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STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY SKWIERC,

Plaintiff,

and

MICHIGAN HEAD & SPINE INSTITUTE, PC,

Intervening Plaintiff-Appellant,

v

WADE ALLEN WHISNANT,

Defendant,

and

MEEMIC INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
November 23, 2021
9:00 a.m.

No. 355133
Macomb Circuit Court
LC No. 2019-003281-NI

Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

BORRELLO, P.J.

In this action involving claims under the no-fault act, MCL 500.3101 *et seq*., intervening plaintiff, Michigan Head & Spine Institute, PC (MHSI), appeals by leave granted[1] the order denying its motion for summary disposition and granting partial summary for defendant, Meemic Insurance Company (Meemic). For the reasons set forth in this opinion, we reverse and remand for further proceedings consistent with this opinion.

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[1] *Skwierc v Whisnant*, unpublished order of the Court of Appeals, entered December 9, 2020 (Docket No. 355133).

I. BACKGROUND

This case arises from an October 11, 2018 automobile accident involving plaintiff, Jeffrey Skwierc, and defendant, Wade Allen Whisnant. Skwierc had a no-fault automobile insurance policy issued by Meemic. After the accident, Skwierc complained of low back pain and sought treatment from chiropractor, Marsh Kroener, D.C. Pursuant to Kroener's referral, Skwierc underwent magnetic resonance imaging (MRI) on his lumbar spine.[2] Skwierc completed an assignment of rights to MHSI.

Skwierc initiated this action by filing a three-count complaint against Whisnant and Meemic.[3] As to Meemic, Skwierc sought payment for personal protection insurance (PIP) benefits under the no-fault act and pursuant to his insurance policy with Meemic. MHSI intervened and filed its own complaint seeking reimbursement from Meemic for services that MHSI had provided to Skwierc and for which Skwierc had assigned his rights to MHSI.

MHSI subsequently moved for summary disposition against Meemic under MCR 2.116(C)(10), arguing that there was no genuine dispute of material fact that it was entitled to compensation for the MRI performed on Skwierc. MHSI alleged that Meemic had "wrongfully denied the claim on the basis that an MRI ordered by a chiropractor is not within the scope of chiropractic medicine and therefore not compensable under the No-Fault Act." MHSI argued that it was entitled to reimbursement for the MRI under MCL 500.3107b(b) because an MRI was within the definition of chiropractic practice under MCL 333.16401 as of January 1, 2009. MHSI maintained that an MRI was an analytical instrument, tool, or method used by chiropractors to diagnose spinal conditions and that Kroener had ordered the MRI in this case to diagnose the source of Skwierc's low back pain.

In response, Meemic argued that it had not wrongfully denied the claim because the MRI was outside the scope of chiropractic practice as of January 1, 2009, and was therefore not compensable under MCL 500.3107b(b). Accordingly, Meemic moved for partial summary disposition under MCR 2.116(I)(2) with respect MHSI's charges for the MRI services.

The trial court denied MHSI's motion for summary disposition and granted Meemic's motion. The trial court determined that the MRI was outside the scope of chiropractic practice and concluded that Kroener unlawfully engaged in the unauthorized practice of medicine when ordering the MRI. Thus, the trial court held that Meemic was not obligated to reimburse MHSI for the MRI services under the no-fault act. The trial court denied MHSI's motion for reconsideration. This appeal followed.

II. STANDARD OF REVIEW

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[2] The medical records indicate that these services were provided by Premier MRI, which MHSI alleged was one of its affiliated facilities. The exact nature of the relationship between these entities is unclear, but their affiliation appears undisputed. Thus, for purposes of this appeal, we treat them as a single entity.

[3] The claims against Whisnant are not at issue in this appeal.

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When the motion is brought under MCR 2.116(C)(10), the evidence submitted by the parties is viewed in the light most favorable to the nonmoving party, and the moving party is entitled to judgment as a matter of law if the "proffered evidence fails to establish a genuine issue regarding any material fact." *Id*. at 120. However, "[t]he trial court appropriately grants summary disposition to the opposing party under MCR 2.116(I)(2) when it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002).

Michigan is a state where the parameters of chiropractic care have been set not by the profession, but rather by politicians. Hence, "[b]ecause the scope of chiropractic is statutorily defined, the question whether a given activity . . . is within the authorized scope of chiropractic is primarily one of statutory construction to be decided by the court." *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 67; 535 NW2d 529 (1995).

> This Court also reviews de novo questions of statutory interpretation. The first step when addressing a question of statutory interpretation is to review the language of the statute. 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. Where the statutory language is clear and unambiguous, a court must apply it as written. [*Measel v Auto Club Group Ins Co*, 314 Mich App 320, 326; 886 NW2d 193 (2016) (quotation marks and citations omitted).]

III. ANALYSIS

The issue presented here is relatively simple. MHSI argues that the trial court erred by concluding that the MRI was outside the scope of chiropractic practice as of January 1, 2009, and granting summary disposition in favor of Meemic. MHSI maintains that the MRI was within the statutorily defined scope of chiropractic practice as of January 1, 2009.

"Generally, under the no-fault act, personal protection insurance (PIP) benefits are payable for medical expenses that are lawfully rendered and reasonably necessary for an insured's care, recovery, and rehabilitation." *Measel*, 314 Mich App at 326.[4] However, "as an exception to this general rule, the Legislature enacted 2009 PA 222, which added MCL 500.3107b(b) to the no-fault act." *Id*. at 326-327. MCL 500.3107b(b) currently provides:

[4] See also MCL 500.3107(1)(a) (providing generally that subject to certain exceptions and limitations, PIP benefits are payable for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation"); MCL 500.3157(1) (generally permitting a "physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by personal protection insurance" to "charge a reasonable amount for the treatment").

Reimbursement or coverage for expenses within personal protection insurance coverage under section 31071 is not required for any of the following:

* * *

(b) A practice of chiropractic service rendered before July 2, 2021, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009.

In *Measel*, 314 Mich App at 326-336, this Court set forth the framework for determining whether a chiropractic service falls within the exception in MCL 500.3107b(b) providing that reimbursement is not required under the no-fault act. Under *Measel*, a court must first consider whether the services at issue were lawfully rendered and reasonably necessary for the insured's accident-related care. *Measel*, 314 Mich App at 326, 328. If so, then the services are "within PIP coverage under MCL 500.3107," and the next question is "whether each of the services was '[a] practice of chiropractic service' for purposes of MCL 500.3107b(b)." *Measel*, 314 Mich App at 328 (alteration in original). In *Measel*, 314 Mich App at 329, this Court held that "a service is '[a] practice of chiropractic service' for purposes of MCL 500.3107b(b) if that service falls under the *current definition* of 'practice of chiropractic' provided by MCL 333.16401." (Alteration in original; emphasis added.)

However, even if a service is determined to be within the current definition of "practice of chiropractic," reimbursement is not required under the no-fault act "unless the service 'was included in the definition of practice of chiropractic under [MCL 333.16401] . . . as of January 1, 2009.' " *Measel*, 314 Mich App at 335 (alteration and ellipsis in original), quoting MCL 500.3107b(b). Thus, "if a service falls within PIP coverage under MCL 500.3107 and is '[a] practice of chiropractic service' under MCL 500.3107b(b), reimbursement is only required under the no-fault act if the service was included in the definition of 'practice of chiropractic' under MCL 333.16401 as that statute existed on January 1, 2009." *Measel*, 314 Mich App at 328.

In this case, the trial court did not begin with the initial threshold questions but instead skipped straight to the question whether the lumbar spine MRI was within the scope of chiropractic practice on January 1, 2009. The trial court resolved this question in the negative. The trial court further concluded that the MRI ordered by the chiropractor in this case was unlawful based on the trial court's erroneous conclusion that the MRI was outside the scope of the practice of chiropractic as of January 1, 2009.

The trial court erred as a matter of law by concluding that the MRI in this case was unlawful because even if the trial court had correctly determined that the MRI was not within the practice of chiropractic as of January 1, 2009, as that term was defined by MCL 333.16401, such a determination does not necessarily render the MRI unlawful. This Court has explained:

To be sure, only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit. It does not follow, however, that an activity is not lawfully rendered, and therefore not subject

> to payment as a no-fault benefit, merely because it is excluded from the statutory scope of chiropractic. [*Hofmann*, 211 Mich App at 64-65 (citation omitted).]

This is because " '[t]he purpose of the licensing statute is not to prohibit the doing of those acts that are excluded from the definition of chiropractic, but to make it unlawful to do without a license those things that are within the definition.' " *Id*. at 65, quoting *Attorney General v Beno*, 422 Mich 293, 303; 373 NW2d 544 (1985). Accordingly, the trial court's ruling that the MRI was unlawful in this case was clearly erroneous. *Hofmann*, 211 Mich App at 64-65. It appears from the trial court's opinion and order that it primarily relied on its conclusion that the MRI was unlawful to justify granting summary disposition in Meemic's favor. We therefore conclude that the trial court erred in its summary disposition ruling.

Nonetheless, the trial court also concluded that the MRI was not within the practice of chiropractic as of January 1, 2009, and conceivably could have granted summary disposition on that basis alone. See MCL 500.3107b(b). As this Court stated in *Measel*, 314 Mich App at 335-336:

> The definition of "practice of chiropractic" provided by MCL 333.16401 on January 1, 2009, stated the following:
>
> > (b) "Practice of chiropractic" means that discipline within the healing arts which deals with the human nervous system and its relationship to the spinal column and its interrelationship with other body systems. Practice of chiropractic includes the following:
> >
> > (*i*) Diagnosis, including spinal analysis, to determine the existence of spinal subluxations or misalignments that produce nerve interference, indicating the necessity for chiropractic care.
> >
> > (*ii*) A chiropractic adjustment of spinal subluxations or misalignments and related bones and tissues for the establishment of neural integrity utilizing the inherent recuperative powers of the body for restoration and maintenance of health.
> >
> > (*iii*) The use of analytical instruments, nutritional advice, rehabilitative exercise and adjustment apparatus regulated by rules promulgated by the board pursuant to section 16423, and the use of x-ray machines in the examination of patients for the purpose of locating spinal subluxations or misaligned vertebrae of the human spine. The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, or the dispensing or prescribing of drugs or medicine. [Quoting MCL 333.16401(1), as amended by 2002 PA 734.]

Resolution of the initial scope question requires us to consider the above statutory definition of "practice of chiropractic" and "determine whether the use of a given instrument is allowed under that definition." *Hofmann*, 211 Mich App at 70.

Under Subparagraph (*i*) of the statutory provision quoted above, the practice of chiropractic includes "[d]iagnosis, including spinal analysis, to determine the existence of spinal subluxations or misalignments that produce nerve interference, indicating the necessity for chiropractic care." A "chiropractic 'diagnosis' is limited to the determination of existing spinal subluxations or misalignments, which can only be located at their source, i.e., the spine." *Hofmann*, 211 Mich App at 75.

In this case, the MRI at issue was of Skwierc's lumbar spine. The trial court ruled that the lumbar spine MRI did not fall within Subparagraph (*i*) because "MRIs are tests that must be interpreted by doctors in determining a patient's condition and reaching a diagnosis; MRIs do not, in and of themselves, constitute a diagnosis."

The trial court appears to have misunderstood the applicable limits on a chiropractor's diagnostic authority in this context, which is essentially defined by the distinction between spinal and non-spinal areas. *Hofmann*, 211 Mich App at 85-87. "[A] chiropractor's diagnostic authority includes the authority to perform 'spinal analysis,' which encompasses 'monitor[ing] the body's physiology for the purpose of determining subluxated or misaligned vertebrae or related bones and tissues,' " but "a chiropractor's authority to analyze and monitor the body's physiology necessarily is limited to the spinal area only . . . ." *Id.* at 86-87 (second alteration in original; citations omitted). Because the MRI in this case was limited to a portion of the spine, its use was not outside the scope of chiropractic diagnostic authority. *Id.* The trial court erred by concluding otherwise.

Subparagraph (*iii*) of the statute additionally provides that the practice of chiropractic includes the "use of analytical instruments . . . regulated by rules promulgated by the board pursuant to section 16423, . . . for the purpose of locating spinal subluxations or misaligned vertebrae of the human spine." As of January 1, 2009, the term "analytical instruments" was defined by rule to mean "instruments which monitor the body's physiology for the purpose of determining subluxated or misaligned vertebrae or related bones and tissues." 2006 Annual Admin Code Supp, R 338.12001(b); see also *Hofmann*, 211 Mich App at 85 (citing an earlier version of this rule that contained the same language). This Court has previously described the nature of an MRI as follows:

> Magnetic resonance imaging is a scanning technology that permits detailed, potentially three-dimensional viewing of soft tissue structures within the body-such as muscles, nerves, and connective tissue-without using ionizing radiation; as distinct from x-rays or CT scans, which do subject the body to ionizing radiation and are much less useful for visualizing soft tissue. [*Chouman v Home Owners Ins Co*, 293 Mich App 434, 442 n 4; 810 NW2d 88 (2011).][5]

Accordingly, when used for an analysis of the spine, it is clear that an MRI falls within the scope of chiropractic practice as it was defined in January 1, 2009. See *Hofmann*, 211 Mich App at 87-88 (holding that certain dermathermography instruments that "monitor the body's physiology by measuring a person's skin temperature at each spinal level for the purpose of determining

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[5] We further note that the medical records of the MRI in the instant case also document findings related to Skwierc's lumbar vertebrae.

subluxated or misaligned vertebrae" were therefore limited to spinal analysis and within the scope of Subparagraphs (*i*) and (*iii*)).

Nonetheless, the trial court determined that MRIs were not permissible analytical instruments because the statute mentioned x-rays expressly without also mentioning MRIs even though the Legislature could have included such a reference to MRIs had it decided to do so. The statute provides that the practice of chiropractic includes the "use of analytical instruments . . . *and* the use of x-ray machines," MCL 333.16401(1)(b)(*iii*), as amended by 2002 PA 734 (emphasis added), thereby indicating that x-ray machines may be used *in addition to* the broader category of "analytical instruments." The trial court improperly read the statute to mean that the only imaging technology that could be used by a chiropractor were x-rays. Contrary to this reading, we conclude there is nothing in the statute prohibiting the use of an MRI or indicating that an x-ray is the only permissible form of imaging technology; the Legislature's decision not to expressly refer to MRIs in the statute when an MRI is clearly within the term "analytical instrument" is irrelevant. Rather than discern legislative intent by confining itself to the plain language of the statute, the trial court erred by attempting to divine legislative intent. We have made clear in the past that the plain language of the statue is the best indicator of legislative intent. *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 223; 779 NW2d 304 (2009). "When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Id*. Here, the plain language of the statute indicates that x-ray machines *and* analytical instruments may be used. Because an MRI satisfies the definition of "analytical instrument[]," its appropriate use is within the practice of chiropractic as of January 1, 2009. The trial court erred by failing to apply the unambiguous statutory language as written. *Measel*, 314 Mich App at 326.

Meemic argues on appeal that MRIs are used for a "variety" of other purposes and can provide detailed imaging of more than the spine alone, including soft tissue structures. However, the statutory definition of "practice of chiropractic" expressly includes "the human nervous system and its relationship to the spinal column and its interrelationship with other body systems." MCL 333.16401(1)(b), as amended by 2002 PA 734. Moreover, to the extent that an MRI "might reveal a condition that is not amenable to chiropractic treatment does not remove it from the purview of § 16401(1)(b)(iii)." *Hofmann*, 211 Mich App at 72. Thus, Meemic's argument does not change our analysis.

The trial court erred by granting summary disposition in favor of Meemic because its ruling was premised on an incorrect interpretation and application of the relevant statutory language. We therefore reverse the trial court's ruling and remand for further proceedings consistent with this opinion.[6]

Reversed and remanded for further proceedings consistent with this opinion. We do not

[6] In light of our conclusion, we need not address MHSI's additional alternative arguments for reversal because they are moot. "An issue is moot when a judgment, if entered, cannot have any practical legal effect on the existing controversy." *Auto Owners Ins Co v Seils*, 310 Mich App 132, 163 n 8; 871 NW2d 530 (2015).

retain jurisdiction. Plaintiff having prevailed is entitled to costs. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ Kathleen Jansen

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Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

BOONSTRA, J. (*concurring*).

I generally agree with the majority's analysis, including its statutory interpretation, and with the result it reaches. I write separately because I believe that neither this appeal nor the motion for summary disposition that is the subject of this appeal properly framed the pertinent issues. Unfortunately, important issues were not raised in the summary disposition motion or, therefore, in the application for leave to appeal, and this Court's order granting the application unsurprisingly limited the appeal to the issues that were raised in the application and supporting brief.[1] This Court not having been presented with these issues, the majority opinion does not

[1] *Skwierc v Whisnant*, unpublished order of the Court of Appeals, entered December 9, 2020 (Docket No. 355133).

address them; yet I believe they should have been addressed at some point in the proceedings below.

My concerns derive from the fact that the services that are at issue in this case (unlike in the pertinent cases cited by the parties) are MRI services that were performed not by a chiropractor, but rather by an entity composed of medical doctors specializing in radiology. The relevant issue thus becomes whether those radiologic services performed by medical doctors (as opposed to any services performed by a chiropractor) are properly reimbursable under the no-fault act. In my judgment, the proper issue first to be addressed is therefore whether the provision of MRI services by medical doctors constitutes "[a] practice of chiropractic service" or the "practice of chiropractic," as those terms are used in MCL 500.3107b, and as the latter is defined in MCL 333.16401 (as of January 1, 2009). If not, then this case would appropriately be resolved on that basis alone. As the majority notes, MCL 500.3107b(b) currently provides:

> Reimbursement or coverage for expenses within personal protection insurance coverage under section 31071 is not required for any of the following:
>
> * * *
>
> (b) A practice of chiropractic service rendered before July 2, 2021, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009.

It seems clear to me that medical doctors who perform MRIs are not, merely by doing so, performing chiropractic services. And I find it highly questionable to presume that the mere fact that an MRI is ordered by a chiropractor somehow transforms the performance of MRIs (by non-chiropractor medical doctors) into the performance of chiropractic services. In any event, that is the question that first should have been asked and answered in this case.[2] Instead, the summary disposition motion and, consequently, this appeal, skipped over that threshold question and focused both the trial court and this Court on whether a chiropractor may properly order an MRI.[3]

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[2] Additional questions that might properly have been raised include (a) whether medical doctors performing MRIs have a duty to police whether referring providers are acting within the scope of their practice; and (2) whether medical doctors who are denied reimbursement under MCL 500.3107b(b) are in some sense akin to "innocent third parties," *Bazzi v Sentinel Ins Co*, 502 Mich 390; 919 NW2d 20 (2018), and what the ramifications of such a status would be in this context.

[3] I note that no party contends (nor is it at issue on appeal) that the *performance* of an MRI (as opposed to the *ordering* of one) falls within the definition of "practice of chiropractic" under MCL 333.16401, and our decision in this case therefore could not properly be construed as reaching such a conclusion.

While I agree with the majority's analysis of that issue, I do not believe that it is properly the question that we should be answering at this juncture.

/s/ Mark T. Boonstra