STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY SKWIERC,

Plaintiff,

and

MICHIGAN HEAD & SPINE INSTITUTE, PC,

Intervening Plaintiff-Appellant,

v

WADE ALLEN WHISNANT,

Defendant,

and

MEEMIC INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
November 23, 2021

No. 355133
Macomb Circuit Court
LC No. 2019-003281-NI

Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

BOONSTRA, J. (*concurring*).

I generally agree with the majority's analysis, including its statutory interpretation, and with the result it reaches. I write separately because I believe that neither this appeal nor the motion for summary disposition that is the subject of this appeal properly framed the pertinent issues. Unfortunately, important issues were not raised in the summary disposition motion or, therefore, in the application for leave to appeal, and this Court's order granting the application unsurprisingly limited the appeal to the issues that were raised in the application and supporting brief.[1] This Court not having been presented with these issues, the majority opinion does not

[1] *Skwierc v Whisnant*, unpublished order of the Court of Appeals, entered December 9, 2020 (Docket No. 355133).

address them; yet I believe they should have been addressed at some point in the proceedings below.

My concerns derive from the fact that the services that are at issue in this case (unlike in the pertinent cases cited by the parties) are MRI services that were performed not by a chiropractor, but rather by an entity composed of medical doctors specializing in radiology. The relevant issue thus becomes whether those radiologic services performed by medical doctors (as opposed to any services performed by a chiropractor) are properly reimbursable under the no-fault act. In my judgment, the proper issue first to be addressed is therefore whether the provision of MRI services by medical doctors constitutes "[a] practice of chiropractic service" or the "practice of chiropractic," as those terms are used in MCL 500.3107b, and as the latter is defined in MCL 333.16401 (as of January 1, 2009). If not, then this case would appropriately be resolved on that basis alone. As the majority notes, MCL 500.3107b(b) currently provides:

> Reimbursement or coverage for expenses within personal protection insurance coverage under section 31071 is not required for any of the following:
>
> * * *
>
> (b) A practice of chiropractic service rendered before July 2, 2021, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009.

It seems clear to me that medical doctors who perform MRIs are not, merely by doing so, performing chiropractic services. And I find it highly questionable to presume that the mere fact that an MRI is ordered by a chiropractor somehow transforms the performance of MRIs (by non-chiropractor medical doctors) into the performance of chiropractic services. In any event, that is the question that first should have been asked and answered in this case.[2] Instead, the summary disposition motion and, consequently, this appeal, skipped over that threshold question and focused both the trial court and this Court on whether a chiropractor may properly order an MRI.[3]

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[2] Additional questions that might properly have been raised include (a) whether medical doctors performing MRIs have a duty to police whether referring providers are acting within the scope of their practice; and (2) whether medical doctors who are denied reimbursement under MCL 500.3107b(b) are in some sense akin to "innocent third parties," *Bazzi v Sentinel Ins Co*, 502 Mich 390; 919 NW2d 20 (2018), and what the ramifications of such a status would be in this context.

[3] I note that no party contends (nor is it at issue on appeal) that the *performance* of an MRI (as opposed to the *ordering* of one) falls within the definition of "practice of chiropractic" under MCL 333.16401, and our decision in this case therefore could not properly be construed as reaching such a conclusion.

While I agree with the majority's analysis of that issue, I do not believe that it is properly the question that we should be answering at this juncture.

/s/ Mark T. Boonstra