STATE OF MICHIGAN

COURT OF APPEALS

CHIMERE CHERYL COOKS,

Plaintiff-Appellant,

and

BERNICE LYNN CLAY,

Plaintiff,

v

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellee.

UNPUBLISHED
August 13, 2026
2:06 PM

No. 375350
Wayne Circuit Court
LC No. 23-009583-NF

Before: LETICA, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

In this first-party no-fault action, MCL 500.3101 *et seq*., plaintiff appeals as of right the order of dismissal but challenges an earlier order granting summary disposition under MCR 2.116(C)(10) to defendant, Citizens Insurance Company. We affirm.

I. BACKGROUND

This action arose from a March 24, 2022 motor vehicle accident that injured plaintiff. Plaintiff lived with her sister, April Clay, and was driving Clay's vehicle when the accident occurred. Plaintiff, who sustained injuries to her neck and back, began seeing a chiropractor. Clay's vehicle was insured by Progressive Insurance Company, and plaintiff submitted a claim as a resident relative. Because the policy address provided was incorrect,[1] Progressive sent multiple inquiries to plaintiff for additional information, and thereafter, denied plaintiff's claim based on her lack of cooperation. In turn, plaintiff applied for personal injury benefits through the Michigan

[1] Plaintiff's address did not match the address on her sister's policy.

Assigned Claims Plan (MACP). Defendant was assigned plaintiff's claim. Defendant denied plaintiff services because Progressive was a higher priority insurer. Plaintiff filed suit contending that the Progressive policy was not applicable to her and she was entitled to MACP benefits through defendant.

Plaintiff was unable to secure documentation showing Progressive denied her claim, but provided an unnotarized transcript of a voicemail she received from a Progressive employee. The transcription indicated that Progressive denied plaintiff coverage for noncooperation, order of priority, and because she did not live at the policy address. Defendant moved for summary disposition asserting Clay's policy was applicable to defendant as a resident relative even if Progressive denied her claim. The trial court granted defendant summary disposition, and plaintiff appealed.

II. ANALYSIS

Plaintiff argues the trial court erred in granting defendant's motion for summary disposition because it failed to demonstrate plaintiff was covered by a higher priority insurance policy. Further, plaintiff contends this Court should reverse the order and deny defendant's alternative claim to dismiss plaintiff's claims for chiropractic treatment because they were timely and could be tolled under MCL 500.3145(3). We disagree.

An appellate court "reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "In making this determination, [an appellate court] reviews the entire record to determine whether defendant was entitled to summary disposition." *Id*. "De novo review means that [an appellate court] review[s] the legal issue independently, without required deference to the courts below." *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019). Defendant moved for summary disposition under MCR 2.116(C)(10). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint." *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 109; 1 NW3d 44 (2023) (quotation marks and citation omitted). "In deciding a motion under MCR 2.116(C)(10), a court reviews the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Sanders v McLaren-Macomb*, 323 Mich App 254, 264; 916 NW2d 305 (2018) (quotation marks and citation omitted).

MCR 2.116(C)(10) provides that the trial court may grant summary disposition in favor of the moving party when, "[e]xcept as to the amount of damages, 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." "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." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "Under the burden-shifting framework of MCR 2.116(C)(10), the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Holder v Anchor Bay Investments, Inc*, 350 Mich App 631, 635; 33 NW3d 901 (2024).

Plaintiff contends summary disposition was improperly granted because there was a question of fact as to whether she was covered by her sister's Progressive policy as a resident relative. We disagree.

"When a person is injured in a motor vehicle accident, the first step in a coverage determination is found in MCL 500.3114(1), which creates the highest priority for motor vehicle occupants." *Smith v Farm Bureau Mut Ins Co of Mich*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 369139); slip op at 5. In pertinent part, MCL 500.3114(1) provides: "[A] personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." "Michigan courts have defined domicile to mean the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 493; 835 NW2d 363 (2013) (citation and quotation marks omitted).

"MCL 500.3172 sets forth the eligibility criteria for claimants to seek [personal injury protection] PIP benefits through the MACP when no insurance is readily applicable and the accident occurs in Michigan." *Steanhouse v Mich Auto Ins Placement Facility (On Remand)*, 351 Mich App 209, 224; 34 NW3d 627 (2024) (quotation marks and citation omitted). A person may claim PIP benefits through the MACP if "[n]o personal protection insurance is applicable to the injury," MCL 500.3172(1)(a), or if "[n]o personal protection insurance applicable to the injury can be identified," MCL 500.3172(1)(b).

> [T]he MACP is a benefit to persons injured in motor vehicle accidents who otherwise do not have applicable insurance benefits. It imposes, by statute, the obligation of providing no-fault benefits to persons injured in motor vehicle accidents if an applicable no-fault policy cannot be *identified*, MCL 500.3172(1), on all no-fault insurers licensed to do business in Michigan. [*Bronner v City of Detroit*, 507 Mich 158, 174; 968 NW2d 310 (2021) (emphasis added).]

Essentially, "the MACP obliges [a chosen insurer] to function as insurers of last resort even as to some injured persons with whom the insurer does not have an existing insurance relationship, making insurance companies [] the instruments through which the Legislature carries out a scheme of general welfare." *Id*. at 174-175 (quotation marks and citation omitted).

Plaintiff argues defendant provided no affirmative evidence to support the allegation she was covered by her sister's insurance policy. But defendant provided the trial court with documentary evidence, including a summary of plaintiff's sister's policy, plaintiff's affidavit of residency, plaintiff's driver's license information, and plaintiff's testimony admitting that plaintiff was domiciled as a resident relative of her sister, who was a named Progressive policy holder at the time of the accident. This evidence shows that plaintiff and her sister lived at the same address. Their mail was delivered to that address and all their belongings were at that location. On appeal, plaintiff admits she was domiciled with her sister and that her status as a resident relative is not contested. Consequently, plaintiff would be ineligible for MACP benefits because her sister's Progressive policy would be applicable to her as a resident relative.

Plaintiff, however, argues that she is entitled to MACP benefits through defendant because the policy was not applicable to her under MCL 500.3172(1)(a), and Progressive did not actually provide her coverage. Although the policy address provided to Progressive was incorrect, Progressive did not rescind the policy or void coverage, and plaintiff provided no documentary evidence that her sister's policy did not apply to her as a resident relative. Further, plaintiff did not provide documentary evidence that her claim was denied. But, even if it was, MCL 500.3114 does not require defendant to prove Progressive would accept plaintiff's claim or to prove benefits were received.

Although unpublished per curiam opinions are not binding authority under MCR 7.215(C)(1), this Court recently dealt with a similar case involving the applicability of insurance as a resident relative. In *Henry Ford Health Sys v Mich Auto Ins Placement Facility*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2025 (Docket No. 368076), p 2, the claimant lived with his grandfather and was injured in a motor vehicle accident. *Id*. Claimant sought MACP benefits after being denied coverage by his grandfather's insurance company. *Id*. This Court found that even though claimant was not listed on the insurance policy as a resident relative and had been denied by the insurance company, the issue became "whether coverage was 'available' to [the claimant] under his grandfather's policy." *Id*. at p 6. Because "[a]pplicable PIP coverage for [the claimant's] injuries exist[ed]," claims against the MACP were dismissed. *Id*. In other words, defendant only had to establish that an insurance policy was applicable to plaintiff in order to show that she could not pursue benefits under the MACP.

In this case, plaintiff asserts that under MCL 500.3172(1)(a), MACP benefits are allowed if "[n]o personal protection insurance is *applicable* to the injury." (Emphasis added). Plaintiff contends defendant misinterprets the language of MCL 500.3172(1)(a), asserting that she had "identifiable" insurance but no "applicable" coverage. Plaintiff also looks to the dictionary to define "applicable" as meaning: "[C]apable of or suitable for being applied." *Merriam-Webster's Collegiate Dictionary* (11th ed). But MCL 500.3114(1) states that an insurance policy "applies . . . to the person named in the policy, . . . and a relative . . . domiciled in the same household . . . ." At the summary disposition hearing, defendant provided affirmative proof that plaintiff's sister had a current and valid insurance policy and that plaintiff was a resident-relative, who was domiciled in her sister's household. Plaintiff provided no proof to refute these facts. Because plaintiff was a resident relative, the insurance policy of plaintiff's sister could have applied to plaintiff. As such, plaintiff was not qualified for MACP coverage. The burden then shifted to plaintiff to prove she was not covered by her sister's policy. See *Holder*, ___ Mich App at ___; slip op at 2.

If Progressive had rescinded the policy, plaintiff may not have been covered as a resident relative because her sister would not have been insured. See *Bazzi v Sentinel Ins Co*, 502 Mich 390; 919 NW2d 20 (2018). But no formal denial of the Progressive policy's applicability or rescission of coverage was introduced. The last letter from Progressive dated January 2, 2023, involved requesting information pertinent to denying plaintiff's claim. Importantly, Progressive explained that if the information was provided, the investigation and handling of her claim would continue. Our Supreme Court has held that "a claimant must be diligent in the pursuit of . . . her claim for PIP benefits." *Griffin v Trumbull Ins Co*, 509 Mich 484, 500; 983 NW2d 760 (2022). "Due diligence requires a good-faith effort to fulfill a legal obligation or requirement that could ordinarily be expected of a person under the factual circumstances." *Id*. Instead of continuing the claim with Progressive, plaintiff filed for MACP benefits on January 14, 2023, for which she was not qualified.

The only support plaintiff offered for her contention that the policy did not apply to her was the transcribed voicemail message from October 16, 2024, stating plaintiff's claim was denied due to order of priority, noncooperation, and because plaintiff "does not return to the policy address." This transcription was not notarized or signed in affirmation by the Progressive agent. Even accepting the voicemail as legitimate and viewing it in the light most favorable to plaintiff, it does not establish a material fact in these proceedings. "A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact." *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995). "[T]he nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), superseded by statute as stated in *Dell v Citizen Ins Co of America*, 312 Mich App 734, 742; 880 NW2d 280 (2015). As noted, the policy was not rescinded, and under MCL 500.3114, insurance coverage needs only to be applicable, not successfully granted. There was no question of material fact, at the time of summary disposition, that the policy of plaintiff's sister as it related to the accident, was not rescinded by Progressive. Because the policy was applicable, it encompassed the resident relatives, including plaintiff.

Although the policy address was incorrect, that matter requires settling between plaintiff and Progressive, not plaintiff and defendant. Defendant is not the right party to defend against the claim, and the proper remedy would have been to pursue the matter with Progressive. Although plaintiff argues she is barred from seeking redress with Progressive under the one-year back rule, MCL 500.3145, plaintiff had the opportunity to make Progressive a party to the current action. Again, no evidence was provided suggesting Progressive rescinded the policy because of the address or that this insurance policy was not applicable to plaintiff. Plaintiff failed to create a genuine issue of material fact, and the trial court did not err in finding plaintiff was a resident relative under the applicable insurance policy of her sister, providing plaintiff a means to obtain insurance benefits.[2]

Affirmed.

/s/ Anica Letica
/s/ Colleen A. O'Brien
/s/ James Robert Redford

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[2] In light of our disposition, we decline to address plaintiff's alternative argument.