STATE OF MICHIGAN

COURT OF APPEALS

THE ACCIDENT FUND COMPANY, a/k/a ACCIDENT FUND OF MICHIGAN, Plaintiff-Appellant, v DAVID TOLLERS, VALERIE TOLLERS, ANGELO IAFRATE CONSTRUCTION COMPANY, ANGELO'S CRUSHED CONCRETE, INC., ANGELO IAFRATE, MICHIGAN MUTUAL INSURANCE COMPANY, KENNETH JONES, PATTERSON, PHIFER & PHILLIPS, P.C., and HUNT & ASSOCIATES, P.C., Defendants-Appellees.	UNPUBLISHED March 2, 2001 No. 214485 Oakland Circuit Court LC No. 94-479310-NZ

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

This case arises from the settlement of an underlying, personal injury action. Plaintiff, a workers' compensation insurance carrier, brought this action seeking reimbursement for benefits paid from the proceeds of the third-party tort action. Plaintiff appeals as of right from the trial court's orders granting defendants[1] summary disposition. We affirm.

In July 1989, defendant David Tollers was injured in the course of his employment with R & B Contracting Company when hot asphalt was accidentally dumped onto the truck in which he was sitting. As David waited for asphalt to be loaded into the truck bed, a chute from the asphalt silo opened directly above the truck's cab. Hot asphalt poured into the cab of the truck, causing serious burns to David's legs, abdomen, and right arm. Plaintiff paid workers' compensation benefits for David's medical expenses and wage loss resulting from the accident.

[1] Defendants involved in this appeal are Hunt & Associates, P.C., Angelo Iafrate Construction Company, Angelo's Crushed Concrete, Inc., Angelo Iafrate individually, and Michigan Mutual Insurance Company. Plaintiff does not contest the trial court's grant of summary disposition to the other defendants.

David and his wife, defendant Valerie Tollers, brought a third-party tort action against defendants Angelo Iafrate Construction Company, Angelo's Crushed Concrete Inc., Angelo Iafrate individually, and Michigan Mutual Insurance Company (herein the Iafrate defendants). Michigan Mutual is the Iafrates' general liability insurer and the no-fault insurer of the vehicle in which David was injured.[2] That case was ultimately settled for $150,000.

Following the settlement, plaintiff sought reimbursement from the settlement proceeds pursuant to the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq*.; MSA 17.237(101) *et seq*., against the Tollers and the Iafrate defendants. Plaintiff claimed that it had a statutory lien against the settlement proceeds. Plaintiff also named as a defendant Hunt and Associates, P.C. (Hunt & Associates), the law firm that represented the Tollers in the third-party action.[3] Plaintiff alleged that all defendants were liable to plaintiff for the full amount of the settlement because they failed to timely notify plaintiff of the third-party claim as required by statute.

The trial court granted Hunt and Associates' motion for summary disposition pursuant to MCR 2.116(C)(8). The court relied upon MCL 418.827(5) and (6); MSA 17.237(827)(5) and (6), which provides that the workers' compensation carrier is entitled to reimbursement from the proceeds of a third-party claim "after deducting expenses of recovery," which expressly includes legal fees. Plaintiff did not allege that Hunt & Associates received any compensation beyond attorney fees. Accordingly, the court determined that attorney fees incurred to recover in the third-party action had priority over any reimbursement right of plaintiff. The court further supported its ruling by noting that the statute requires the parties, not their attorneys, to notify the workers' compensation carrier of the third-party action. The court determined that because Hunt and Associates was not a party to the action, it was also entitled to summary disposition on that basis.

The trial court initially granted partial summary disposition to the Iafrate defendants to the extent that plaintiff claimed reimbursement for the payment of medical expenses and wage loss benefits for the first three years after the date of the injury. Plaintiff conceded that it was not entitled to reimbursement for benefits paid during the first three years following the accident because these benefits were paid in lieu of no-fault benefits otherwise payable. Plaintiff stipulated to the entry of an order granting partial summary disposition to defendants on that issue. The court subsequently granted summary disposition to the Iafrate defendants on any

[2] David initiated a separate action to collect no-fault benefits. The trial court granted summary disposition to David, and this Court affirmed that decision. This Court determined that the parked vehicle exception to coverage under the no-fault statute did not apply, and that David was entitled to no-fault benefits. *Tollers v Amerisure Co/Michigan Mutual Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued June 16, 1993 (Docket No. 144505).

[3] Plaintiff also named as defendants David and Valerie Tollers, Kenneth Jones, and Patterson, Phifer & Phillips, P.C., the law firm involved in plaintiff's workers' compensation claim. While this matter was pending, the Tollers' liability was discharged in a bankruptcy proceeding and plaintiff does not challenge the trial court's grant of summary disposition to Patterson, Phifer & Phillips, P.C.. Based upon the assertions made below, Kenneth Jones, the individual responsible for the accident, was never served in this matter.

remaining claim pursuant to MCR 2.116(C)(7) based upon the expiration of the statute of limitations, because plaintiff had not initiated its action for reimbursement within three years of the settlement of the underlying litigation.

On appeal, plaintiff raises several issues regarding the court's rulings. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Taylor v Laban*, 241 Mich App 449, 451; 616 NW2d 229 (2000). Without directly addressing the trial court's bases for its rulings, we conclude that summary disposition was warranted on an alternative basis offered by defendants below. Because plaintiff failed to establish that it paid benefits in excess of no-fault benefits otherwise payable, thereby triggering plaintiff's right to reimbursement, defendants were entitled to summary disposition on that ground. We will affirm where the trial court reached the correct result for a different reason. *Howe v Detroit Free Press, Inc*, 219 Mich App 150, 158; 555 NW2d 738 (1996), aff'd 457 Mich 871; 586 NW2d 85 (1998).

When an employee is injured in a motor vehicle accident during the course of employment, entitlement to compensation for injuries is governed by both the WDCA and the no-fault act. *Specht v Citizens Ins Co of America*, 234 Mich App 292, 295; 593 NW2d 670 (1999). See also, *Great American Ins Co v Queen*, 410 Mich 73, 86; 300 NW2d 895 (1980); *Mathis v Interstate Motor Freight System*, 408 Mich 164, 179-180; 289 NW2d 708 (1980); *Harris v Vernier*, 242 Mich App 306, 317; 617 NW2d 764 (2000). The WDCA and the no-fault insurance act, MCL 500.3101 *et seq*.; MSA 24.13101 *et seq*., "are complete and self-contained legislative schemes addressing discrete problems. Neither act refers expressly to the other." *Harris*, *supra* at 317; *Specht*, *supra* at 294, quoting *Mathis*, *supra* at 179. "'The WDCA provides a substitute for common-law tort liability founded upon an employer's negligence . . . .' On the other hand, '[t]he no-fault act provides a substitute for common-law tort liability based upon the ownership or operation of a motor vehicle.'" *Harris*, *supra* at 317; *Specht*, *supra* at 294-295, quoting *Mathis*, *supra* at 179.

"As a general matter, an employer or workers' compensation insurance carrier that has paid benefits to an injured employee is entitled under MCL 418.827; MSA 17.237(827) to reimbursement from any recovery that the employee obtains in a third-party tort action." *Ramsey v Kohl*, 231 Mich App 556, 558-559; 591 NW2d 221 (1998). The statute provides in relevant part:

> In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his or her dependents or personal representative would be entitled to recover in an action in tort. *Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to the date of recovery* and the balance shall immediately be paid to the employee or his or her dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits. MCL 418.827(5); MSA 17.237(827)(5) (emphasis added).]

MCL 500.3107(1); MSA 24.13107(1) provides that no-fault benefits cover all medical expenses, and wage losses for the first three years following the accident. "[I]t is well-settled that when an employee is injured in a motor vehicle accident during the course of employment, the no-fault carrier is entitled to a setoff or reimbursement in the amount of the worker's compensation benefits that were or will be paid for the same injuries. See MCL 500.3109(1); MSA 24.13109(1)." *Specht, supra* at 295. See also *Queen, supra* at 94.

In *Queen, supra*, our Supreme Court addressed the relationship between the WDCA and the no-fault act in the context of a workers' compensation carrier's right to reimbursement from an employee's recovery in a third-party tort action. The Supreme Court held that because the carrier sought "reimbursement for payments which substituted for no-fault benefits otherwise payable, there is no right to reimbursement." *Id.* at 85. In *Hearns v Ujkaj*, 180 Mich App 363; 446 NW2d 657 (1989), this Court applied that holding, and further explained:

> Where an employee is injured in a motor vehicle accident in the course of his employment, workers' compensation benefits substitute for automobile no-fault benefits to the extent that the workers' compensation benefits duplicate no-fault benefits otherwise payable to the employee. *Great American Ins Co v Queen*, 410 Mich 73, 96; 300 NW2d 895 (1980). A workers' compensation carrier is not entitled to reimbursement for payments which substitute for no-fault benefits. *Great American*, p 85. To the extent that payment of workers' compensation benefits exceeds the no-fault benefits which are otherwise payable, the workers' compensation carrier is entitled to a lien against an injured employee's third-party recovery for reimbursement of the excess. [*Hearns, supra* at 367-368.]

It is only workers compensation benefits which do not substitute for no-fault benefits, because they exceed no-fault benefits in amount or duration, which give rise to a right to reimbursement from third-party tort recoveries. *Queen, supra* at 97; *Hearns, supra* at 368.

Because David was injured in July 1989, benefits paid by plaintiff through July 1992 served as a substitute for no-fault benefits. *Queen, supra* at 93; *Hearns, supra* at 368-369. The third-party claim was settled in May 1991. At the time of settlement, the workers' compensation benefits plaintiff had paid were still payable under the no-fault statute. Because the settlement occurred in 1991, less than three years after the 1989 accident, plaintiff is not entitled to reimbursement. Plaintiff was not entitled to reimbursement at the time of the recovery because as of that date, plaintiff had not paid any excess benefits. See *McKenney v Crum & Forster*, 218 Mich App 619; 554 NW2d 600 (1996).

Plaintiff conceded that reimbursement was not available for benefits paid within three years of the injury, and agreed that any entitlement to reimbursement must arise from payments made in excess of no-fault benefits otherwise payable. Plaintiff argued that it had paid benefits in excess of those allowed under the no-fault statute, and was therefore entitled to the proceeds of the third-party settlement as reimbursement. However, plaintiff offered no evidence to support its claim.

Plaintiff failed to offer any evidence to refute defendants' argument that, at the time of the settlement of the third-party claim, the workers' compensation benefits substituted for no-fault benefits.[4] MCR 2.116(G)(4). Indeed, plaintiff did not address this issue in its response to the Iafrate defendants' motion for summary disposition, nor does plaintiff address this point on appeal. Plaintiff failed to offer evidence to substantiate that it paid benefits in excess of no-fault benefits otherwise payable. Accordingly, plaintiff has not established any right to reimbursement from the settlement proceeds We conclude that summary disposition was properly granted to defendants in light of plaintiff's failure to offer any evidence that it paid excess benefits which would trigger its entitlement to reimbursement. "Because the correct result was reached, albeit for a different reason, we will affirm." *Howe, supra* at 158. See also, *Norris v State Farm Fire & Cas Co*, 229 Mich App 231, 240; 581 NW2d 746 (1998); *Webb v First of Michigan Corp*, 195 Mich App 470, 472; 491 NW2d 851 (1992). Our resolution of this question is dispositive of plaintiff's appeal, and we need not address the other issues raised.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Patrick M. Meter

[4] In support of its motion for summary disposition, the Iafrate defendants attached a copy of this Court's opinion in which it affirmed the trial court's ruling that David was entitled to no-fault benefits as a result of the accident. Defendants argued that, because the third-party action was settled within three years of the accident, no-fault benefits remained payable and plaintiff was not entitled to reimbursement. See *Tollers v Amerisure Co/Michigan Mutual Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued June 16, 1993 (Docket No. 144505).