STATE OF MICHIGAN

COURT OF APPEALS

ARCHANGEL PHYSICAL THERAPY, LLC,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 24, 2022

No. 355220
Macomb Circuit Court
LC No. 2019-004829-NF

Before: O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.

PER CURIAM.

Plaintiff Archangel Physical Therapy, LLC (Archangel), appeals as of right the trial court's order granting summary disposition to defendant State Farm Automobile Insurance Company. We affirm.

I. BACKGROUND

Rafaa Yahia was injured in a motor vehicle accident on January 11, 2018. State Farm was Yahia's no-fault insurer at the time of the accident. Archangel provided physical therapy services to Yahia from January 29, 2018, to October 11, 2018, allegedly for injuries she sustained in the accident. On September 10, 2018, Yahia filed a complaint against State Farm for recovery of unpaid personal protection insurance benefits. Archangel was not a party to Yahia's first-party action; however, on June 20, 2019, Archangel filed a notice of lien in that lawsuit and requested to receive information regarding case evaluation. In an e-mail dated June 21, 2019, Archangel's counsel informed Yahia's counsel that he "will be negotiating directly with the defense attorney . . . in hopes of amicably resolving this matter." That same day, Yahia's counsel sent to State Farm and Archangel a revised case evaluation summary excluding Archangel's claims. Case evaluation occurred on June 24, 2020, and Yahia and State Farm accepted the case evaluation award and stipulated to dismiss the case against State Farm.

On November 11, 2019, Archangel moved to reopen Yahia's case, but the trial court denied relief because Archangel was not a party to that case. Archangel then filed the instant action on November 27, 2019, seeking compensation from State Farm under the no-fault act, MCL

500.3101, *et seq*., for services it provided to Yahia. Archangel brought suit pursuant to an assignment of rights Yahia executed on July 31, 2018, allowing Archangel to pursue Yahia's right to no-fault benefits from State Farm.

State Farm moved for summary disposition under MCR 2.116 (C)(8) and (C)(10), arguing that Archangel's claims were barred by MCL 500.3145(1). In response, Archangel argued that State Farm was estopped from asserting the one-year-back rule as a defense because it induced Archangel to refrain from initiating a lawsuit within the time limitations of MCL 500.3145(1). The trial court disagreed with Archangel and granted summary disposition to State Farm under MCR 2.116(C)(10). Archangel moved for reconsideration, which was denied. This appeal followed.

II. DISCUSSION

Archangel argues that the trial court erred by granting summary disposition because State Farm should be equitably estopped from asserting the one-year back rule as a defense. We disagree.[1]

MCL 500.3145(1) provides in relevant part that "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."[2] Known as the one-year back rule, this provision limits recovery to "losses incurred within the one year preceding the filing of the action." *Devillers v Auto Club Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005).

Archangel filed its complaint on November 27, 2019, and so MCL 500.3145(1) bars recovery for claims incurred before November 27, 2018. It is undisputed that Archangel sought reimbursement for medical bills incurred between January 29, 2018, and October 11, 2018. Accordingly, all Archangel's claims are barred by MCL 500.3145(1). However, as noted, Archangel argues that estoppel precludes application of the one-year-back rule.

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[1] We review de novo a trial court's decision to grant summary disposition. *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015). Summary disposition is appropriate under MCR 2.116(C)(10) "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "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 may differ." *Id*. Equitable issues are reviewed de novo and questions of fact are reviewed for clear error. *AFSCME v Bank One*, 267 Mich App 281, 293; 705 NW2d 355 (2005).

[2] MCL 500.3145 was amended by 2019 PA 21, effective on June 11, 2019, to include tolling provisions for the one-year back rule. Archangel does not argue that the amended version should be given retroactive effect, or that the tolling provisions would apply in this case. Accordingly, we will not address those issues and will assume without deciding that the pre-amendment version of the statute controls.

Equitable estoppel is a "judicially created exception to the general rule that statutes of limitation run without interruption." *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997). "A plaintiff who relies upon an estoppel theory to avoid a statute of limitations defense must show that the conduct of the defendant has induced the plaintiff to refrain from bringing action within the period fixed by statute, and that such conduct should estop the defendant." *Bohlinger v Detroit Auto Inter-Ins Exch*, 120 Mich App 269, 274-275; 327 NW2d 466 (1982) (quotation marks and citation omitted). Generally, to invoke estoppel a plaintiff must establish:

> (1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party. [*Cincinnati Ins Co*, 454 Mich at 270.]

Michigan courts are "reluctant to recognize an estoppel absent intentional or negligent conduct designed to induce a plaintiff to refrain from bringing a timely action." *Id*. (emphasis omitted). Factors to consider include whether there was a promise to pay or settle a claim. *Bohlinger*, 120 Mich App at 275.

Archangel argues that State Farm's conduct was designed to delay Archangel from commencing a lawsuit against State Farm. However, even when viewed in a light most favorable to Archangel, the evidence is insufficient to create a genuine issue of material fact on that matter. Archangel first relies on phone records indicating that its counsel and State Farm's counsel spoke on June 21, 2019, a day after the lien was filed. But there is no evidence in the record as to the substance of this conversation. Next, Archangel points to the June 21, 2019 e-mail correspondence in which its counsel informs Yahia's counsel that he spoke to State Farm's attorney and that he "will be negotiating directly with the defense attorney . . . in hopes of amicably resolving this matter." This does not show a promise by State Farm to settle Archangel's claims, but at most shows an agreement "to work toward an amicable solution," which, as the trial court reasoned, "does not rise to the level of conduct intended to induce one party's justifiable reliance in refraining from filing a lawsuit."[3] The only e-mail Archangel provided between Archangel and State Farm was sent on July 2, 2019, in which State Farm's attorney stated, "You filed the lien[,]" and directed Archangel's counsel to call him. While Archangel claims that the parties discussed settling its claims, it has not provided evidence regarding the substance of that phone conversation.

Archangel argues that the revised case evaluation summary in Yahia's action excluding its bills shows that the parties agreed to negotiate those claims. "Negotiations intended to forestall

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[3] Archangel relies on several cases, but not one supports applying estoppel under the facts of this case. In *English v Home Ins Co*, 112 Mich App 468, 474-475; 316 NW2d 463 (1982), we declined to "express any view on the merits of plaintiff's estoppel claim" and remanded to the trial court to address that issue in the first instance. In *Bohlinger*, 120 Mich App at 278, we concluded that the plaintiffs did not show a reasonable basis for not bringing a timely action. And in *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577; 543 NW2d 42 (1995), we held, in part, that "the insurer would be estopped to renege on its promise to defend and indemnify the insured" for claims made by the healthcare provider for full payment, which is a distinct issue that has no relevance to this appeal.

bringing an action have been considered an inducement sufficient to invoke the doctrine[.]" *Cincinnati Ins Co*, 454 Mich at 270. In *Cincinnati Ins Co*, the defendant insurer informed the plaintiff insurer that it would only evaluate the plaintiff's subrogation claim once it had the documentation for the entire loss because it did not want to "handle the claim piecemeal." *Id*. at 266. The plaintiff relied on the defendant's representations and agreed to deferred payment for several months, but the defendant eventually stated that it would not pay the claim because the one-year statute of limitations, MCL 500.3145(2), had expired. *Id*. at 267. The Supreme Court determined that, because the plaintiff acted in good faith at the direction of the defendant for the convenience of the defendant, the defendant was estopped from asserting the statute of limitations as a defense. *Id*. at 271-272.

In contrast to *Cincinnati Ins Co*, there is no evidence that State Farm made assurances that it would pay or settle Archangel's claims or that State Farm induced Archangel to delay filing suit. Indeed, there is no evidence of contact between State Farm and Archangel before June 21, 2019. Thus, Archangel's decision to not file an action for reimbursement before that time cannot be attributable to any representation by State Farm. Further, the last communication between the parties, according to the record evidence, was on July 2, 2019. At this point, Archangel still had three months to bring suit and seek recovery for some of its outstanding bills. Considering the sparse communications between the parties over the course of two weeks, it cannot be said that State Farm prevented Archangel from commencing an action within the recovery period of MCL 500.3145(1).

In sum, Archangel fails to establish a genuine issue of material fact that State Farm made representations intended to delay Archangel from filing suit or that Archangel justifiably relied on any representation by State Farm. Accordingly, the trial court did not err by denying Archangel's claim of estoppel and granting summary disposition to State Farm on the basis of the one-year back rule.

Archangel also argues that the trial court erred by denying Archangel's motion for reconsideration. We again disagree.[4]

MCR 2.119(F)(3) provides:

> (3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

[4] We review a trial court's decision on a motion for reconsideration for an abuse of discretion. *St John Macomb Oakland Hosp v State Farm Mut Ins Co*, 318 Mich App 256, 262; 896 NW2d 85 (2016). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Frankenmuth Ins Co v Poll*, 311 Mich App 442, 445; 875 NW2d 250 (2015).

Archangel argues that the trial court abused its discretion by denying its motion for reconsideration because, in deciding whether State Farm was estopped from asserting the one-year-back rule, the court should have analyzed whether State Farm's conduct induced Archangel to refrain from submitting its claims in Yahia's case evaluation. Archangel maintains that the crux of its argument is not whether State Farm induced it to not file a timely action, but whether it was induced to withdraw its claims from Yahia's case evaluation summary.

For the reasons already discussed, there is scant record evidence to conclude that State Farm induced Archangel to exclude its bills from Yahia's case evaluation. There is only one communication from State Farm to Archangel in the record. In the July 2, 2019 e-mail, State Farm's attorney merely acknowledges Archangel's lien and directs Archangel's counsel to call him. Further, this e-mail was sent after case evaluation occurred on June 24, 2019. Thus, the e-mail does not support Archangel's position that State Farm intended to induce Archangel to exclude its claims from Yahia's case evaluation.

Despite Archangel's arguments to the contrary, the pertinent question before us *is* whether State Farm induced Archangel to not bring a timely suit. Again, State Farm sought summary disposition on the basis of the one-year back rule. To invoke estoppel in this context, Archangel must show that State Farm induced it to refrain from bringing a timely action. See *Cincinnati Ins Co*, 454 Mich at 270; *Bohlinger*, 120 Mich App at 274-275. Even if the trial court had agreed that estoppel could arise from communications regarding Archangel's decision to take its claims out of the insured's suit, there is, as reviewed, no evidence establishing a question of fact that State Farm intended to induce Archangel into doing so. And the trial court did not err by concluding that the motion for reconsideration failed to raise an issue that had not already decided by the court in its initial ruling granting summary disposition. See MCR 2.119(F)(3).

Affirmed.

/s/ Colleen A. O'Brien
/s/ Douglas B. Shapiro
/s/ Mark T. Boonstra