

STATE OF MICHIGAN
COURT OF APPEALS

JODY MICHAEL WILLIAMS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

March 23, 2001

No. 217740

Delta Circuit Court

LC No. 97-013664-NZ

Before: Gribbs, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

In this no-fault insurance dispute, plaintiff appeals as of right from a judgment awarding plaintiff compensatory and declaratory relief. We affirm.

Plaintiff sustained multiple injuries in an automobile/train accident in June 1995, and defendant, plaintiff's no-fault automobile insurer, paid wage losses and necessary medical expenses resulting from the injuries diagnosed at that time. However, on the basis of its belief that plaintiff's left knee injury that manifested months after the accident was not a result of the accident, defendant refused to pay for medical treatment for that injury. After a bench trial, the court ordered defendant to pay for reasonable and necessary expenses resulting from treatment of plaintiff's left knee injury and for past wage loss that occurred due to the left knee condition. The court denied plaintiff's request for attorney fees and for a declaratory judgment that would have held defendant liable for future wage loss that might occur as a result of medical treatment for plaintiff's left knee injury.

Plaintiff argues that the trial court erred when it concluded that defendant did not unreasonably refuse to pay benefits for plaintiff's left knee injury, and thus denied plaintiff's request for attorney fees. First, plaintiff claims that he is entitled to attorney fees because defendant's refusal to pay for medical treatment for his left knee was unreasonable where plaintiff's treating physician informed defendant that the injury was caused by the accident.

A trial court's finding on the reasonableness of an insurer's delay in paying or refusal to pay no-fault benefits should be reversed only if it is clearly erroneous. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999); *McKelvie v Auto Club Ins Ass'n*, 203 Mich App 331, 335; 512 NW2d 74 (1994). The attorney for a no-fault claimant is

entitled to reasonable fees where the insurer unreasonably delays or refuses to pay benefits. MCL 500.3148(1); MSA 24.13148(1). When the benefits are not paid within the thirty-day period required by MCL 500.3142(2); MSA 24.13142(2), a rebuttable presumption of unreasonable refusal arises and the insurer has the burden to justify the delay or refusal. *Attard, supra* at 317; *Bloemsma v Auto Club Ins Ass'n*, 174 Mich App 692, 696-697; 436 NW2d 442 (1989). In determining if attorney fees are warranted, a delay or refusal will not be found unreasonable where it is the product of a legitimate question of statutory construction, constitutional law, or a bona fide factual uncertainty. *Attard, supra*; *McKelvie, supra* at 335.

Here, conflicting evidence about the cause of plaintiff's left knee injury existed. Although plaintiff's treating physician concluded that the left knee injury was related to the accident, defendant's claim specialist had obtained contradictory explanations. According to the claims specialist, plaintiff informed her that he first observed a problem with the knee around Christmas-time, but later said that his left knee did not bother him until after he returned to work in May 1996--almost one year after the accident. The claims specialist testified that plaintiff had no problem with the knee during his physical therapy or when he was on crutches after surgery on his right leg. A December 1996 report from defendant's medical expert confirmed defendant's belief that it was unlikely that the accident caused plaintiff's left knee condition. Under these circumstances, we cannot say that the trial court clearly erred in finding that a bona fide factual uncertainty regarding the cause of plaintiff's left knee condition existed, and therefore that defendant did not unreasonably delay or refuse to pay benefits. Consequently, plaintiff was not entitled to attorney fees.

Plaintiff also argues that he was entitled to attorney fees because there was no reasonable dispute as to plaintiff's disability. Plaintiff claims that defendant should not have ceased paying wage loss benefits on November 22, 1996, because even defendant's independent medical examiner found plaintiff disabled. However, a November 1996 report from plaintiff's treating physician stated that plaintiff had no real problems with his right knee, which could reasonably lead to the conclusion that the disability finding was based on plaintiff's left knee. Although finding plaintiff disabled, the independent medical examiner did not explain in his report if that opinion was based on plaintiff's left knee condition or plaintiff's overall physical condition. It was not until the September 1998 deposition of the independent medical examiner that the record was clear that the independent medical examiner found plaintiff disabled based on all of plaintiff's injuries, not just his left knee injury. Because there was a bona fide factual dispute regarding the cause of plaintiff's left knee condition, defendant did not unreasonably refuse to pay plaintiff's lost wages after November 22, 1996. Accordingly, the trial court did not clearly err in concluding that defendant did not unreasonably refuse to pay plaintiff's wage loss, and thus plaintiff was not entitled to attorney fees. *Attard, supra*; *McKelvie, supra*.

Finally, plaintiff argues that the trial court erred in denying plaintiff's request for a declaratory judgment ordering defendant to pay for wage loss benefits that plaintiff would incur as a result of medical treatment for his left knee. Specifically, plaintiff argues that the statutory three-year time limit for paying no-fault insurance benefits should be extended in the present case. Plaintiff sought an order that would require defendant to pay for any wage loss plaintiff may incur in the future due to medical treatment for his left knee.

We review a trial court's decision to grant or deny declaratory relief for an abuse of discretion. *Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993). The trial court's rulings regarding questions of law in a declaratory judgment action are reviewed de novo; however, the court's factual findings will not be reversed unless clearly erroneous. *Macomb Co Prosecutor v Murphy*, 233 Mich App 372, 379; 592 NW2d 745 (1999). Pursuant to MCR 2.605(A)(1), a trial court has the discretion to declare the rights and legal responsibilities of the parties to an actual controversy. *Allstate, supra* at 65. The existence of another adequate remedy does not preclude declaratory relief and, after entry of a declaratory judgment, additional necessary and proper relief may be granted. MCR 2.605(C) and (F); *Durant v Michigan*, 456 Mich 175, 209; 566 NW2d 272 (1997). The purpose of a declaratory judgment is to minimize avoidable losses and unnecessary accrual of damages. *Durant, supra* at 209.

The Michigan no-fault act obligates an insurer to pay its insured for wage loss that occurs as a result of injuries sustained in an accident, but the coverage is limited to losses during the first three years following the accident. MCL 500.3107(1)(b); MSA 24.13107(1)(b). Plaintiff acknowledged that the three-year limitation period ended in June 1998, several months before this trial began. However, plaintiff argued that had defendant agreed to pay for medical treatment for his left knee at the time it was reported to defendant in July 1996, defendant would have been obligated to pay for wage loss that was a result of the medical treatment.

We find no merit to plaintiff's argument that he was entitled to declaratory relief for future wage loss benefits. The language of the statute is clear and unambiguous, limiting defendant's coverage of wage loss to "loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured." MCL 500.3107(1)(b); MSA 24.13107(1)(b). Where a statute is clear and unambiguous on its face, the statute must be enforced as written. *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 549; 619 NW2d 66 (2000). Plaintiff cites no authority allowing an extension of wage loss benefits beyond the three-year period dictated by MCL 500.3107(1)(b); MSA 24.13107(1)(b). Because plaintiff had no right to future wage loss benefits under the statute, the trial court had no basis for granting declaratory relief. The trial court has no discretion to rewrite a statute in order to grant declaratory relief. *Evans Products Co v State Bd of Escheats*, 307 Mich 506, 548; 12 NW2d 448 (1943).

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ Joel P. Hoekstra