STATE OF MICHIGAN

COURT OF APPEALS

JOHNTHAN DEMPSTER,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
August 20, 2026
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No. 374546; 375033
Wayne Circuit Court
LC No. 23-001880-NI

Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

PER CURIAM.

In this no-fault action brought by plaintiff, Johnthan Dempster, for recovery of personal protection insurance (PIP) benefits after an automobile accident, defendant, State Farm Mutual Automobile Insurance Company, appeals as of right the trial court order awarding plaintiff attorneys fees and the final judgment.[1] After a jury found that work loss benefits stemming from plaintiff's injuries were owing and overdue to plaintiff, the trial court awarded plaintiff $60,291.71 in attorney fees under MCL 500.3148. On appeal, defendant argues that the trial court erred by awarding plaintiff attorney fees because defendant's refusal to pay work loss benefits was reasonable and based on a bona fide factual dispute. We affirm.

I. BACKGROUND

In September 2021, plaintiff was driving westbound on Charlevoix Street in Detroit when another vehicle failed to stop at a stop sign and struck plaintiff's vehicle on the passenger side. The next day, plaintiff went to urgent care suffering from pain in his wrist and lower back. It was recommended that plaintiff go to the emergency room for further treatment. Plaintiff's CT scan from Beaumont Hospital showed that he had three herniated discs. Plaintiff had not received any

[1] Although these appeals were consolidated, there is only one issue on appeal. *Dempster v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, entered April 9, 2025 (Docket Nos. 374546 and 375033).

medical treatment related to his back before the subject accident and later testified that he had never been told that he had herniated discs in his back. At the time of the accident, plaintiff's vehicle was insured by defendant.

Plaintiff began treatment with a neurosurgeon for his injuries. Although plaintiff and his doctor discussed the possibility of surgery, plaintiff elected to try a more conservative approach of pain management. Plaintiff's doctor referred him to Dr. John Marshall, who specialized in physical medicine and rehabilitation. The record contains extensive notes from plaintiff's appointments with Dr. Marshall, which reflect that plaintiff had chronic pain due to trauma from the accident. After trying non-invasive methods of relieving pain for several months, Dr. Marshall began treating plaintiff using epidural injections. Prior to the accident, plaintiff worked as a truck driver. Due to his injuries and taking narcotics to treat his injuries, plaintiff was unable to return to work.

Defendant initially determined that plaintiff's visit to urgent care and subsequent treatment was reasonable and necessary because of continuous back pain from the accident. However, after investigation, defendant stopped further payment for medical bills and wage loss related to the accident.

In April 2022, surveillance showed plaintiff "walking around quite a bit, driving to different locations, performing activities, vacuuming out his car . . . , and walking without a limp." Defendant's claims specialist testified that this was significant because at that time plaintiff was claiming a need for eight hours of attendant care, including "transferring and position assistance with hygiene, grooming, medication management, [and] meal prep." Further, in July 2022, Dr. Jayant Jagannathan, a neurosurgeon hired by defendant, performed a medical evaluation of plaintiff. In light of his examination of plaintiff and review of the medical records, Dr. Jagannathan opined that plaintiff was suffering from chronic pain because of degenerative problems in his spine, and not acute injuries from the accident. Dr. Jagannathan did not find "a specific injury that [he could] directly attribute to the accident," and noted that the pars defect was likely something that plaintiff was born with and often degenerative in nature. Notably, Dr. Jagannathan opined that the scans from after plaintiff's prior motorcycle accident were "almost identical" to the scans after the subject accident. However, he acknowledged that he had not reviewed the film of the scan, only the report. Defendant sent a letter dated August 10, 2022, informing plaintiff that defendant would not be paying further benefits.

A second examination was performed by another expert retained by defendant, Dr. Christopher Schoenherr, who specialized in physical medicine and rehabilitation, on December 8, 2022. Based on his examination of plaintiff and review of plaintiff's medical records, Dr. Schoenherr concluded that plaintiff "had a myofascial injury secondary to a motor vehicle accident and a whiplash type environment," but concluded that "[t]he other findings appear to be chronic degenerative in nature." Dr. Schoenherr opined that plaintiff likely had some lumbar pain after the accident, but his "current symptoms do not appear to be related to the motor vehicle accident." Further, he believed that plaintiff may "have needed some work restrictions for 2-4 weeks. After that time I would have expected he would have been approaching full duty with no permanent impairment."

In February 2023, plaintiff initiated the present action alleging that defendant wrongfully withheld benefits for allowable expenses. The case proceeded to a two-day trial in January 2025, during which the jury heard testimony from plaintiff and a claims specialist from State Farm. The jury also heard the recorded deposition testimonies of Dr. Marshall, Dr. Jagannathan, and Dr. Schoenherr. At the conclusion of trial, the jury determined that plaintiff sustained an accidental bodily injury arising out of the operation of a motor vehicle. The jury also found that plaintiff sustained work loss as a result of his injuries and that he was entitled to $149,630 in work loss benefits. Further, the jury found that payment for such loss was overdue, and that plaintiff was entitled to penalty interest in the amount of $17,955.60. However, the jury found that plaintiff did not incur allowable medical expenses arising out of the accidental bodily injury.

Plaintiff moved for attorney's fees pursuant to MCL 500.3148, in addition to costs and prejudgment interest. In response, defendant argued that plaintiff was not entitled to attorney fees because there was a bona fide factual dispute regarding whether plaintiff was entitled to benefits. Defendant argued that it reasonably relied on two reports by its expert witnesses and that it had no duty to reconcile the conflicting opinions before stopping payments. After a hearing on the motion, the trial court found that defendant had unreasonably refused to pay benefits, reasoning that this finding was consistent with the jury's determination to award penalty interest.

Defendant now appeals.

II. STANDARDS OF REVIEW

A request for attorney fees under MCL 500.3148(1) presents a mixed question of law and fact. *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008). "What constitutes reasonableness is a question of law, but whether the defendant's denial of benefits is reasonable under the particular facts of the case is a question of fact." *Id*. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made. *Id*. "With that said, we review a trial court's ultimate decision to award attorney fees for an abuse of discretion. An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Johnson v USA Underwriters*, 328 Mich App 223, 247; 936 NW2d 834, 846 (2019) (quotation marks and citations omitted).

III. ANALYSIS

The no-fault act provides for a system of no-fault automobile insurance, which requires Michigan drivers to purchase personal protection insurance (PIP). "The goal of the no-fault insurance system was to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978), cert den sub nom *Allstate Ins Co v Kelley*, 442 US 934 (1979). To that end, the act provides for penalty interest and attorney fees when an insurer unreasonably refuses to make timely benefits payments. Thus, the act encourages insurers to "pay PIP benefits to claimants promptly and sort out priority and reimbursement issues later" by imposing "the very real possibility that steep penalties will be assessed against an insurer that drags its feet in paying PIP benefits to claimants." *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan*, 507 Mich 498, 519; 968 NW2d 482 (2021).

With regard to attorney fees, MCL 500.3148(1) provides:

> [A]n attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits that are overdue. The attorney's fee is a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

Thus, "MCL 500.3148(1) establishes two prerequisites for the award of attorney fees." *Moore v Secura Ins*, 482 Mich 507, 517; 759 NW2d 833 (2008). First, benefits must be overdue under MCL 500.3142(2). *Id*. Second, the trial court must find that the insurer "unreasonably refused to pay the claim or unreasonably delayed in making proper payment." *Id*., quoting MCL 500.3148(1). To determine whether an insurer acted unreasonably, the trial court must engage in a fact-specific inquiry. *Id*. at 522.

"If a claimant establishes the first prerequisite, a rebuttable presumption arises regarding the second," and "[t]he insurer then bears the burden of justifying the refusal or delay." *Brown v Home-Owners Ins Co*, 298 Mich App 678, 690-691; 828 NW2d 400 (2012). "The insurer can meet this burden by showing that the refusal or delay is the product of a legitimate question of statutory construction, constitutional law, or factual uncertainty." *Ross*, 481 Mich at 11. A trial court "must examine the circumstances as they existed at the time the insurer made the decision, and decide whether that decision was reasonable at that time." *Brown*, 298 Mich App at 691. "An insurer's initial refusal to pay benefits under Michigan's no-fault insurance statutes can be deemed reasonable even though it is later determined that the insurer was required to pay those benefits." *Moore*, 482 Mich at 525. "[T]he determinative factor . . . is not whether the insurer ultimately is held responsible for benefits, but whether its initial refusal to pay was unreasonable." *Id*. at 522 (cleaned up). Although MCL 500.3148(1) does not require an insurer "to reconcile conflicting medical opinions," our Supreme Court has made it clear that "an insurer acts at its own risk in terminating benefits in the face of conflicting medical reports." *Id*.

In the present case, as noted, the jury determined that plaintiff sustained work loss as a result of his injuries and awarded him $149,630 in work loss benefits. Further, the jury concluded that payments were overdue, and that plaintiff was entitled to penalty interest. Accordingly, a rebuttable presumption arose that defendant's refusal to pay benefits was unreasonable, entitling plaintiff to attorney fees. See *Brown*, 298 Mich App at 690-691.

Defendant argues that the trial court erred in awarding attorney fees because this case presents a "classic bona fide factual dispute" regarding whether plaintiff's injuries arose from the accident or were pre-existing injuries. Defendant argues that it reasonably discontinued benefits nearly a year after the accident based upon the reports of its two expert witnesses, which suggested plaintiff had recovered from any injuries he may have sustained in the accident and his current symptoms were from a chronic degenerative condition that existed prior to the accident.

However, we must determine the reasonableness of defendant's decision based on the circumstances that existed in August 2022 when defendant stopped further payments. See *Brown*, 298 Mich App at 691. Defendant cannot support its decision with Dr. Schoenherr's opinion, which was obtained in December 2022, *after* payments were discontinued.

As we cannot consider Dr. Schoenherr's opinion, defendant can rely only on the report of Dr. Jagannathan and the surveillance of plaintiff, but neither was sufficient to overcome the presumption that defendant's failure to pay was unreasonable. Although the surveillance video itself was not presented to this Court, the summary of the surveillance, and the description by the parties, suggests that it was inconsequential. The surveillance showed plaintiff doing small everyday tasks such as leaving his home, getting into his vehicle, or vacuuming his truck for a few minutes. As there was not a claim that plaintiff was entirely disabled and unable to walk, this evidence proves very little. The surveillance tells us little about the pain plaintiff may have been in when performing everyday tasks and did not suggest that plaintiff was able to return to work as a truck driver.

This leaves the report of Dr. Jagannathan. Dr. Jagannathan acknowledged that he did not have access to the actual images of plaintiff's injuries; therefore, his opinion was based solely on reports about plaintiff's CT scans and subsequent MRIs. In addition to not viewing the actual images, his conclusion that the scans from plaintiff's motorcycle accident and the subject accident were "almost identical" was based merely on his assumption that the term "disc bulging" as used in the 2019 scan, was synonymous with the "disc herniation" present in the 2021 scans.[2]

It bears mention that from the start it appeared that Dr. Jagannathan was unobjectively skeptical of the idea that the accident caused, or at the very least could have exacerbated, injuries in plaintiff's back. Dr. Jagannathan was dismissive of what he called plaintiff's "subjective" claims of pain, suggesting that plaintiff's claims were not credible without some accompanying objective injury. Also, as plaintiff notes on appeal, Dr. Jagannathan's report incorrectly stated that plaintiff did not seek medical treatment until "several days" after the accident, when plaintiff went to urgent care the very next day. In sum, Dr. Jagannathan's report contains at least one inaccuracy and an assumption that should have given defendant more pause before stopping payment of benefits to plaintiff.

Given Dr. Marshall's opinion that the multiple disc herniations were likely caused by the trauma of the accident and the inaccuracies and assumptions made in Dr. Jagannathan's report, the trial court did not err by finding that defendant could not reasonably rely on Dr. Jagannathan's report to stop payments under plaintiff's insurance policy and avoid the penalty of attorney fees under MCL 500.3148(1). Although defendant was not required to reconcile the conflicting medical opinions of Dr. Marshall and Dr. Jagannathan, it took a risk by choosing to stop payments based almost solely on the report of defendant's retained expert. See *Moore*, 482 Mich at 522. That risk was ill-advised in this case.

Defendant makes a great deal out of the jury's finding that plaintiff was not entitled to additional medical benefits, arguing that this shows that the decision to discontinue all benefits was reasonable. However, work loss and medical expenses are distinct categories of PIP benefits. See *Johnson v Recca*, 492 Mich 169, 176-177; 821 NW2d 520 (2012). Therefore, the decision not

[2] The record reflects that the 2019 scan described "mild disc bulging L3-L4 through L5-S1," whereas the report on the 2021 scan after the subject accident described "mild posterior disc herniation at L3-L4, L4-L5, with moderate posterior disc herniation L5-S1."

to award medical expense benefits did not preclude the jury's decision to award work loss benefits and does not preclude a finding that work loss benefits were overdue and unreasonably withheld.

The trial court did not clearly err by finding that defendant's decision was unreasonable under the circumstances and that plaintiff was entitled to attorney fees. See *Ross*, 481 Mich at 7.

Affirmed.

/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado
/s/ Randy J. Wallace