Order

Michigan Supreme Court
Lansing, Michigan

July 2, 2025

166182

CODY BONTER and KAYTLIN JACKMAN,

Plaintiffs/Counterdefendants-Appellants,

v

SC: 166182
COA: 360411
Genesee CC: 21-115568-CK

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant/Counterplaintiff/Cross-Plaintiff-Appellee,

and

TAYLON WILLIAMS,

Defendant/Cross-Defendant.

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On May 7, 2025, the Court heard oral argument on the application for leave to appeal the August 17, 2023 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals holding that the increased minimum bodily injury or death liability limits for no-fault insurance policies enacted in 2019 PA 21 and 2019 PA 22 do not apply to policies delivered or issued for delivery before July 2, 2020, and we REMAND this case to that court for further consideration not inconsistent with this order.

MCL 500.3009 sets the minimum liability limits for property damage and bodily injury or death coverage in automobile liability policies. Effective June 11, 2019, MCL 500.3009(1) provides that, "[s]ubject to subsections (5) to (8), an automobile liability or motor vehicle liability policy . . . must not be delivered or issued for delivery . . . unless the liability coverage is subject to all of" the minimum liability limits provided in Subsections (1)(a) through (1)(c). This case concerns only the limits provided in

Subsections (1)(a) and (1)(b).[1] As amended by 2019 PA 21 and 2019 PA 22, Subsections (1)(a) and (1)(b) identify the applicable minimum liability limits for bodily injury or death coverage before July 2, 2020, as $20,000 for one person in any one accident and $40,000 for two or more persons in any one accident, and, after July 1, 2020, as $250,000 for one person in any one accident and $500,000 for two or more persons in any one accident.

Here, defendant Progressive issued the present policy on June 19, 2020,[2] which is after the June 11, 2019 effective date of 2019 PA 21 and 2019 PA 22. Accordingly, Subsection (1) required the policy to include "all" the minimum liability limits set forth in Subsections (1)(a) and (1)(b). MCL 500.3009(1). Yet the policy, which was in effect from June 20 to December 20, 2020, included only the $20,000/$40,000 liability limits for bodily injury or death. These terms did not satisfy the requirements of Subsections (1)(a) and (1)(b) because they did not incorporate liability limits of at least $250,000/$500,000 for the coverage period beginning July 2, 2020, through the policy's end date of December 20, 2020. By delivering a policy that did not comply with the minimum liability limits specified in Subsections (1)(a) and (1)(b), Progressive issued a policy that failed to comply with the minimum requirements of the no-fault act.

In so concluding, we reject the Court of Appeals' conclusion that the date ranges in Subsections (1)(a) and (1)(b) instead modify the verb phrase "must not be delivered or issued for delivery" in Subsection (1).[3] This reading is contrary to the statute's plain

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[1] Subsection (1)(c) provides for "[a] limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident." This subsection was not amended by 2019 PA 21 and 2019 PA 22.

[2] Given our holding, we need not address issue two in the Court's order seeking supplemental briefing, which directed the parties to address whether "the July 6, 2020 change in defendant Williams' vehicles, coupled with defendant Progressive Marathon Insurance Company's sending of the 'auto insurance coverage summary' to Williams, constituted the delivery or issuance of an insurance policy that triggered the statutory conditions to impose the heightened liability coverage limits." *Bonter v Progressive Marathon Ins Co*, ___ Mich ___, ___; 9 NW3d 351, 351 (2024).

[3] In reaching its conclusion, the Court of Appeals relied on *Progressive Marathon Ins Co v Pena*, 345 Mich App 270 (2023). In that case, the Court of Appeals held that the amendments to MCL 500.3009 do not apply to "policies issued before the statutory changes in coverage took effect but whose term extended beyond July 2, 2020." *Id*. at 275, 278, 281. The *Pena* defendants appealed that decision here, and after hearing argument on the defendants' application for leave to appeal, we held *Pena* in abeyance for the instant case. *Progressive Marathon Ins Co v Pena*, ___ Mich ___, ___; 9 NW3d 348, 348-349 (2024).

language and organization. Subsection (1) requires that the "liability coverage" of automobile policies must fulfill "all of the following limits," expressing that the entirety of what follows in Subsections (1)(a) and (1)(b) are the required "limits" on "the liability coverage" in an insurance policy, rather than a further condition on the statement in Subsection (1) that a policy "must not be delivered or issued for delivery." Had the Legislature intended to require the coverage levels in Subsections (1)(a) and (1)(b) to apply only in policies delivered or issued for delivery after July 1, 2020, it would have used different language to express that intention. Indeed, the Legislature explicitly limited other contemporaneously enacted no-fault amendments to policies issued or renewed after July 1, 2020. See, e.g., MCL 500.3107c(1); MCL 500.3107d(1). Instead, Subsection (1) of MCL 500.3009 requires that a policy may not be delivered or issued for delivery unless it provides *all* of the minimum liability coverage prescribed in Subsections (1)(a) and (1)(b), while Subsections (1)(a) and (1)(b) specify what coverage level is to be provided and differentiate between the required coverage level before July 2, 2020, and after July 1, 2020. "Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210 (1993). Thus, the general effective date of 2019 PA 21 and 2019 PA 22—June 11, 2019—governs, such that policies delivered or issued for delivery after that date must comply with "all" the coverage requirements in Subsections (1)(a) and (1)(b) unless the insured selects a different coverage level under Subsection (5).[4]

We also reject Progressive's argument that this interpretation is inconsistent with Subsection (1)'s provision that it is subject to Subsections (5) to (8). Subsections (5) through (8) generally provide the option to purchase bodily injury liability coverage that is less than the minimums provided in Subsections (1)(a) and (1)(b). Subsections (5), (6), and (8) begin with the phrase "[a]fter July 1, 2020," and therefore were not applicable when policies, like the present one, were issued or renewed before July 2, 2020. Subsection (5) gives "an applicant" or a "named insured" the option to purchase bodily injury or death liability coverage that is less than the $250,000/$500,000 minimums provided in Subsections (1)(a) and (1)(b),[5] and Subsections (6) and (7) require insurers to advise

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[4] As the dissent notes, the Department of Insurance and Financial Services (DIFS) website issued guidance that conflicts with our holding today. Although this Court grants respectful consideration to an administrative agency's interpretation of a statute, guidance posted on an administrative agency's website—like any agency interpretation—cannot rewrite the plain language of a statute. See *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 93 (2008).

[5] Notably, Subsection (5) is not limited to those who first applied for or purchased a policy after July 1, 2020, and instead refers broadly to "applicant[s] for or named insured[s] in . . . [a] policy described in subsection (1) . . . ." This means that, under Subsection (5), those

insureds of this option and provide a form for them to select their preferred coverage. Finally, Subsection (8) provides that, if the insured "has not made an effective choice under subsection (5)," the insurer must issue a policy containing the $250,000/$500,000 minimum coverages provided in Subsections (1)(a) and (1)(b). Read together, Subsection (1) requires any policy delivered or issued for delivery after the statute's effective date of June 11, 2019, to provide the statutory minimum liability coverage—which is $250,000/$500,000 after July 1, 2020—and Subsections (5) through (7) allow an insured to opt for lower coverage beginning July 2, 2020.[6]

Having concluded that Subsection (1) required insurers issuing policies after June 11, 2019, to provide for minimum liability limits of $250,000/$500,000 after July 1, 2020, and that Progressive failed to do so in the present policy, we now reverse the judgment of the Court of Appeals and remand this case to that court for consideration of Progressive's remaining arguments.

We do not retain jurisdiction.

ZAHRA, J. (*dissenting*).

I respectfully dissent. I would affirm the judgment of the Court of Appeals, because I agree with the panel that the Court of Appeals' decision in *Progressive Marathon Ins Co*

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who received a policy before July 2, 2020—and whose policy should have provided for $250,000/$500,000 liability limits after July 1, 2020—may purchase lower limits after that date. Thus, contrary to the dissent's suggestion, a policy issued before July 2, 2020, could still be "subject to" Subsection (5).

[6] The dissent contends that the Legislature's reform of other provisions under the no-fault act impairs our interpretation. We disagree. As noted earlier, the meaningful textual variations between Subsection (1) and these other provisions support our interpretation. We also note that the no-fault amendments provided that, after July 1, 2020, motorists could purchase policies with less-than-unlimited personal protection insurance (PIP) coverage, see MCL 500.3107c and MCL 500.3107d, and those who made that choice could sue an at-fault driver to recover certain expenses not covered by the victim's reduced PIP coverage, see MCL 500.3135(3)(c). Thus, beginning July 2, 2020, drivers faced the risk of potentially significant tort liability if they were at fault in an accident that injured a person who opted to purchase less-than-unlimited PIP coverage. It is therefore not unreasonable to conclude that the Legislature intended for the new bodily injury limits in MCL 500.3009 to apply to *all* policies issued after the statute's effective date of June 11, 2019, to ensure that such an at-fault motorist would have additional bodily injury coverage after July 1, 2020, to offset that increased risk unless and until an insured opted to purchase a lower coverage option.

v Pena[7] is dispositive.[8] In *Pena*, the Court of Appeals correctly concluded that the increased bodily injury minimum liability limits for no-fault insurance policies enacted in 2019 PA 22 do not apply to insurance policies issued or delivered before July 2, 2020. In concluding to the contrary, a majority of this Court fails to consider MCL 500.3009 in its entirety and in its proper context in light of contemporaneous amendments of the no-fault act, MCL 500.3101 *et seq*.

Effective June 11, 2019, legislative amendments of MCL 500.3009 raised the minimum liability limits on auto policies, identifying July 2, 2020, as the date on which those limits changed.[9] Defendant Progressive Marathon Insurance Company issued a six-month policy to defendant Taylon Williams on June 19, 2020,[10] which would expire on December 20, 2020. Williams was involved in an accident on July 25, 2020, which injured plaintiffs Cody Bonter and Kaytlin Jackman. In addition to unlimited personal protection insurance (PIP) benefits, the applicable no-fault policy provided for limited bodily injury coverage up to $20,000 for any one person and $40,000 for any one accident, regardless of the number of covered automobiles or insured persons involved. At issue is whether the amendment of MCL 500.3009 required the June 19, 2020, policy to include the heightened limits of $250,000 for any one person and $500,000 for any one accident, where the accident occurred after July 1, 2020.

As amended, MCL 500.3009 states, in pertinent part:

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[7] *Progressive Marathon Ins Co v Pena*, 345 Mich App 270, 280 (2023).

[8] The Court of Appeals in the instant case acknowledged that *Pena* is dispositive as to the statutory issue presented and simply applied *Pena* to conclude that the heightened liability coverage limits set forth in MCL 500.3009(1)(a) and (b) do not apply. We heard oral argument on the application in *Pena* but subsequently held it in abeyance for this case. Given the Court of Appeals' reliance on *Pena*, the very issue currently before this Court is whether *Pena* correctly interpreted the relevant statutes. The majority order acknowledges *Pena*, but declines to overrule that decision, despite necessarily concluding that *Pena* reached the incorrect result.

[9] See 2019 PA 21 and 2019 PA 22. In addition to the amendment of MCL 500.3009 raising the minimum liability limits, the amendments also gave applicants the option to purchase limited, or no, personal protection insurance (PIP) coverage for auto policies. The statute addressing tort claims, MCL 500.3135, was also amended to allow injured persons to recover, in tort, PIP benefits in excess of any limits they selected for their own policies.

[10] The policy was issued on June 19, 2020, with the policy period beginning on June 20, 2020.

(1) Subject to subsections (5) to (8), an automobile liability or motor vehicle liability policy that insures against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle must not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to all of the following limits:

(a) Before July 2, 2020, a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and after July 1, 2020, a limit, exclusive of interest and costs, of not less than $250,000.00 because of bodily injury to or death of 1 person in any 1 accident.

(b) Before July 2, 2020 and subject to the limit for 1 person in subdivision (a), a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and after July 1, 2020, and subject to the limit for 1 person in subdivision (a), a limit of not less than $500,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident.

* * *

(5) After July 1, 2020, an applicant for or named insured in the automobile liability or motor vehicle liability policy described in subsection (1) may choose to purchase lower limits than required under subsection (1)(a) and (b), but not lower than $50,000.00 under subsection (1)(a) and $100,000.00 under subsection (1)(b). To exercise an option under this subsection, the person shall complete a form issued by the director and provided as required by section 3107e, that meets the requirements of subsection (7).

(6) After July 1, 2020, on application for the issuance of a new policy or renewal of an existing policy, an insurer shall do all of the following:

(a) Provide the applicant or named insured the liability options available under this section.

(b) Provide the applicant or named insured a price for each option available under this section.

(c) Offer the applicant or named insured the option and form under this subsection.

> (7) The form required under subsection (5) must do all of the following:
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> (a) State, in a conspicuous manner, the risks of choosing liability limits lower than those required by subsection (1)(a) and (b).
>
> (b) Provide a way for the person to mark the form to acknowledge that he or she has received a list of the liability options available under this section and the price for each option.
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> (c) Provide a way for the person to mark the form to acknowledge that he or she has read the form and understands the risks of choosing the lower liability limits.
>
> (d) Allow the person to sign the form.
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> (8) After July 1, 2020, if an insurance policy is issued or renewed as described in subsection (1) and the person named in the policy has not made an effective choice under subsection (5), the limits under subsection (1)(a) and (b) apply to the policy.

This case presents the exact same legal issue as that presented in *Pena*. In that case, the Court of Appeals rejected the argument that the 2019 amendments of MCL 500.3009 automatically increased liability coverage for preexisting policies whose terms extended beyond July 1, 2020. Instead, the panel analyzed the plain language of MCL 500.3009 to conclude that the Legislature intended for the heightened liability limits to apply only to policies delivered or issued *after* July 1, 2020. I agree with the Court of Appeals' holding in *Pena* and with the Court of Appeals' application of that holding in this case.

MCL 500.3009(1) is poorly drafted; the Legislature could have more clearly specified which language in the body of Subsection (1) it intended the July 2, 2020, date set forth in MCL 500.3009(1)(a) and (b) to modify. In reversing the Court of Appeals, a majority of this Court concludes that the July 2, 2020, date found in Subdivisions (a) and (b) refers to the "unless the liability coverage is subject to *all of the following limits*" language in Subsection (1).[11] According to the majority, this means that because

[11] Emphasis added. While not dispositive to my reading of the statute, it is notable that the phrase "all of the following limits," which a majority of this Court heavily relies on, predates the amendment that we currently analyze. This language was added to the statute in 2017 via 2016 PA 346 when Subdivisions (a) through (c) were added in an apparent attempt to delineate the three types of required minimum coverage: the coverage required for (a) "bodily injury to or death of 1 person in any 1 accident," (b) "bodily injury to or death of 2 or more persons in any 1 accident," and (c) "[a] limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident." Thus, the use of

Progressive issued the applicable policy after the effective date of 2019 PA 22, Subsection (1) of MCL 500.3009 required the policy's liability coverage to meet all of the minimum liability limits set forth in *both* Subdivisions (a) and (b) by providing a $20,000/$40,000 bodily injury limit through July 1, 2020, and then a $250,000/$500,000 bodily injury limit thereafter. While this interpretation makes some sense when reading Subsection (1) in isolation, when considered in its proper context, the Court of Appeals in *Pena* more reasonably concluded that the July 2, 2020, date set forth in MCL 500.3009(1)(a) and (b) should be read in reference to the "delivered or issued for delivery" language in Subsection (1). That is, MCL 500.3009(1)(a) and (b) are conditioned on when a policy was "delivered or issued for delivery" under Subsection (1). Accordingly, policies "delivered or issued for delivery" before July 2, 2020, were subject to coverage limits of $20,000/$40,000 under Subsection (1)(a), and only those "delivered or issued for delivery" after July 1, 2020, are subject to the heightened limits of $250,000/$500,000 under Subsection (1)(b).

To the extent that MCL 500.3009(1) is difficult to decipher, any confusion is resolved when reading MCL 500.3009 in its entirety and in context with related provisions of the no-fault act, which this Court is required to do. Starting with MCL 500.3009, Subsection (1) states that its provisions are "[s]ubject to" Subsections (5) through (8), all of which incorporate a July 1, 2020, date. MCL 500.3009(5) includes an option for an insured to purchase lower liability limits *after* July 1, 2020, providing that "[*a*]*fter July 1, 2020*, an applicant for or named insured in the automobile liability or motor vehicle liability policy described in subsection (1) may choose to purchase lower limits than required under subsection (1)(a) and (b), but not lower than $50,000.00 under subsection (1)(a) and $100,000.00 under subsection (1)(b)."[12] The Legislature seemingly would not have made the coverage provided for in Subsection (1) "[s]ubject to" the election referred to in Subsection (5) before that election was contemplated—"after July 1, 2020."

Notably, Subsection (6) provides:

> After July 1, 2020, on application for the issuance of a new policy or renewal of an existing policy, an insurer shall do all of the following:
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> (a) Provide the applicant or named insured the liability options available under this section.

"all of the following limits" in the statute was seemingly intended to convey that all three types of minimum coverage are required to be included in no-fault policies. I question the majority's reliance on this language to support its conclusion that policies must contain not only the three types of coverage referred to in the statute, but both the pre- and post-July 2, 2020, monetary limits set forth in MCL 500.3009(1)(a) and (b).

[12] Emphasis added.

> (b) Provide the applicant or named insured a price for each option available under this section.
>
> (c) Offer the applicant or named insured the option and form under this subsection.

This subsection does not require insurers to provide such information when issuing a policy that takes effect before July 2, 2020, and lasts beyond July 1, 2020. If the increased limits automatically applied to that group of insureds, as the majority concludes, then those insureds would also need to be apprised of the change in limits and the ability to purchase lower limits under Subsection (5). Because the insureds are not statutorily entitled to such information, it is unlikely that the Legislature intended the heightened limits to apply to policies that were issued before July 2, 2020. Rather, the increased limits apply only when an application is made after July 1, 2020.

Finally, Subsection (8) states that "[*a*]*fter July 1, 2020*, if an insurance policy is issued or renewed as described in subsection (1) and the person named in the policy has not made an effective choice under subsection (5), the limits under subsection (1)(a) and (b) apply to the policy."[13] This language indicates that the insured may make a choice as to coverage, and that the default under Subsection (8) is automatically invoked absent a contrary choice only where a policy is issued or renewed after July 1, 2020.[14] If the majority's interpretation is correct, this language would also apply to policies issued or renewed prior to July 2, 2020, with terms that extended beyond July 1, 2020.

In short, consideration of the statute in its entirety supports the Court of Appeals' interpretation in *Pena*. The Legislature easily could have included a subsection making clear that all existing policies must be adjusted before July 2, 2020. It also could have included a different deadline for making an election under MCL 500.3009(5) so that insurers and insureds could mutually agree on a policy that would go into effect on July 2, 2020. Instead, the Legislature enacted a statute that repeatedly refers to events occurring after July 1, 2020, with Subsection (6) specifically providing instruction as to what needs to occur for "the issuance of a new policy or renewal of an existing policy" "[a]fter July 1, 2020." The statute simply does not contemplate that the heightened limits set forth in MCL 500.3009(1) apply to policies issued before July 2, 2020.

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[13] Emphasis added.

[14] While one could argue that a policy issued before July 2, 2020, could still be "subject to" MCL 500.3009(5) because the relevant portions of that policy would simply be triggered on that date, it is unclear how this would be accomplished if Subsection (6) does not require the conveying of the necessary information to invoke that option before July 2, 2020.

Just as other subsections of MCL 500.3009 support the interpretation of the Court of Appeals in *Pena*, so too do related provisions of the no-fault act. This is because at the same time that the Legislature modified MCL 500.3009, it added or modified provisions of the no-fault act to apply when a policy is issued or renewed *after* July 1, 2020. The Legislature added MCL 500.3107c, which allows insurance applicants to purchase limited PIP coverage—with a corresponding reduction in the premium—for policies "*issued or renewed after July 1, 2020*."[15] MCL 500.3109a(2) instructs that "[f]or an insurance policy *issued or renewed after July 1, 2020*, the insurer shall offer to an applicant or named insured that selects a personal protection benefit limit under section 3107c(1)(b) an exclusion related to qualified health coverage."[16] And MCL 500.3107d allows applicants who are qualified persons to decline PIP coverage altogether for a policy that "*is issued or renewed after July 1, 2020*."[17] I seriously doubt that the Legislature intended for these statutes to apply only to policies issued or renewed after July 1, 2020, yet also intended the increase in minimum liability limits of MCL 500.3009 to apply to policies that were issued before July 2, 2020.

These amendments tie into the Legislature's simultaneous reform of tort liability under the no-fault act. MCL 500.3135(3)(c) subjects tortfeasors to liability for allowable expense damages exceeding any applicable limits selected under MCL 500.3107c, or without limit for allowable expenses for those who excluded PIP coverage entirely under MCL 500.3107d, which, again, both explicitly refer to policies issued or renewed after July 1, 2020.[18] As the Court of Appeals in *Pena* explained, "[b]ecause applicants or named

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[15] Emphasis added. MCL 500.3107c(1) states, "Except as provided in sections 3107d and 3109a, and subject to subsection (5), for an insurance policy that provides the security required under section 3101(1) *and is issued or renewed after July 1, 2020*, the applicant or named insured shall, in a way required under section 3107e and on a form approved by the director, select 1 of the following coverage levels for personal protection insurance benefits under section 3107(1)(a)[.]" (Emphasis added.)

[16] Emphasis added.

[17] Emphasis added. MCL 500.3107d(1) states, "For an insurance policy that provides the security required under section 3101(1) *and is issued or renewed after July 1, 2020*, the applicant or named insured may, in a way required under section 3107e and on a form approved by the director, elect to not maintain coverage for personal protection insurance benefits payable under section 3107(1)(a) . . . ." (Emphasis added.)

[18] MCL 500.3135(3) states, in pertinent part:

> Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with

insureds were only permitted to limit or exclude PIP coverage under MCL 500.3107c and 3107d in policies issued or renewed after July 1, 2020, their direct reference in MCL 500.3135 indicates that the changes in tort liability cannot affect policies issued prior to July 2, 2020."[19] Consideration of all of these amendments makes clear that the Legislature intended a combination of changes to available PIP benefits, tort recovery, and liability limits for policies issued or renewed after July 1, 2020.[20] The increased limits set forth in MCL 500.3009(1)(a) and (b), and the ability to elect lower limits under MCL 500.3009(5), are part of a comprehensive group of changes that apply only to policies issued or renewed after July 1, 2020. MCL 500.3009 therefore did not increase liability coverage for preexisting policies whose terms extended beyond July 1, 2020. Because Progressive's

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> respect to which the security required by section 3101(1) was in effect is abolished except as to:
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> * * *
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> (c) Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110, including all future allowable expenses and work loss, in excess of any applicable limit under section 3107c or the daily, monthly, and 3-year limitations contained in those sections, or without limit for allowable expenses if an election to not maintain that coverage was made under section 3107d or if an exclusion under section 3109a(2) applies.

[19] *Pena*, 345 Mich App at 280.

[20] See also MCL 500.3104(2) (providing that the catastrophic claims association covers "policies issued or renewed before July 2, 2020" and certain policies "issued or renewed after July 1, 2020"); MCL 500.2105(6) ("The amendments to this chapter made by the amendatory act that added this subsection apply beginning July 1, 2020."). The amendments added MCL 500.2111f, which provides in Subsection (1), "Before July 1, 2020, an insurer that offers automobile insurance in this state shall file premium rates for personal protection insurance coverage for automobile insurance policies effective after July 1, 2020." In turn, Subsection (10) provides, "After July 1, 2020 and before July 2, 2028, an insurer *shall not issue or renew* an automobile insurance policy in this state unless the premium rates filed by the insurer for personal protection insurance coverage are approved under this section." (Emphasis added.) While the Legislature used the clearer "issued or renewed after July 1, 2020" language in other provisions, in most instances it did so in newly added sections of the no-fault act. See 2019 PA 21 (listing newly added sections including MCL 500.3107c and MCL 500.3107d). But as alluded to previously in footnote 5, the Legislature chose to insert the new dates into the existing statutory structure in MCL 500.3009, rather than fully rewriting that provision. See 2019 PA 22. While not dispositive, this provides a potential explanation for the different language in MCL 500.3009.

policy is consistent with the plain language of MCL 500.3009, the trial court erred by granting summary disposition in favor of plaintiffs.

It is noteworthy that the Department of Insurance and Financial Services (DIFS), the entity tasked with interpreting and applying no-fault statutes, approved of this interpretation. The DIFS stated on a website addressing frequently asked questions about 2019 PAs 21 and 22 that the "changes will apply to policies issued or renewed after July 1, 2020." The DIFS also stated the following question and answer on its website:

> **When does Section 3009 requiring a change in Bodily Injury limits become effective? Does it go in effect for new policies written and existing policies renewing after July 1, 2020, or does it go in effect for all policies on that date?**
>
> [Answer:] The new BI limits did not automatically apply on July 2, 2020. They become effective for policies that are issued or renewed after July 1, 2020.

Progressive complied with the DIFS's clear guidance. If insurers were required to issue a staggered policy (with different policy limits applied up to and after July 1, 2020), it was never contemplated by the DIFS, nor did the DIFS appear to contemplate that insurers would need to terminate all policies on July 1, 2020, and issue new policies after that date.

Finally, the majority's interpretation requires Progressive to provide limits more than 12 times higher than what was contracted for without an increased premium. The majority's interpretation allows Williams to receive unlimited PIP benefits under the policy because it predated July 2, 2020, but also obtain the benefit of the highest liability limit that the Legislature intended would apply only to policies issued or renewed after July 1, 2020. Williams bears no burden by adhering to the $20,000/$40,000 liability limits that he purchased.

In sum, I would affirm the judgment of the Court of Appeals because *Pena* correctly held that the amendments of MCL 500.3009 did not automatically increase liability coverage for preexisting policies whose terms extended beyond July 1, 2020.[21] This result

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[21] I also agree with the Court of Appeals that the July 6, 2020, change in Williams' vehicles, coupled with Progressive's sending of an "auto insurance coverage summary" to Williams, did not constitute the delivery or issuance of a new insurance policy that triggered the statutory conditions to impose the heightened liability coverage limits set forth in MCL 500.3009(1)(a) and (b). As noted earlier, Progressive issued the original no-fault automobile insurance policy to Williams on June 19, 2020, with effective dates from June 20, 2020 to December 20, 2020. The policy had a "replacement auto" provision, which

is consistent with the plain text of MCL 500.3009, as well as with related provisions of the no-fault act.[22] For these reasons, I dissent.

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stated that "an auto that permanently replaces an auto shown on the declarations page . . . *will have the same coverage as the auto it replaces* if the replacement auto is not covered by any other insurance policy." (Emphasis added and omitted.) On July 6, 2020, Progressive, at Williams' request, changed the insured vehicle under the policy from a 2014 Jeep Grand Cherokee to a 2017 Dodge Charger.

Plaintiffs disclaimed any argument that this swap amounted to the issuance of a new policy. But even if they did not, this argument would fail. In *Wells v Detroit Auto Inter-Ins Exch*, 29 Mich App 235, 241 (1970), the Court of Appeals concluded that a vehicle swap conducted under a nearly identical provision did not amount to a new policy. By providing coverage for Williams' Jeep, Progressive was merely fulfilling its obligations under the original June 20, 2020 policy. Consequently, the analysis set forth in *Pena* is entirely applicable and dispositive here.

[22] This result is also consistent with the Court of Appeals' opinion in *Demske v Fick*, ___ Mich App ___ (April 18, 2024) (Docket No. 362739). That case pertained to MCL 500.3157, which was amended by 2019 PA 21 to add fee schedules for medical treatment or training rendered after July 1, 2021. At issue was whether the amended version of MCL 500.3157 applied to medical treatment rendered after July 1, 2021, where the applicable renewal insurance policy took effect after the statutory amendment date of June 11, 2019, and the plaintiff was injured after that date, but before July 1, 2021. The Court of Appeals held that the fee schedules applied, reasoning that "[t]he insurance contract took effect after the statutory amendment, and retroactive application of the statutory amendment does not occur in this instance." *Id*. at ___; slip op at 7-8. This Court denied leave to appeal after hearing oral argument in the same session as the instant case.

My position in this case is consistent with the Court of Appeals' result in *Demske* because the statutory provisions in each case meaningfully differ. The statutory provision at issue in *Pena* and the instant case—MCL 500.3009(1)—focuses on the date an automobile liability policy was delivered or issued, while the statutory provision at issue in *Demske*—MCL 500.3157(2)—focuses on the date medical treatment was rendered. In contrast to MCL 500.3009, MCL 500.3157 does not distinguish the application of the fee schedules by the policy's delivery date but only distinguishes between categories of "treatment or training rendered" by date. MCL 500.3157 contains no language that resembles MCL 500.3009's language distinguishing coverage between dates. Because of this key difference, the Court of Appeals' opinions in *Pena* and in *Demske* are consistent.

WELCH, J., joins the statement of ZAHRA, J.

BERNSTEIN and HOOD, JJ., took no part in the decision of this case.

STATE OF MICHIGAN

COURT OF APPEALS

CODY BONTER and KAYTLIN JACKMAN,

Plaintiffs/Counterdefendants-Appellees,

v

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant/Counterplaintiff/Cross-Plaintiff-Appellant,

and

TAYLON WILLIAMS,

Defendant/Cross-Defendant.

UNPUBLISHED
August 17, 2023

No. 360411
Genesee Circuit Court
LC No. 21-115568-CK

Before: O'BRIEN, P.J., and CAVANAGH and MARKEY, JJ.

PER CURIAM.

In this declaratory-judgment action, defendant/counterplaintiff/cross-plaintiff Progressive Marathon Insurance Company appeals by right the trial court's order denying Progressive's motion for summary disposition pursuant to MCR 2.116(C)(10) (no genuine question of material fact) and instead granting summary disposition in favor of plaintiffs, Cody Bonter and Kaytlin Jackman, pursuant to MCR 2.116(I)(2) (opposing party entitled to judgment). We reverse.

I. BACKGROUND

On June 19, 2020, Progressive issued a no-fault automobile insurance policy to defendant Taylon Williams with effective dates from June 20, 2020 to December 20, 2020. The policy's terms provided liability coverage of $20,000 per person or $40,000 per accident, and it covered Williams' 2014 Jeep Grand Cherokee. Pursuant to 2019 PA 21 and 2019 PA 22, amendments to the Insurance Code, MCL 500.100 *et seq*., mandated increased minimum liability limits of $250,000 per person or $500,000 per accident for "automobile liability or motor vehicle liability polic[ies] . . . delivered

or issued for delivery in this state" after July 1, 2020. MCL 500.3009(1). On July 6, 2020, Progressive, at Williams' request, changed the insured vehicle under the policy from the 2014 Jeep Grand Cherokee to a 2017 Dodge Charger. Progressive sent Williams an "auto insurance coverage summary" reflecting this change. On July 22, 2020, Progressive sent Williams another insurance coverage summary reflecting that a credit union had been added as an interest-holder on the vehicle.

On July 25, 2020, Williams, while driving the 2017 Dodge Charger, was responsible for an accident in which plaintiffs were injured. Plaintiffs initially sued Williams for their injuries. After Progressive offered to settle for the limits stated in its policy with Williams, plaintiffs commenced this declaratory-judgment action to resolve whether Progressive, as Williams' insurer, was liable up to the $20,000/$40,000 limit stated in Williams' policy or up to the new statutorily-mandated $250,000/$500,000 limit. Progressive counterclaimed, then moved for summary disposition, to resolve the same question. The only dispute concerned the amount of Progressive's liability. The trial court determined that the July 6, 2020 change in vehicles, coupled with Progressive's sending of the "auto insurance coverage summary" to Williams, fulfilled the statutory conditions to impose the higher limits, so it denied Progressive's motion for summary disposition and granted summary disposition in favor of plaintiffs. This appeal followed.

II. STANDARDS OF REVIEW

A grant or denial of summary disposition is reviewed de novo. *McMaster v DTE Energy Co*, 509 Mich 423, 431; 984 NW2d 91 (2022). Summary disposition under MCR 2.116(C)(10) is proper 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." Thus, "[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim." *McMaster*, 509 Mich at 431. "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." *Zaher v Miotke*, 300 Mich App 132, 139-140; 832 NW2d 266 (2013).

The initial burden in a motion under MCR 2.116(C)(10) rests with the moving party, who can satisfy its burden by either (1) submitting "affirmative evidence that negates an essential element of the nonmoving party's claim" or (2) demonstrating "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (quotation marks and citation omitted). In response to a properly supported motion under MCR 2.116(C)(10), the nonmoving party cannot "rest on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial." *Campbell v Kovich*, 273 Mich App 227, 229; 731 NW2d 112 (2006).

The trial court's interpretation and application of statutes is reviewed de novo. *Safdar v Aziz*, 501 Mich 213, 217; 912 NW2d 511 (2018).

III. ANALYSIS

The parties' dispute centers around MCL 500.3009(1), which states:

> (1) Subject to subsections (5) to (8), an automobile liability or motor vehicle liability policy that insures against loss resulting from liability imposed by law for

> property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle must not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to all of the following limits:
>
> (a) Before July 2, 2020, a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and after July 1, 2020, a limit, exclusive of interest and costs, of not less than $250,000.00 because of bodily injury to or death of 1 person in any 1 accident.
>
> (b) Before July 2, 2020 and subject to the limit for 1 person in subdivision (a), a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and after July 1, 2020, and subject to the limit for 1 person in subdivision (a), a limit of not less than $500,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident.
>
> (c) A limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident. [Emphasis added.]

The parties' dispute about this subsection more or less comes down to a single issue—whether MCL 500.3009(1) automatically increased Williams' policy limits as of July 2, 2020. This question has been resolved by *Progressive Marathon Ins Co v Pena*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 358849), which, as a published decision, is controlling under the rule of stare decisis. See MCR 7.215(J)(1).

In *Pena*, the plaintiff issued an insurance policy to one of the defendants with policy limits of $20,000 per person or $40,000 per accident, and the policy had effective dates from March 11, 2020 to September 11, 2020. *Pena*, ___ Mich App at ___; slip op at 1. This Court considered and rejected any argument that the policy's limits automatically increased to the new statutory limits of $250,000/$500,000 on July 2, 2020, expressly holding that the increased limits applied only to "policies delivered or issued for delivery after July 1, 2020." *Pena*, ___ Mich App at ___; slip op at 2-5. In defining the words "delivered" and "issued," this Court consulted a dictionary, and concluded that delivery involved conveying something to another person, and issuance meant distributing something or putting it forth. *Pena*, ___ Mich App at ___; slip op at 3-4. The Court accordingly concluded "that the phrase 'delivered or issued for delivery' under MCL 500.3009(1) can encompass both a policy that was previously delivered and left in the insured's possession and a policy that was sent out or distributed to an insured for delivery." *Id*. at ___; slip op at 4. The *Pena* Court went on to observe that pursuant to the plain language of the statute, "it is clear that the Legislature did not intend for the increased minimums to apply automatically to policies that had been delivered prior to July 2, 2020." *Id*. at ___; slip op at 4. This effectively resolves the parties' dispute over whether the applicable policy limits automatically increased on July 2, 2020—*Pena* held that they do not.

Turning to the only potential wrinkle in this case, Progressive, at Williams' request, changed the insured vehicle under the policy after July 1, 2020, and sent Williams an "auto insurance coverage summary" reflecting that change. While not explicitly stated, the trial court appeared to hold that this violated MCL 500.3009(8), which states, "After July 1, 2020, *if an insurance policy*

is issued or renewed as described in subsection (1) and the person named in the policy has not made an effective choice under subsection (5), the limits under subsection (1)(a) and (b) apply to the policy." (Emphasis added.) Again, MCL 500.3009(1) concerns whether a policy was "delivered or issued for delivery." Thus, the touchstone for resolving whether a policy was "issued or renewed" under MCL 500.3009(8) is whether the policy was "delivered or issued for delivery" after July 1, 2020. That in turn means Progressive must have, in some way, actually conveyed or attempted to convey a *policy* to Williams after July 1, 2020. See *Pena*, ___ Mich App at ___; slip op at 4.

There is no evidence in the record that Progressive did so. Progressive submitted evidence that it sent Williams a policy on June 19, 2020, stating that his coverage begins the following day—June 20, 2020. The same evidence shows that Williams' policy was given "Policy Number: 939510962." Each "auto insurance coverage summary" that Williams received after July 1, 2020, listed the same policy number and stated, "Your insurance policy and any policy endorsements contain a full explanation of your coverage." By necessary inference, each insurance coverage summary sent to and received by Williams was not, itself, a policy.

Progressive submitted this evidence to the trial court, thereby sufficiently supporting its argument that it did not deliver or issue for delivery a *policy* to Williams after July 1, 2020. See *Quinto*, 451 Mich at 362. This shifted the burden to plaintiffs to submit documentary evidence setting forth a genuine issue of material fact about whether Progressive delivered or issued for delivery a policy to Williams after July 1, 2020. See *Campbell*, 273 Mich App at 229. In response to Progressive's motion, plaintiffs only pointed to the July 6, 2020 insurance coverage summary as evidence that Progressive delivered a "policy" to Williams after July 1, 2020. For the reasons explained, however, this summary supports that Progressive did *not* issue a policy to Williams on that date; the summary refers to the same "policy number" as Williams' other policy documents and otherwise clearly indicates that it is not, itself, a policy.[1] Accordingly, plaintiffs failed to establish a genuine issue of material fact whether Progressive delivered or issued for delivery a *policy* after July 1, 2020. From this, it follows that MCL 500.3009(8) is necessarily inapplicable, and Progressive was otherwise entitled to summary disposition in this declaratory action.[2]

Reversed and remanded for the trial court to enter an order granting Progressive's motion for summary disposition. We do not retain jurisdiction. Progressive, as the prevailing party, may tax costs under MCR 7.219.

/s/ Colleen A. O'Brien
/s/ Mark J. Cavanagh
/s/ Jane E. Markey

[1] Notably, plaintiffs on appeal now only assert "that Progressive delivered *coverage* to Williams . . . on July 6, 2020, i.e., after July 1, 2020." (Emphasis added.) However, the plain language of MCL 500.3009(1) refers to delivering a "policy," not "coverage."

[2] In light of this holding, we decline to address Progressive's alternative arguments on appeal.