disposition and the defendant appealed to this Court. *Id.*

In resolving the issue of whether MCL 500.3173a precluded the plaintiff's recovery of PIP benefits, this Court articulated that "in order to qualify as part of a fraudulent insurance act under [MCL 500.3173a(2)], the false statement merely must have been presented 'as part of or in support of a claim to the [MAIPF] for payment or another benefit.' " *Candler*, 321 Mich App at 779. Accordingly, this Court announced that the elements to proving a "fraudulent insurance act" are,

> (1) the person presents or causes to be presented an oral or written statement, (2) the statement is part of or in support of a claim for no-fault benefits, and (3) the claim for benefits was submitted to the MAIPF. Further, (4) the person must have known that the statement contained false information, and (5) the statement concerned a fact or thing material to the claim. [*Id.* at 779-780.]

In this case, plaintiff's arguments rest on the last two *Candler* prongs—that Thirlkill did not know his statements in the application contained false information and that the statements were not material to the claim.

We first address plaintiff's argument that Thirlkill did not know his statements on the application for PIP benefits were false. Plaintiff claims that Thirlkill did not know that he was asserting false information because he did not understand that the questions on the application for benefits required him to account for medical conditions that occurred before the automobile accident. According to plaintiff, Thirlkill's inconsistent statements only amounted to "a man who did not understand what was being asked for on the [a]pplication form."

However, "Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its contents." *Galea v FCA US LLC*, 323 Mich App 360, 369; 917 NW2d 694 (2018) (quotation marks and citation omitted). Absent contradictory evidence, Thirlkill's misunderstanding of the questions is not an excuse for fraud. In signing the application for benefits, Thirlkill checked the box that stated, "I have reviewed the application in its entirety and attest that the information contained therein is true and accurate." Consequently, we presume Thirlkill understood the document that he was signing.

Moreover, the evidence is clear that no issue of material fact exists regarding whether Thirlkill committed fraud when submitting his application for benefits. "[F]raud may be established by circumstantial evidence." *Foodland Distrib v Al-Naimi*, 220 Mich App 453, 458; 559 NW2d 379 (1996); citing *Goldberg v Goldberg*, 295 Mich 380, 384; 295 NW 194 (1940). A fraudulent statement is one "that the insured knew that [ ] false at the time it was made or that

[ ] was made recklessly, without any knowledge of its truth." *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 424; 864 NW2d 609 (2014).

In this case, the relevant questions and answers on the application for benefits included:

> [*Question 26*]: Please list any pre-existing conditions that you had before this accident and how long you have been treating for those conditions.
>
> [*Thirlkill's Response*]: None.
>
> [*Question 27*]: Had you sought treatment for any prior conditions before this accident?
>
> [*Thirlkill's Response*]: No.
>
> [*Question 28*]: Were you taking any medications prior to this accident?
>
> [*Thirlkill's Response*]: No.
>
> [*Question 32*]: Are you eligible for any benefits under social security?
>
> [*Thirlkill's Response*]: No.

However, Thirlkill told a different story during his deposition. Thirlkill described his medical history in detail, including numerous conditions, doctors, medications, and pharmacies dating back to the mid-1980's. Given Thirlkill's extensive knowledge of his detailed medical history, we conclude that reasonable minds could not differ on the question of whether Thirlkill understood that the questions on the form asked him to describe his medical history. Accordingly, the trial court did not err by finding "[t]he evidence presented shows Thirlkill made false written statements in response to questions 27, 28, and 32 which were part of his application and submitted to the MACP."

Plaintiff goes on to argue, however, that because defendant "clearly had the means to determine the truth," i.e., access to Thirlkill's medical records which contained a comprehensive account of Thirlkill's medical history, defendant could not be prejudiced by Thirlkill's failure to articulate his medical history in his application for PIP benefits. However, MCL 500.3173a(4), which provides that a fraudulent insurance act occurs if "a person who presents or causes to be presented an oral or written statement . . . knowing that the statement contains false information concerning a fact or thing material to the claim[,]" does not exclude situations in which the insurer is able to discover for itself the truth of the statements. In giving effect to the plain language of the statute, a fraudulent insurance act occurs whenever a person makes a false assertion of fact *notwithstanding* the ability of the insurer to uncover the truth. Moreover, our Supreme Court has held "that an insurer has no duty to investigate or verify the representations of a potential insured." *Titan Ins Co v Hyten*, 491 Mich 547, 570; 817 NW2d 562 (2012). The fraudulent insurance act in this case occurred when Thirlkill submitted the application for PIP benefits to MACP and the fact that defendant later uncovered the truth during its investigation into Thirlkill's medical history is irrelevant.

Plaintiff also goes on to argue that Thirlkill did not submit false information regarding replacement services because defendant presents "no evidence that the services shown on the replacement services forms were not in fact performed." Essentially, plaintiff argues that Thirlkill's omission regarding the pre-performance of replacement services does not amount to a false insurance act under the statute. Thirlkill's testimony regarding his claim for replacement services was as follows:

> *Q*. Yeah, now you want to waive [your claim for replacement services], right?
>
> *A*. Yes.
>
> *Q*. Because you know it'd be false to claim if he was already cleaning the house and being paid by the State—
>
> *A*. Right, right, you can't get paid twice.
>
> *Q*. You can't be double[-]dipping, right?
>
> *A*. Right.
>
> *Q*. And it'd be false to claim in this case that he's doing this because of the accident when he was already doing it anyway?
>
> *A*. Right.
>
> *Q*. Right. So that was false to do in the beginning and now you're trying to say, 'I'm no doing that anymore,' right?
>
> *A*. Right.

On the basis of the foregoing, there is no question that Thirlkill's knew that it would be "false" to assert a claim for replacement services that were already being provided. Yet, Thirlkill failed to disclose on his application for PIP benefits that he was already receiving replacement services.

MCL 500.3173a(2) provides that "[a] person who presents or causes to be presented an oral or written statement . . . for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503." And, under MCL 500.4503, a "fraudulent insurance act" is defined as "acts or *omissions* committed by any person who knowingly, and with an intent to injure, defraud, or deceive." (emphasis added). Thus, plaintiff's argument that "there is no deception inherent in not revealing that [replacement] services were already being provided at state expense," is of no consequence because MCL 500.4503 specifically considers omissions of facts in its definition of "fraudulent insurance acts."

Plaintiff also argues that Thirlkill's answers on the application for PIP benefits were not material to plaintiff's ultimate claim for benefits against defendant. Again, we disagree. Plaintiff initially contends that MAIPF's principal role is gatekeeper of PIP claims. As such, plaintiff

believes that the statements made in his application for benefits were directed at MAIPF, not defendant—accordingly, the statements are not material to plaintiff's claim against defendant. Plaintiff's argument is nearly identical with one made by the plaintiff in *Candler* who asserted that MCL 500.3173a(2) only applies to statements made to the MAIPF, and not directed at a defendant insurance company. *Candler*, 321 Mich App at 778. This Court expressly rejected this argument stating that the statute "does not require that any particular recipient have received the false statement in order for the act to qualify as a fraudulent insurance act, as long as the statements was used 'as part of a or in support of a claim to the [MAIPF].' " *Id*. at 780. Here, Thirlkill made the statements at issue in his application for PIP benefits to the MAIPF. However, under *Candler*, it is of no consequence that the defendant was not the intended recipient so long as the statements were made in support of a PIP claim.[2] Thus, plaintiff's argument that the false statements in the application for benefits were directed at MAIPF, and not defendant, is without merit.

Plaintiff also asserts that the medical history not disclosed, specifically Thirlkill's "history of having a gunshot wound and chronic leg problems, and his illegal drug use and his prescriptions for blood pressure and diabetes medications and his Social Security Disability status have no bearing whatsoever on his eligibility for No-Fault benefits" and therefore are not material and should not bar his claim. We cannot agree.

MCL 500.3107(1)(a) provides that PIP benefits are allowed for "reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." The inference derived from this section is that a claimant may only receive PIP benefits for injuries related to the accident at issue. In cases where a claimant has preexisting medical conditions, the insurer must distinguish between the preexisting conditions and those arising from the accident because, under MCL 500.3107(1)(a), its coverage is limited to those accident-related conditions. Here, plaintiff's argument that Thirlkill's preexisting conditions "have no bearing whatsoever on his eligibility for No-fault benefits" fails because in providing PIP benefits related to the automobile accident, defendant had to ensure it was not also covering for medical expenses related to Thirlkill's other medical conditions. Therefore, information about Thirlkill's preexisting conditions is material to his claim for PIP benefits.

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[2] As previously stated, the no-fault act underwent substantial revisions that became effective in 2019. 2019 PA 21. One of these revisions was to MCL 500.3173a(2) which was moved to subsection (4) of the statute. MCL 500.3173a(4). Further, the Legislature saw fit to amend the language of the statute, which now states:

> A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to [MAIPF], *or to an insurer to which the claim is assigned under the assigned claims plan*, for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503. [MCL 500.3173a(4) (emphasis added).]

This amended language of the statute indicates the Legislature's intent to include statements for which either MAIPF or the insurer is the recipient.

Finally, plaintiff asserts that the statements were not material to Thirlkill's claim for PIP benefits because "[the statements] were not relied upon by [defendant] . . . [which] conducted its own thorough investigation of the claims." However, "[a] statement is material if it is reasonably relevant to the insurer's investigation of the claim." *Bahri*, 308 Mich App at 425. This standard does not require a showing of reliance; instead, all that is required is a showing of reasonable relevance. As discussed, the information gathered from the application for PIP benefits is relevant because the questions related to preaccident injuries bear on PIP coverage because PIP coverage only applies to accident-related injuries. The questions on the application for PIP benefits provide both MACP and the insurer a starting place when considering initial eligibility and the span of coverage available to the claimant. Thus, we conclude that the trial court did not err when it concluded that Thirlkill's statements on the application for PIP benefits were material to the claim.

We conclude that the trial court did not err by finding no genuine issue of material fact remained regarding whether Thirlkill knew statements regarding his medical history and replacement services on the application for PIP benefits contained false information, and that the statements were material to the claim. Plaintiff, as Thirlkill's assignee, is equally subject to the consequences of Thirlkill's actions. *First of America Bank*, 217 Mich App at 587. Therefore, summary disposition in favor of defendant was appropriately granted.

Affirmed.

/s/ Jonathan Tukel
/s/ Kathleen Jansen
/s/ Thomas C. Cameron