STATE OF MICHIGAN

COURT OF APPEALS

PENELOPE JEVAHIRIAN,

Plaintiff-Appellant,

v

PROGRESSIVE CASUALTY INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 27, 1999

No. 205577
St. Clare Circuit Court
LC No. 94-000425 NZ

Before: Hood, P.J., and Holbrook, Jr., and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting partial summary disposition to defendant, pursuant to MCR 2.116(C)(10). Summary disposition was based on the trial judge's determination that the one-year-back rule of the no-fault act, MCL 500.3145(1); MSA 24.13145(1), barred plaintiff's reimbursement for replacement services, attendant care expenses and medical mileage incurred from the date of her accident, December 22, 1977, to one year prior to the filing of her lawsuit, February 22, 1993. We affirm.

A trial court's grant or denial of a motion for summary disposition is reviewed de novo. *Carlyon v Mutual of Omaha Ins Co*, 220 Mich App 444, 446; 559 NW2d 407 (1996). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court will consider all documentary evidence in the light most favorable to the nonmoving party in order to determine whether there is a genuine issue with respect to any material fact that requires a trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Plaintiff argues that the trial court erred in holding that the one-year-back rule was not tolled based on *Welton v Carriers Ins Co*, 421 Mich 571; 365 NW2d 170 (1984), and *Lewis v DAIIE*, 426 Mich 93; 393 NW2d 167 (1986). Together, these cases hold that the one-year-back rule is tolled from the time that an insured files a specific claim for benefits until the insurer denies the claim. *Lewis, supra* at 101; *Welton, supra* at 578. While plaintiff does not dispute that she failed to file a claim for benefits, she notes that defendant was on notice of her accident and her paraplegic injury. Based on

Johnson v State Farm Mutual Automobile Ins Co, 183 Mich App 752; 455 NW2d 420 (1990), plaintiff argues that defendant therefore had a duty to advise her of her entitlement to benefits for replacement services, attendant care and medical mileage, and that the one-year-back rule was tolled given defendant's failure to so advise her.

The Michigan no-fault insurance statute bars recovery of benefits for losses incurred more than one year preceding the commencement of an action to recover those benefits. MCL 500.3145(1); MSA 24.13145(1); *Welton, supra* at 576. However, this one-year-back rule is tolled from the date that an insured makes a specific claim for benefits until the date that the insurer formally denies liability. *Lewis, supra* at 101.

Notice of an injury that simply informs the insurer of the name and address of the claimant and the time, place, and nature of an injury cannot serve as the specific claim that triggers tolling because it does not inform the insurer of the expenses incurred, whether the expenses were covered losses, and whether the claimant would file a claim. *Welton, supra* at 579. Moreover, tolling of the one-year-back rule is only proper when the insured has sought reimbursement with reasonable diligence. *Lewis, supra* at 102.

Plaintiff relies on *Johnson, supra*, as authority for her claim of tolling. However the facts and circumstances of that decision distinguish it. It involved one insurer with two policies covering the decedent. While the decedent's wife claimed coverage under a motorcycle policy, she made no specific demand for no-fault survivor's loss under a separate policy covering an automobile until shortly before she began her action against the insurance company in circuit court. *Id.* at 754-755. This Court ruled that the plaintiff's notice of injury with respect to the motorcycle policy constituted sufficient notice of a claim for these benefits. *Id.* at 758-761. However, notice of the death was the only information the insurer needed to conclude that the plaintiff had an entitlement to the benefit, and this benefit, based primarily on wage loss, can generally be calculated easily. MCL 500.3108(1); MSA 24.13108(1). In contrast, the expenses for which plaintiff is seeking reimbursement, except for the replacement services figure, which is set at a fixed amount when such services are needed, are subject to flux in relation to the level of attendant care needed by plaintiff and the distance she would have to travel to get this care, which would vary over time. Furthermore, the plaintiff in *Johnson*, waited approximately only two and one-half years to file suit, *id*. at 755, while in the instant case, plaintiff did not seek these benefits for over sixteen years.

The trial court did not err when it ruled that *Welton* and *Lewis* were binding, and that *Johnson* did not control the outcome of this case. Plaintiff's application for benefits was not sufficient to act as a triggering event for tolling purposes. Further, plaintiff did not pursue reimbursement of her replacement services, attendant care and medical mileage expenses in a reasonably diligent manner. Plaintiff's claims for expenses incurred prior to February 22, 1993, are therefore barred by the one-year-back rule.

Affirmed.

/s/ Harold Hood
/s/ Donald E. Holbrook, Jr.
/s/ William C. Whitbeck