STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED January 17, 2013
v	No. 306827 Wayne Circuit Court
EUCHERIA CHUKWUEKE, Defendant, and	LC No. 10-009501-NF
ALLSTATE INSURANCE COMPANY, Defendant-Appellant.	

Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant Allstate Insurance Company[1] appeals as of right the trial court's order granting summary disposition for plaintiff in this reimbursement action. Because the one-year-back rule set forth in MCL 500.3145(1) of the no-fault act, MCL 500.3101 *et seq*., is inapplicable in this action and the term "the claimant" in MCL 500.3175(3) includes a medical provider that provides services to an insured, but it is unclear whether plaintiff's action was timely with respect to each claimant regarding which reimbursement is sought, we affirm in part, reverse in part, and remand for further proceedings.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises out of a motor vehicle-pedestrian accident that occurred on September 1, 2007. Defendant Eucheria Chukwueke owned the 2001 Pontiac Grand Am that her father was driving when he struck pedestrian Merrill Hall, causing his injuries. Hall filed an application for personal injury protection (PIP) benefits with the Assigned Claims Facility, which assigned his

[1] Because defendant Eucheria Chukwueke is not a party to this appeal, our reference to "defendant" refers to Allstate Insurance Company.

claim to plaintiff. Plaintiff administered Hall's claim and paid $448,693 in medical expenses on his behalf.

Plaintiff filed this action against defendant seeking reimbursement of its loss adjustment costs and benefits paid.[2] Plaintiff alleged that defendant insured the vehicle through a no-fault policy at the time of the accident and, pursuant to MCL 500.3114 and MCL 500.3115, defendant was higher in priority than plaintiff to pay Hall's PIP benefits. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10). Defendant admitted that it insured the vehicle at the time of the accident but argued that the statute of limitations barred plaintiff's claim because plaintiff did not file its complaint within two years after it was assigned Hall's claim and it did not make any payments directly to Hall. Defendant also argued that the one-year-back rule set forth in MCL 500.3145(1) barred the recovery of benefits paid before August 18, 2009, one year before plaintiff filed its complaint.

In response, plaintiff argued that the one-year-back rule was inapplicable because this case involves the Assigned Claims Facility and the assignee insurer's, i.e., plaintiff's, claim for reimbursement against a higher priority insurer. Plaintiff asserted that its statutory right to reimbursement gave it an independent right of action to which the two-year limitation period in MCL 500.3175(3) applied. Plaintiff also argued that because its most recent payment on behalf of Hall was made within one year before it filed its complaint, the complaint was timely pursuant to MCL 500.3175(3). Plaintiff asserted that it was irrelevant that the payment was not made directly to Hall because it was made on Hall's behalf. The trial court agreed with plaintiff and denied defendant's motion.

Thereafter, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it was entitled to reimbursement from defendant pursuant to MCL 500.3172(1). Plaintiff maintained that its claim was not time barred because it filed its complaint within one year after making a payment to the claimant as stated in MCL 500.3175(3). Plaintiff further argued that the no-fault act authorizes payments to and on behalf of injured persons and that it was not necessary that the payment be made directly to Hall. Finally, plaintiff argued that the one-year-back rule was inapplicable.

In response to plaintiff's motion, defendant primarily reasserted the arguments that it previously raised. The trial court again agreed with plaintiff and granted plaintiff's motion. The court entered a judgment in plaintiff's favor in the amount of $480,684.82.

II. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition under

[2] Plaintiff also filed suit against Chukwueke on the basis that the vehicle was uninsured, entitling plaintiff to recover the benefits paid and loss adjustment costs from Chukwueke as the owner of the vehicle. The trial court dismissed that claim with prejudice after defendant admitted that it insured the vehicle at the time of the accident.

MCR 2.116(C)(10) "is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. We also review de novo as a question of law the proper interpretation of a statute. *Plunkett v Dep't of Transp*, 286 Mich App 168, 174; 779 NW2d 263 (2009).

III. MEANING OF "THE CLAIMANT" WITHIN MCL 500.3175(3)

Defendant first argues that the trial court erroneously granted summary disposition for plaintiff because its claim was barred by the limitation period set forth in MCL 500.3175(3). That provision states:

> An 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.

It is undisputed that plaintiff filed its complaint more than two years after it was assigned Hall's claim. Thus, in order to be timely, plaintiff must have filed its complaint within one year after its last payment *to the claimant*. Defendant argues that because plaintiff made payments to Hall's medical providers and did not make any payments directly to Hall, plaintiff's claim is time barred. Accordingly, this issue involves the proper interpretation of the term "the claimant" in MCL 500.3175(3).

"When interpreting the meaning of a statute, our primary goal is to discern the intent of the Legislature by first examining the plain language of the statute." *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). We must read statutory provisions in the context of the entire act and accord every word its plain and ordinary meaning. *Id*. at 247. If statutory language is clear and unambiguous, we must apply the language as written and must not engage in judicial construction. *Id*. Courts should give effect to every word and phrase in a statute and avoid an interpretation that renders any part of a statute surplusage or nugatory. *Dep't of Environmental Quality v Worth Twp*, 491 Mich 227, 238; 814 NW2d 646 (2012).

Defendant argues that the term "the claimant" in MCL 500.3175(3) refers to the injured party and that a medical provider is not included within the singular term "the claimant." Plaintiff, on the other hand, contends that a medical provider is a claimant within the meaning of MCL 500.3175(3). Defendant's argument that the term "the claimant" is synonymous with "the injured party" lacks merit. Courts should give effect to every word and phrase in a statute. *Dep't of Environmental Quality*, 491 Mich at 238. MCL 500.3109(2) defines "injured person" as "a natural person suffering accidental bodily injury." Interpreting the term "the claimant" in MCL 500.3175(3) identical to the phrase "injured person" would not give effect to every word in the statute and would render the term "the claimant" mere surplusage.

This Court has previously recognized that the terms "claimant" and "injured person" have two different meanings. In *Lakeland Neurocare Ctrs v State Farm Mut Auto Ins Co*, 250 Mich App 35; 645 NW2d 59 (2002), this Court discussed the meanings of the terms in the context of the no-fault act when it addressed whether a rehabilitation services provider could recover its attorney fees under MCL 500.3148(1), the attorney fee provision of the no-fault act. This Court stated:

> Defendant contends that the word "claimant" means that only the injured person may pursue attorney fees. However, undefined words contained in statutes are given meaning as understood in common language, considering the text and subject matter in which they are used. *Maxwell v Citizens Ins Co of America*, 245 Mich App 477, 482; 628 NW2d 95 (2001); *Marcelle v Taubman*, 224 Mich App 215, 219; 568 NW2d 393 (1997). We also may refer to a dictionary for the definition of a word that is not defined in the statute. *Maxwell, supra; Marcelle, supra.* The word "claimant" is defined as "a person who makes a claim." *Random House Webster's College Dictionary* (1997). The relevant dictionary definitions of the word "claim" include "a demand for something as due; an assertion of a right or an alleged right," and "a request or demand for payment in accordance with an insurance policy . . . ." *Id.*
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> In this case, . . . because plaintiff properly submitted a claim for personal protection insurance benefits for the benefit of defendant's insured, plaintiff was entitled to such payment within the time limits imposed by the no-fault act. Consequently, plaintiff was a claimant within the plain meaning of the statute and, thus, had the right to attempt recovery of its attorney fees expended in pursuit of recovering overdue benefits. [*Lakeland Neurocare Ctrs*, 250 Mich App at 40-41.]

Further, this Court recognized that the no-fault act "specifically contemplates the payment of benefits to someone other than the injured person . . . ." *Id*. at 39. MCL 500.3112 states that "[p]ersonal protection insurance benefits are payable to *or for the benefit of* an injured person or, in case of his death, to or for the benefit of his dependents." (Emphasis added.) "As a result, it is common practice for insurers to directly reimburse health care providers for services rendered to their insureds." *Lakeland Neurocare Ctrs*, 250 Mich App at 39.

Therefore, the term "the claimant" in MCL 500.3175(3) is not synonymous with "the injured person." Rather, "the claimant" refers to a party that files a claim for PIP benefits. Thus, the medical providers that submitted claims in this case were claimants within the meaning of MCL 500.3175(3).

Notwithstanding that the medical providers were claimants, MCL 500.3175(3) states that "[a]n action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after . . . 1 year after the date of the last payment to *the* claimant." (Emphasis added.) The provision uses the definite article "the" instead of the indefinite article "a."

> Traditionally in our law, to say nothing of our classrooms, we have recognized the difference between "the" and "a." "The" is defined as "definite article. 1. (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an) . . . ." *Random House Webster's College Dictionary*, p 1382. Further, we must follow these distinctions between "a" and "the" as the Legislature has directed that "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language . . . ." MCL 8.3a[.] [*Robinson v Detroit*, 462 Mich 439, 461-462; 613 NW2d 307 (2000) (citation omitted).]

The Legislature's use of the word "the" instead of "a" indicates that each claimant must be considered individually. Giving effect to the word "the," an action may not be commenced more than one year after the date of the last payment to the individual claimant with respect to which indemnity or reimbursement is sought. This approach is consistent with MCL 500.3142(1) and (2), which state that "[PIP] benefits are payable as loss accrues" and that "benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." Accordingly, an action seeking indemnity or reimbursement may not be commenced more than one year after the date of the last payment to the particular claimant regarding which indemnity or reimbursement is sought.[3]

Because it is unclear from the record whether plaintiff filed its complaint within one year after the date of the last payment made to each individual claimant, we remand this case to the trial court for a determination regarding that issue. Defendant concedes that plaintiff made four payments to medical providers after August 18, 2009, one year before plaintiff filed its complaint. Those payments totaled $10,729.18 and were paid to Howard L. Dubin, D.O., Bloomfield Hills Head Injury, and Orthopedic Trauma Specialists. The record reflects, however, that after plaintiff filed its complaint, it continued to make payments to medical providers on behalf of Hall. Because the date of the last payment to each individual claimant is unclear, we remand this case to the trial court to determine whether plaintiff's claim for reimbursement is timely with respect to each claimant regarding which reimbursement is sought.

IV. THE ONE-YEAR-BACK RULE OF MCL 500.3145

Defendant also argues that although MCL 500.3175(3) sets forth the limitation period that controls in this case, the one-year-back rule of MCL 500.3145(1) nevertheless bars the recovery of any benefits paid before August 18, 2009, one year before plaintiff filed its complaint. MCL 500.3145(1) provides, in relevant part:

> 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*

[3] We note that in *Allstate Ins Co v Faulhaber*, 157 Mich App 164, 168; 403 NW2d 527 (1987), this Court opined that the plaintiff's action was timely because it was filed within one year after it last paid benefits "to or on behalf of JacLynn Faulhaber," the injured person. The issue presented in that case did not involve the interpretation of the term "the claimant" in MCL 500.3175(3). Thus, the Court's conclusion that any payment made within one year to or on behalf of the injured person satisfies the limitation period set forth in MCL 500.3175(3) is mere dicta.

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. [Emphasis added.]

In *Allen v Farm Bureau Ins Co*, 210 Mich App 591, 595-598; 534 NW2d 177 (1995), this Court held that the one-year period of limitation in MCL 500.3145(1) is inapplicable when an assignee of the Assigned Claims Facility brings a claim for reimbursement pursuant to its statutory right to reimbursement set forth in MCL 500.3172(1). This Court reasoned that in such cases the assignee's claim asserts an independent, statutorily created right to reimbursement and the assignee did not bring its claim as a subrogee of the injured party. *Id*. at 595-597.

Defendant argues that *Allen* is inapplicable because the *Allen* Court discussed the one-year limitation period of MCL 500.3145(1) and did not address the one-year back rule set forth in the provision. Defendant's argument lacks merit. The reasoning in *Allen* applies with respect to both the limitation period and the one-year back rule. In a reimbursement action, the plaintiff's claim is not derivative of the injured party. Rather, it is an independent claim brought pursuant to MCL 500.3172(1), which authorizes an assignee to bring a claim for reimbursement from a defaulting insurer. MCL 500.3145(1) does not apply to such claims and instead, by its very terms, pertains to "[a]n action for recovery of [PIP] benefits." A claim for reimbursement is not an action for recovery of PIP benefits. Rather, a claim seeking reimbursement is "[a]n action to enforce rights to indemnity or reimbursement against a third party" as stated in MCL 500.3175(3). Accordingly, MCL 500.3175(3) applies to reimbursement actions and the one-year back rule of MCL 500.3145(1) is inapplicable.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction. Neither party having prevailed in full, no costs are taxable pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto