STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL HELLER and MAIL HANDLERS BENEFIT PLAN, Plaintiffs-Appellees, v CITIZENS INSURANCE COMPANY OF AMERICA, Defendant-Appellant.	UNPUBLISHED September 4, 2001 No. 222219 Livingston Circuit Court LC No. 98-016391-CZ

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiffs' motion for summary disposition and denying defendant's motion for summary disposition. We affirm.

Plaintiff Heller's son was injured in an automobile accident in October 1991. Plaintiff Heller's son was listed as a dependent on the health insurance policy issued to plaintiff Heller by plaintiff Mail Handlers Benefit Plan ("Mail Handlers"). The claim for medical expenses made by plaintiff Heller was paid by plaintiff Mail Handlers. However, the insurance policy contained a subrogation provision. On March 21, 1992, plaintiff Heller executed a subrogation agreement in favor of plaintiff Mail Handlers. Plaintiff Heller filed a third-party lawsuit against the driver of the at-fault motor vehicle. The lawsuit was settled for $100,000 in June 1994. Plaintiff Mail Handlers then sought reimbursement from plaintiff for $52,999.96, the amount of medical expenses paid.

At the time of the accident, plaintiff Heller was insured under a no-fault automobile policy issued by defendant that contained a coordinated benefits provision. When the request for reimbursement of medical expenses was made by plaintiff Mail Handlers, plaintiff Heller asked defendant to reimburse plaintiff Mail Handlers. As a result of defendant's refusal, plaintiff filed this action seeking declaratory relief and damages for bad faith denial of a claim. Defendant moved for summary disposition alleging that there was no case in controversy, a benefit had not been incurred, the claim was barred by the statute of limitations, plaintiffs' dual representation created a conflict of interest, and, in any event, the common fund governed distribution to plaintiff Heller.

Plaintiffs also moved for summary disposition. Plaintiffs alleged that defendant was elevated to the role of primary carrier when benefits were paid by a federal insurance plan and reimbursement was requested. Plaintiffs further alleged that a one-year statute of limitations did not apply, but rather a six-year statute of limitations governed the case because it was equitable in nature. The trial court granted plaintiffs' motion for summary disposition, holding that defendant was obligated to provide insurance coverage when the federal provider requested reimbursement. The trial court also concluded that defendant unreasonably refused to pay plaintiffs and granted plaintiffs' request for attorney fees. However, the trial court did not provide a factual basis for its conclusion that defendant acted unreasonably. However, on appeal, defendant has not taken issue with the trial court's conclusion regarding the reasonableness of its actions.

Defendant first argues that the trial court erred in concluding that defendant was required to reimburse plaintiffs. We disagree. Our review of a summary disposition decision is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In *Sibley v DAIIE*, 431 Mich 164, 170; 427 NW2d 528 (1988), the Supreme Court stated:

> The primary underlying theme of the automobile no-fault act is that the automobile insurer pays without any right of reimbursement out of any tort recovery. It is an important, but secondary, concept that where benefits are provided from other sources pursuant to state or federal law, the amount paid by the other source reduces the automobile insurer's responsibility. But to the extent that the reduction in the automobile insurer's responsibility is from a source that retrieves reimbursement from the injured person's tort recovery, the amount so retrieved should not be deemed "benefits provided" within the meaning of the automobile no-fault act relieving the primarily liable automobile insurer of its primary responsibility to pay full benefits without reduction by reason of any tort recovery. Were it to be otherwise, the worker's tort recovery, contrary to the spirit of the automobile no-fault act, would be used, in effect, to reimburse the alternative source (the federal government) of the other "benefits provided" that substituted for automobile no-fault benefits.
>
> Because the reimbursement here is provided for by federal law, which preempts state law, we cannot, as in *Great American Ins v Queen*, 410 Mich 73; 300 NW2d 895 (1980), bar the alternative source (the federal government) from recovering against and from the tort recovery what it paid the injured worker. In fairness, however, in order to prevent a worker injured in an automobile accident from, in effect, paying for his own work loss/medical benefits, we can require the automobile no-fault insurer to repay benefits to that extent, in order to effectuate the underlying policies of the automobile no-fault act.

Defendant argues that the *Sibley* decision should be limited to the statutory section at issue, MCL 500.3109(1), and does not apply where coordinated benefits are at issue. However, in *Gunsell v Ryan*, 236 Mich App 204, 213-214; 599 NW2d 767 (1999), this Court held that the rationale underlying the *Sibley* decision was not limited to the statutory provision it addressed. We then

reaffirmed that where the federal government requires repayment from a beneficiary, the no-fault insurer must pay personal protection benefits to the extent restitution is required. *Id*.

In the present case, plaintiff presented documentary evidence that federal preemption is required under the provisions of this federal contract. Defendant failed to submit documentary evidence to the contrary in opposition to plaintiffs' motion for summary disposition.[1] *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991). Furthermore, since the trial court's ruling in this case, the equitable decision rendered by the *Sibley* Court was expanded in *Gunsell*, *supra*. Therefore, on the record available, we conclude that the trial court properly granted plaintiffs' motion for summary disposition and denied defendant's motion for summary disposition.[2]

---

[1] We note that the insurance contract between plaintiffs contains the following provision addressing coordination of benefits:

> The Double Coverage provision is intended to prevent payment of benefits which exceed covered expenses. It applies when a person covered by this Plan also has, or is entitled to, benefits as a result of any other group health coverage or no-fault or other automobile insurance that pays benefits without regard to fault. Information about other group coverage must be disclosed to this Plan.
>
> When there is Double Coverage, one plan normally pays its benefits in full as the primary payer, and the other plan pays a reduced benefit as the secondary payer. When this Plan is the secondary payer, it will pay the lesser of (1) its benefits in full, or (2) a reduced amount which, when added to the benefits payable by the other plan, will not exceed 100% of covered expenses.
>
> The determination of which plan is "primary" (pays its benefits first) is made according to guidelines provided by the National Association of Insurance Commissioners.
>
> The provision applies whether or not a claim is filed under the other plan. When applicable, authorization must be given this Plan to obtain information about benefits or services available from the other plan, or to recover overpayments from other plans.

In the present case, the parties have failed to address this provision or provide the guidelines. Accordingly, we cannot conclude whether the contract itself falls outside the parameters of or is consistent with the *Sibley* and *Gunsell* decisions.

[2] We note that within the discussion section of this issue on appeal, defendant states that the trial court awarded attorney fees to plaintiffs based on its finding that defendant wrongfully refused to pay benefits. Defendant then states that because plaintiff Heller was not entitled to benefits, the order awarding attorney fees should be reversed. We note that defendant has failed to argue that the trial court's finding regarding defendant's wrongful refusal was erroneous. Furthermore, defendant waived independent evaluation of this attorney fee issue by not including it in the

(continued…)

Defendant next argues that the trial court erred in failing to apply the one-year statute of limitations to bar plaintiffs' claim. We disagree. Plaintiffs' declaratory action seeking reimbursement is not governed by the one-year provision of MCL 500.3145(1). *Hofmann v Auto Club Insurance Ass'n*, 211 Mich App 55, 115-117; 535 NW2d 529 (1995).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Harold Hood
/s/ Richard Allen Griffin

(…continued)

statement of questions presented. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).