STATE OF MICHIGAN

COURT OF APPEALS

DALE HUDICK,

Plaintiff-Appellee,

V

HASTINGS MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
September 25, 2001
9:20 a.m.

No. 217489
Wayne Circuit Court
LC No. 98-821738-NI

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

MARKEY, J.

Defendant appeals by right the trial court's orders granting plaintiff's motion for summary disposition, pursuant to MCR 2.116(C)(9) and (C)(10), and denying defendant's motions for summary disposition and reconsideration. We affirm.

On February 19, 1997, plaintiff was severely injured when his two-wheel vehicle collided with a van. Because plaintiff lived with his parents, their no-fault insurer, Allstate Insurance Company, began paying plaintiff's personal injury protection (PIP) benefits on a coordinated basis. Defendant, which insured the van under a policy that did not coordinate medical benefits, had been notified of the accident and the serious nature of plaintiff's injuries. As early as March 18, 1997, defendant believed that it was the primary insurer under the no-fault law, but it actively withheld this belief from plaintiff's attorney and Allstate. On October 29, 1997, after it was determined that the vehicle that plaintiff was operating was a "motorcycle" under the no-fault act, defendant advised plaintiff's attorney that it would assume responsibility for plaintiff's first-party benefits.

On May 13, 1998, plaintiff's attorney sent a letter to defendant's claim representative, noting that payment of first-party benefits was not coordinated under defendant's policy and demanding payment from defendant for hospital expenses incurred by plaintiff between February 19, 1997, and March 14, 1997. Defendant denied payment on May 20, 1998, because all of the expenses were incurred more than one year before the request for payment. Plaintiff filed the instant action on July 10, 1998.

Both parties filed motions for summary disposition. The trial court found that a letter plaintiff's attorney sent on February 27, 1997, which was written in conjunction with plaintiff's third-party case against the driver of the van and its owner, provided defendant with written notice of the catastrophic injury plaintiff sustained and allowed the insurer to assess its liability while the claim was relatively fresh. The court further noted that any limitation on defendant's ability to obtain further information was caused by defendant concealing its belief that it was the primary PIP carrier. Nonetheless, defendant was able to assess its liability as early as March 18, 1997, when it advised the Michigan Catastrophic Claims Association that it was the carrier and had set the medical reserve at $300,000. The court further disputed defendant's argument that even if written notice of injury were given, the one-year back rule should not be tolled because plaintiff did not make a "specific claim for benefits." Although plaintiff did not initially submit the medical bills directly to defendant, he timely submitted them to Allstate. Plaintiff did not submit the bills directly to defendant because defendant did not advise either Allstate or plaintiff that it was the proper carrier. The court granted plaintiff's motion for summary disposition and denied defendant's motion.

The trial court's rulings on motions for summary disposition are reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Absent disputed questions of fact, whether a cause of action is barred by a statute of limitations is a question of law that this Court also reviews de novo. *Titan Ins Co v Farmers Ins Exchange*, 241 Mich App 258, 260; 615 NW2d 774 (2000).

Defendant argues that it was entitled to summary disposition under the limitations period imposed by MCL 500.3145(1), because defendant did not receive "notice" of plaintiff's injury within one year of the accident, and plaintiff's May 13, 1998, claim for medical expenses incurred between February 19, 1997, and March 14, 1997, was not timely under the statute's "one-year back" rule. Section 3145(1) provides:

> 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.

Under this statute, "an action to recover personal protection insurance benefits must be commenced not later than one year after the date of the accident, unless the insured gave written notice of injury to the insurer within one year after the accident or unless the insurer has previously paid personal protection insurance benefits for the injury." *Johnson v State Farm Mutual Auto Ins Co*, 183 Mich App 752, 755; 455 NW2d 420 (1990). Pursuant to the statute's one-year-back rule, "even where the period of limitations is tolled under the notice of injury or payment of benefits exceptions, an insured can only recover benefits for losses incurred within one year preceding the commencement of the action." *Id.* at 759.

In *Lewis v DAIIE*, 426 Mich 93, 98-99; 393 NW2d 167 (1986), the Supreme Court noted that earlier panels of this Court were divided with regard to the construction of § 3145(1). Some panels stated that the statute should be strictly construed and, therefore, a plaintiff could not recover for medical expenses incurred more than one year before the plaintiff's action was commenced. *Id.* Other panels concluded that the one-year limitations period was tolled from the time the insured provided notice until a formal denial of liability. *Id.* The Court in *Lewis* held that the "one-year back rule" was tolled "from the date of a specific claim for benefits to the date of a formal denial of liability." *Id.* at 101. The Court determined that this result "effectively preserves the Legislature's purpose."

> "Tolling the statute when the insured submits a claim for specific benefits would not appear to detract from the policies underlying the one-year limitation on recovery. By submitting a timely and specific claim, the insured serves the interest in preventing stale claims by allowing the insurer to assess its liability while the information supporting the claim is relatively fresh. A prompt denial of the claim would barely affect the running of the limitation period, while a lengthy investigation would simply 'freeze' the situation until the claim is eventually denied. In effect, the insured would be charged with the time spent reducing his losses to a claim for specific benefits plus the time spent deciding whether to sue after the claim is denied." [*Id.*, quoting *Welton v Carriers Ins Co*, 421 Mich 571, 578-579; 365 NW2d 170 (1984).]

However, the Court also added "that the insured must seek reimbursement with reasonable diligence or lose the right to claim the benefit of a tolling of the limitations period." *Id.* at 102.

In *Johnson*, *supra*, this Court considered the circumstances under which the one-year back rule in § 3145(1) would be tolled. In *Johnson*, *supra* at 754, the plaintiff's decedent was killed in an accident on September 2, 1984, while driving his motorcycle. The parties agreed that, by no later than December 3, 1984, the defendant was aware that the other driver and vehicle involved were uninsured, making the defendant the highest priority insurer for the payment of PIP benefits. *Id.* at 761. This Court noted:

> At that point, defendant thus had all the information it needed, other than perhaps the amount of the decedent's wages, to calculate the exact amount of survivor's loss benefit to which plaintiff was entitled. . . . [O]nce defendant was aware that plaintiff's' decedent was involved in a fatal accident and that defendant had the highest priority for payment of no-fault benefits under that automobile policy issued to the decedent, defendant should have processed a survivor's loss

> claim on behalf of plaintiff. Thus, once defendant received sufficient information to be informed that plaintiff suffered a compensable loss, the one-year back rule was tolled until such time as defendant formally denied the payment of benefits under the automobile policy. [*Id.* at 761-762.]

In the instant case, defendant's argument that it did not have "notice" of the accident and of plaintiff's injuries is without merit. The letter from plaintiff's attorney obviously put defendant on notice of plaintiff's claim: defendant's senior claims attorney answered the letter. Plaintiff's attorney sent defendant's attorney copies of plaintiff's medical bills on June 20, 1997. Further, in defendant's internal memoranda, which plaintiff submitted to the trial court with its motion for summary disposition, defendant's employees and agents indicated their knowledge that defendant was "the first carrier in the order of priority for providing no-fault benefits." Additionally, defendant's medical claims representative wrote to the Michigan Catastrophic Claims Association on March 18, 1997, indicating that defendant believed it was the primary carrier of plaintiff's claims and was setting the medical reserve at $300,000. Therefore, the trial court did not err in finding that defendant had "written notice of injury" under § 3145(1) within one year after the accident, which allowed plaintiff to file this action more than one year after the accident.

We also hold that the trial court did not err in determining that plaintiff did, in fact, timely submit a "specific claim for benefits," under the holding in *Lewis.* The insurers were unclear as to which was the priority carrier because of the difficulty in determining whether the vehicle that plaintiff was operating was a "motorcycle" under the no-fault act. Defendant believed throughout the investigation that it was the priority insurer but did not share this belief with plaintiff or Allstate. Moreover, defendant was aware of the extent of plaintiff's injuries and medical bills throughout the investigation. It was not until October 29, 1997, that plaintiff heard from defendant that it was responsible for his first-party benefits. Plaintiff should not be penalized for the time that the two insurers spent investigating the issue, which was extended largely because defendant was aware of its statutory duty but attempted to run the clock on the limitations period.[1]

We also find that the one-year back rule was tolled under the holding in *Johnson.* When defendant wrote to plaintiff on October 29, 1997, indicating to him for the first time that defendant was responsible for his first-party benefits, defendant was aware that the medical benefits in defendant's policy with its insured were not coordinated and that plaintiff therefore had a claim against defendant for his hospital bills. Although defendant had all the information it needed at this point to calculate the benefits it owed to plaintiff, defendant did not process a claim for plaintiff or formally deny its liability until May 20, 1998. Consequently, the one-year

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[1] We express concern that defendant intentionally concealed its belief that it was the primary insurer responsible for plaintiff's first-party benefits. After defendant was informed of the occurrence of an insured loss, plaintiff should have been able to "reasonably rely" on defendant to advise him of the benefits to which he might be entitled. *Johnson, supra* at 764.

back rule was tolled until that date. Plaintiff filed the instant complaint on July 10, 1998; therefore, his action was timely.

We affirm.

/s/ Jane E. Markey
/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald