STATE OF MICHIGAN

COURT OF APPEALS

LM GENERAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

HARTFORD INSURANCE COMPANY,

Defendant,

and

TRUMBULL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 16, 2021

No. 353697
Wayne Circuit Court
LC No. 19-006793-CZ

Before: GLEICHER, P.J., and CAVANAGH and LETICA, JJ.

PER CURIAM.

This is the second chapter of an ongoing dispute between two insurance companies. The first chapter arose from a lawsuit brought by a claimant seeking payment of first-party no-fault benefits. The claimant identified two potential sources of no-fault coverage: LM General Insurance Company and the Hartford Insurance Company, known here as Trumbull Insurance Company. The claimant sued both insurance companies, and LM General paid the benefits under protest. The only dispute in that case was which of the two insurance companies was first in priority for payment.

Trumbull admitted liability after LM General filed a motion for summary disposition to which Trumbull did not respond. Trumbull then agreed to an order, and the case was dismissed. But Trumbull never reimbursed LM General.

LM General filed this lawsuit seeking reimbursement from Trumbull. The circuit court granted summary disposition to Trumbull based on the one-year-back rule, MCL 500.3145(1), which at the time provided, in relevant part, that a "claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced."

The one-year-back rule does not apply for two reasons. LM General is not a "claimant" under the no-fault act, and this is not an action seeking the "payment" of no-fault benefits. Further, the underlying claim brought by the claimant was timely under the one-year-back rule, eliminating that defense even if the one-year-back rule does apply. We reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

Fectoria Hana sustained injuries in a 2016 car accident. Trumbull insured a vehicle owned by Hana's husband. Hana was a named insured on the policy for that vehicle, but her first name was misspelled as Victoria. And although she had retained her unmarried name, the policy identified her as having her husband's last name (Azir). When Trumbull refused to pay first-party no-fault benefits on her behalf, she sued Trumbull and LM General, which insured the car in which she was riding when the accident occurred. Meanwhile, LM General had stepped up and paid $210,321.59 on Hana's behalf. According to information filed by Trumbull in the circuit court, LM General's last payment of first-party benefits was made in June 2019, and the first in September 2016.

The two insurance company defendants were able to resolve Hana's first-party no-fault action rather expeditiously. After the confusion about Hana's name was cleared up, LM General sought summary disposition, presumably relying on MCL 500.3114(1).[1] On the day before the hearing, Trumbull's lawyer sent an email to counsel for LM General stating: "Regarding your MSD set for tomorrow afternoon, I have reviewed the issue and had discussions with the adjuster and we agree that we are in priority over Liberty. Therefore, to avoid you having to go to court and argue the motion, please send over an order for our review." An order was sent and approved, and the case was dismissed with prejudice. In retrospect, LM General should have demanded entry of a judgment. But LM General's lawyer probably assumed that Trumbull's counsel's word was good. Unfortunately, that turned out to have been a misplaced assumption.

Time went by (approximately six months) and Trumbull did not reimburse LM General for the $210,321.59 in benefits that LM General had paid on Hana's behalf. LM General brought this action in May 2019, and as we have noted, the circuit court determined that under the one-year-back rule, LM General was out of luck. LM General now appeals that ruling.

[1]MCL 500.3114(1), the applicable section of the priority statute, provides that a personal injury protection policy "applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household . . . ." Once LM General and Trumbull established that Fectoria Hana was the wife of the named insured, Trumbull's responsibility under the no-fault act was obvious and irrefutable.

II. ANALYSIS

This case involves statutory interpretation, so our review is de novo. *Fuller v GEICO Indemnity Co*, 309 Mich App 495, 498; 872 NW2d 504 (2015). In construing the statute at issue, we begin with the plain language. *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 278; 884 NW2d 257 (2016).

There are several reasons that the one-year-back rule is inapplicable to this second chapter of the insurance companies' current quarrel.

The one-year-back rule, MCL 500.3145, "is not a statute of limitations, but a damages-limiting provision." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 212; 815 NW2d 412 (2012). At the time of the events underlying this suit, the statute provided:

> (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. *However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.* The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.
>
> (2) An action for recovery of property protection insurance benefits shall not be commenced later than 1 year after the accident. [MCL 500.3145, as enacted by 1972 PA 294 (emphasis added).[2]]

LM General is not a "claimant" as that term was used in § 3145(1). A "claimant" is someone who has a right to payment of PIP benefits from a no-fault insurer. Usually (but not always), the claimant is the insured. Under the circumstances presented in this case, LM General, an insurance company, is not a "claimant."

In *Allstate Ins Co v State Farm Mut Auto Ins Co*, 321 Mich App 543, 555; 909 NW2d 495 (2017), we noted that the no-fault act does not define the term "claimant." Injured people may be claimants, we observed, but whether medical providers could also qualify as "claimants" was cast

[2] MCL 500.3145 was amended by 2019 PA 21, effective June 11, 2019.

in doubt by the Supreme Court's decision in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191; 895 NW2d 490 (2017). *Allstate*, 321 Mich App at 555-556. We summarized:

> Although a healthcare provider may request and receive payment from a no-fault insurer for services furnished to an injured person, MCL 500.3112; *Covenant Med Ctr*, 500 Mich at 195, 208-209, that does not mean that the provider is a "claimant" entitled to receive no-fault benefits. *Rather, it is the injured person who is the claimant that receives PIP benefits, in the form of the insurer paying the healthcare providers*. [*Id*. at 558 (emphasis added).]

Allstate is analogous to the case before us. There, the claimant was a pedestrian struck by a car. *Id*. at 546. The Michigan Assigned Claims Plan (MACP) assigned Allstate to pay the injured claimant's no-fault benefits, and Allstate did so. *Id*. at 546-547. Allstate later learned that the driver responsible for the accident was insured by State Farm. Allstate sued State Farm to recoup the no-fault benefits it had paid on the claimant's behalf. *Id*. at 547. To avoid repaying Allstate, State Farm invoked a limitations provision pertaining to MACP claimants that is somewhat similar to MCL 500.3145(1). *Allstate*, 321 Mich App at 547-548. The MACP-related statute, MCL 500.3175(3), stated in part: " '[a]n action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant.' " *Allstate*, 321 Mich Ap at 548.

This Court explained that MCL 500.3175(3) did not preclude Allstate from recovering against State Farm despite that Allstate named State Farm as a defendant more than two years after Allstate had been assigned the claim. The injured party was the claimant, we highlighted, "because she had a right to PIP benefits from [Allstate]." *Allstate*, 321 Mich App at 559. And since Allstate had made two payments on the claimant's behalf within one year of naming State Farm as a party defendant, we found that the payments satisfied the limitations period applicable to the MACP. *Id*. at 560-561.

Hana was the claimant in the 2017 action, and her claim for benefits was timely under the one-year-back rule. Because LM General is not a "claimant" under the no-fault act and made payments to Hana in a timely fashion, *Allstate* counsels that the one-year-back rule does not apply, despite that some of LM General's timely payments to the claimant (Hana) were made more than a year before it was forced to file this suit.[3]

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[3] Application of the one-year-back rule in these circumstances does not vindicate the purpose of the rule, which was intended to protect insurers against stale claims so as to maintain the system's "fiscal integrity."

> Given that Michigan is the only state with a no-fault automobile-injury reparations scheme with mandatory, unlimited, lifetime medical benefits, the Legislature adopted a unique approach to defining the temporal limitations for filing suit without allowing open-ended liability or time-barring claims before they accrue. The Legislature addressed this problem by enacting the one-year-back rule, which

Trumbull resists this interpretation of the one-year-back rule, insisting that as Hana's "subrogee," LM General acquired only the same rights as Hana would have had. Hana could not have recovered no-fault benefits had she filed suit in 2019 when LM General did, Trumbull reasons, because more than a year had elapsed since her last loss was incurred.[4] Whether LM General is actually Hana's "subrogee" is not entirely straightforward. A subrogee is "one who is substituted for another in having a right, duty, or claim." *Harris v Auto Club Ins Ass'n*, 494 Mich 462, 472 n 29; 835 NW2d 356 (2013) (cleaned up). Hana brought an action for benefits. LM General is not suing to enforce a right, duty, or claim owed to Hana; her claim for benefits has been paid and liability decided. Rather, LM General alleges that Trumbull violated an entirely separate and distinct agreement to reimburse LM General for the payments that LM General had made. See *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 407; 751 NW2d 443 (2008) (finding that a fraud action was not subject to the one-year-back rule "because the one-year-back rule applies only to actions brought under the no-fault act" and a fraud action was "a distinct and independent action"). This action was filed not to determine whether a no-fault claimant was entitled to benefits, or which insurance company was responsible for payment. Those questions were answered in chapter one. Although the no-fault insurance system supplies this chapter's factual background, the central issue is whether Trumbull's promise to pay is legally enforceable. Accordingly, the one-year-back rule does not apply.

And even if we assume that LM General is Hana's subrogee, her claim was timely under the one-year-back rule. Standing in Hana's shoes, so is LM General's.[5]

> limits recovery to losses incurred within one year before suit was filed. Thus, the creation of MCL 500.3145(1) was the Legislature's reasonable and simple approach to resolving the problem of allowing a reasonable amount of time for pursuing a claim while protecting the fiscal integrity of the no-fault system. [*Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 220-221; 815 NW2d 412 (2012).]

That purpose was fulfilled when Hana timely sought payments from either LM General or Trumbull, and LM General paid.

[4] That allegation appears to be incorrect. The ledgers attached to Trumbull's motion in the circuit court indicate that LM General made a number of payments for services incurred in 2019, less than a year before LM General filed suit.

[5] Our Supreme Court's recent decision in *Esurance Prop & Casualty Ins Co v Mich Assigned Claims Plan*, __ Mich __; __ NW2d __ (2021) (Docket No. 160592), reinforces this conclusion. *Esurance* involved an *equitable* subrogation claim arising from an insurance company's payment of no-fault benefits that it later determined it did not owe. The Supreme Court upheld the insurance company's right to pursue equitable subrogation against the entity potentially responsible for payment, the Michigan Assigned Claims Plan. Citing several statutory pillars of the no-fault act, the Court summarized:

> What emerges from these statutes is an axiom of both no-fault insurance law and practice: insurers like Esurance must pay PIP benefits to claimants promptly and

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh

> sort out priority and reimbursement issues later. That axiom is actualized by the very real possibility that steep penalties will be assessed against an insurer that drags its feet in paying PIP benefits to claimants. [*Id*., slip op at 18.]

The Supreme Court did not directly address the one-year-back rule in *Esurance*, but if it applied, Esurance's victory would be hollow indeed. The Court did point out that the no-fault act "strongly incentivize[s] insurers like Esurance to adhere to the no-fault act's 'pay promptly, litigate later' logic." *Id*., slip op at 16. LM General not only paid promptly—it rapidly resolved Hana's underlying, timely filed lawsuit. The letter and spirit of *Esurance* buttress our decision here.

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UNPUBLISHED
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No. 353697
Wayne Circuit Court
LC No. 19-006793-CZ

Before: GLEICHER, P.J., and CAVANAGH and LETICA, JJ.

LETICA, J. (*dissenting*).

I respectfully dissent as this Court has held that when a plaintiff insurance company mistakenly pays no-fault benefits when another insurance company had the obligation to pay them due to its higher priority under the no-fault statute, the plaintiff's claim for reimbursement is one of subrogation and the limitations in MCL 500.3145(1) apply. *Titan Ins Co v North Pointe Ins Co*, 270 Mich App 339, 343-344, 347; 715 NW2d 324 (2006). Plaintiff LM General Insurance Company (LM General) identified itself as Fectoria Hana's (Hana's) subrogee when it filed its complaint. As Hana's subrogee, LM General possessed the same rights as Hana and the trial court properly granted defendant Trumbull Insurance Company's (Trumbull's) motion for partial summary disposition and limited LM General's recovery under the one-year-back rule.

I. FACTUAL BACKGROUND

Hana was in a motor vehicle accident on July 28, 2016. On July 27, 2017, Hana filed a separate no-fault action for personal injury protection (PIP) benefits naming LM Automobile

Insurance Company and Hartford Insurance Company (Hartford) as defendants.[1] Hana alleged that defendant, presumably LM General, had paid some PIP benefits after the accident, "but has now wrongfully continued to deny payment . . . ." Hana specifically sought: (1) "[j]udgment against the [d]efendant in whatever amount the [p]laintiff is found to be entitled for her unpaid benefits including costs, interest and [p]laintiff's actual attorney fees," (2) an adjudication of "the [d]efendant's liability for No-Fault Benefits payable to [p]laintiff," (3) a determination of "the total amount due and payable to the [p]laintiff by this [d]efendant pursuant to PIP [b]enefits," and (4) costs. On October 28, 2018, the trial court entered an order granting summary disposition to LM General. The order does not indicate the basis for summary disposition, but it mentioned that no response had been filed to LM General's motion, and, therefore, it found that Hana consented to the trial court granting summary disposition on the basis requested by LM General.[2] During the instant action, LM General asserted that it had requested summary disposition in Hana's separate lawsuit on the basis that Hartford was first in priority to pay Hana's PIP benefits. LM General supported its assertion with an email from Hartford's counsel that conceded Hartford was first in priority. The email further reflected that Hartford's counsel asked LM General's counsel's to "send over an order" and added that Hartford's counsel did not have Hana's attorney's email and that attorney should be included in order to "stip you guys out."[3] A few days after the order granting summary disposition to LM General was entered, Hana and Hartford stipulated to an order dismissing Hana's lawsuit with prejudice as to Hartford, the remaining defendant.[4]

Over five months later, on May 8, 2019, LM General, as Hana's subrogee, filed a complaint, naming Hartford as the defendant. LM General generally described Hana's prior action and alleged that Hartford had failed to reimburse LM General for PIP benefits totaling $210,321.59 that it had paid to Hana despite Hartford being first in priority. LM General then asked the court to order: (1) Hartford was in the highest priority, (2) Hartford had to reimburse LM General "for all amounts that may be owed . . . in addition to loss adjustment costs, interest[] and attorney[] fees pursuant to MCL 500.3172,"[5] or (3) any additional relief that the court deemed appropriate.

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[1]While LM General initially named Hartford as the defendant in its complaint in this case, Trumbull Insurance Company (Trumbull) answered the complaint and the parties subsequently stipulated to substituting Trumbull as the proper party defendant and amending the caption.

[2] Neither party provided a copy of LM's summary disposition motion in Hana's case; however, the trial court was the same in both actions.

[3] As recognized by the majority, LM General neither filed a cross-claim for reimbursement nor sought to have a judgment entered directing Hartford to reimburse LM General for PIP benefits it had paid for Hana.

[4] See *Hana v The Hartford Ins Co*, unpublished order of the Wayne Circuit Court, issued December 3, 2018 (Docket No. 2017-011268-NF). Judicial notice of this public document is appropriate under MRE 201. See *Johnson v Dep't of Natural Resources*, 310 Mich App 635, 649; 873 NW2d 842 (2015).

[5] MCL 500.3172 applies when the Michigan Automobile Insurance Placement Facility assigns an insurer to provide PIP benefits to a claimant. This Court has held that the insurer's statutory right

Trumbull answered the complaint and then moved for partial summary disposition under the one-year-back rule in light of the fact that LM General sought to recover expenses it had incurred on Hana's behalf more than a year before LM General filed its complaint. LM General responded that its suit was not time-barred. The trial court commented to LM General's counsel that the unpublished case he had provided was inapt and that this case involved a rather straightforward application of the one-year-back rule. The trial court then granted partial summary disposition to Trumbull as to any expenses that LM General had incurred before May 8, 2018.

LM General filed a motion for reconsideration, arguing that it was not subject to the one-year-back rule and its suit was proper under MCL 600.5809, which permits "an action to enforce a noncontractual money obligation" to be filed within 10 years if that obligation is "founded upon a judgment or decree rendered in a court of record of this state . . . ." The trial court denied LM General's motion for reconsideration.

The parties later stipulated to $778.87 as the amount LM General had incurred after May 8, 2018, and the trial court entered a final judgment in LM General's favor.

II. DISCUSSION

On appeal, LM General maintains that the trial court erred by granting partial summary disposition to Trumbull on the basis of the one-year-back rule because LM General was not seeking to recover PIP benefits under the no-fault act. Instead, LM General argues, it was simply seeking to enforce the trial court's judgment in Hana's earlier action that held Trumbull to be of higher priority than LM General. LM General relies on MCL 600.5809(3) and argues that, as an enforcement action, this action is subject only to a 10-year limitations period, not the one-year-back rule.

A. STANDARDS OF REVIEW

Issues of statutory interpretation and a trial court's decision on a motion for summary disposition are reviewed de novo. *In re Estate of Koch*, 322 Mich App 383, 392; 912 NW2d 205 (2017).

> A motion brought pursuant to MCR 2.116(C)(10)[6] tests the factual sufficiency of a claim. When considering such a motion, a trial court must consider all evidence

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to reimbursement from the defaulting insurer after paying PIP benefits under the assigned claims plan is independent of the insured and is not based on a subrogation theory. *Allen v Farm Bureau Ins Co*, 210 Mich App 591, 596-597; 534 NW2d 177 (1995). Moreover, the two-year limitation period in MCL 500.3175(3), not the one-year rule, applies in such cases. *Id*. at 597-599.

[6] Although Trumbull moved for summary disposition under MCR 2.116(C)(7) and (10), the trial court did not identify either court rule in its order granting partial summary disposition. Because the one-year-back rule is not a statute of limitations, I assume that the trial court relied on MCR 2.116(C)(10). See *Linden v Citizens Ins Co of America*, 308 Mich App 89, 97-99; 862 NW2d 438 (2014) (differentiating between the "statute of limitations" in the first sentence of

> submitted by the parties in the light most favorable to the party opposing the motion. A court may only grant the motion when there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. 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. [*Highfield Beach at Lake Mich v Sanderson*, 331 Mich App 636, 653; 954 NW2d 231 (2020) (quotation marks and citations omitted).]

B. ANALYSIS

The trial court granted partial summary disposition to Trumbull as to any loss that LM General incurred more than one year before it filed its complaint on the basis of the one-year-back rule in MCL 500.3145. When LM General filed its complaint, MCL 500.3145(1) read:

> An action for recovery of [PIP] benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of [PIP] benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

The first two sentences of MCL 500.3145(1) impose a one-year statute of limitations on the commencement of an action for PIP benefits, while the third sentence, commonly referred to as the one-year-back rule, limits the damages that may be recovered even if the one-year statute of limitations is satisfied. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005); *Linden v Citizens Ins Co of America*, 308 Mich App 89, 97-99; 862 NW2d 438 (2014). When a secondary insurer pays PIP benefits that another insurer was obligated to pay, the secondary insurer has a cause of action against the primary insurer as the insured's subrogee. *Titan Ins Co*, 270 Mich App at 343. "A subrogee acquires no greater rights than those possessed by his subrogor and the subrogated insurer is merely substituted for his insured." *Id*. at 343-344 (quotation marks and citation omitted).

On appeal, LM General recognizes that if this general rule applied, the trial court ruled correctly.[7] LM General, however, contends that the general rule does not apply because "[t]his is

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MCL 500.3145(1) and the "limitation on damages" that is referred to as the one-year-back rule); *Black's Law Dictionary* (11th ed) (defining "statute of limitations" as "[a] law that bars *claims* after a specified period . . . [.]") (emphasis added).

[7] The Supreme Court recently ordered an opinion of this Court that followed *Titan* to be vacated and reconsidered in light of *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan*, ___ Mich ___; ___ NW2d ___ (2020). *Ravenell v Auto Club Ins Ass'n*, ___ Mich ___; 964 NW2d 577

not a no-fault insurer's new action for equitable subrogation to recover benefits mistakenly paid." Rather this "is a subrogation action to enforce a prior order of the court." Stated otherwise, Hana's entitlement to PIP benefits was determined in Hana's 2017 suit and LM General, as Hana's subrogee, seeks to enforce the earlier order that determined Trumbull was the highest priority insurer under MCL 600.5809, which provides:

> (1) A person shall not bring or maintain an action to enforce a noncontractual money obligation unless, after the claim first accrued to the person or to someone through whom he or she claims, the person commences the action within the applicable period of time prescribed by this section.
>
> (2) The period of limitations is 2 years for an action for the recovery of a penalty or forfeiture based on a penal statute brought in the name of the people of this state.
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> (3) Except as provided in subsection (4), the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record of this state, or in a court of record of the United States or of another state of the United States, from the time of the rendition of the judgment or decree. The period of limitations is 6 years for an action founded upon a judgment or decree rendered in a court not of record of this state, or of another state, from the time of the rendition of the judgment or decree. A judgment entered in the district court of this state before May 25, 1973, is a judgment of a court not of record. A judgment entered in the district court of this state on or after May 25, 1973, except a judgment entered in the small claims division of the district court, is a judgment of a court of record. Within the applicable period of limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree. The new judgment or decree is subject to this subsection.
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> (4) For an action to enforce a support order that is enforceable under the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, the period of limitations is 10 years from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.

LM General's initial hurdle is that it first raised this contention in its motion for reconsideration. Therefore, it is not properly preserved for appeal. *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich 513, 519; 773 NW2d 758 (2009). This Court, however, "may review an unpreserved issue if it is an issue of law for which all the relevant facts are available." *Id.* (citation omitted).

Assuming that is true here because Trumbull agrees that it was first in priority, LM General's next hurdle is establishing that the order granting summary disposition to it in Hana's earlier suit was a "judgment" or "decree." The majority does not directly address LM General's

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(2021). However, despite the policy statements contained in *Esurance*, it did not address the issues presented here.

argument; instead, it notes that in hindsight LM General "should have demanded entry of a judgment" in Hana's earlier suit. Thus, the majority appears to recognize that the order granting LM's motion for summary disposition was not a judgment.

LM General is correct that an action to enforce a judgment for no-fault benefits is not an action pursued through the no-fault act. "When a party breaches a substantive obligation arising out of a legal judgment, that breach gives rise to an independent cause of action. The harmed party then acquires the right to bring an action to enforce the judgment." *Dorko v Dorko*, 504 Mich 68, 77; 934 NW2d 644 (2019). Thus, if a party breaches a substantive obligation arising out of a judgment with an underlying basis in PIP benefits, the harmed party acquires a right to bring an action to enforce the no-fault judgment *independent* of the no-fault act. *Id*. Because such an action is not brought under the no-fault act, it is not subject to the one-year-back rule.

Although an action to enforce a previous no-fault judgment is not subject to the one-year-back rule, LM General's argument that this is an action to enforce a prior judgment is unpersuasive. In the previous action brought by Hana, the trial court did not indicate the basis on which it was granting summary disposition. The court merely indicated it was granting LM General's motion. See *Hana v The Hartford Ins Co*, unpublished order of the Wayne Circuit Court, entered November 28, 2018 (Docket No. 2017-011268-NF). Even so, the parties agree that the only issue the trial court resolved with its order granting summary disposition was that Trumbull (Hartford) was higher in priority than LM General to pay Hana's no-fault benefits. That being so, LM General is not seeking to merely enforce the previous judgment[8] as it alone would be insufficient to provide the monetary relief LM General seeks. In order to be entitled to the relief LM General seeks, it would have to satisfy a number of additional requirements provided for in the no-fault act. Specifically, LM General would have to establish that the expenses it paid were allowable expenses under MCL 500.3107(1)(a). To be allowable expenses, they must have been reasonable in amount and reasonably necessary for Hana's care, recovery, or rehabilitation. MCL 500.3107(1)(a). Because LM General must prove such facts before it is entitled to recover PIP benefits it paid to Hana from Trumbull, LM General's action is not one to enforce a previous judgment; instead, it is "[a]n action for recovery of [PIP] benefits payable under" the no-fault act. MCL 500.3145(1). Stated another way, Trumbull has not breached a substantive obligation to compensate LM General for the PIP benefits LM General paid to Hana that was imposed by a previous judgment. *Dorko*, 504 Mich at 77. Instead, Trumbull is alleged to have breached a substantive obligation imposed by the no-fault act itself. Accordingly, LM General does not have a cause of action independent of the no-fault act, *Dorko*, 504 Mich at 77, and the one-year-back rule applies to LM General's action. Thus, LM General "may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." MCL 500.3145(1). Because there is no genuine issue of material fact that LM General commenced this action on May 8, 2019, the trial court properly granted partial summary disposition to Trumbull under MCR 2.116(C)(10) as to any loss LM General incurred before May 8, 2018. *Highfield Beach*, 331 Mich App at 653.

[8] See footnote 4.

The majority disagrees, concluding that *Allstate Ins Co v State Farm Mut Auto Ins Co*, 321 Mich App 543; 909 NW2d 495 (2017), controls the outcome here. But that case is distinguishable as it involved a statutory right to reimbursement by an insurer assigned through the Michigan Assigned Claims Plan that was pursued under a separate statutory statute of limitations. *Id*. at 546-548. And this Court specifically recognized that the applicable statute "does not limit the damages that may be recovered in a timely action," unlike the one-year-back rule . *Id*. at 546-548, 562.

In the majority's view, this is a reimbursement action outside the no-fault act that does not serve the purpose of the one-year-back rule. But our caselaw is clear that this is a subrogation action for PIP benefits for a claimant under the no-fault act. *Titan Ins Co*, 270 Mich App at 344-345; *Amerisure Cos v State Farm Mut Auto Ins Co*, 222 Mich App 97, 103; 564 NW2d 65 (1997); *Fed Kemper Ins Co v Western Ins Cos*, 97 Mich App 204, 209; 293 NW2d 765 (1980). But see *Madden v Employers Ins of Wausau*, 168 Mich App 33; 424 NW2d 21 (1988). I follow *Titan* and *Amerisure* as required by MCR 7.215(J)(1) ("A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.").

For these reasons, I would affirm the trial court's order granting partial summary disposition to Trumbull.

/s/ Anica Letica