

STATE OF MICHIGAN
COURT OF APPEALS

DANNY LEE JOHNSON,
Plaintiff-Appellee,

UNPUBLISHED
June 4, 2002

v

AUTO OWNERS INSURANCE CO.,
Defendant-Appellant.

No. 235600
Delta Circuit Court
LC No. 99-015074-NF

Before: Griffin, P.J., and Hood and Sawyer, JJ.

MEMORANDUM.

Defendant appeals as of right the circuit court's award of attorney fees to plaintiff in this first-party automobile no-fault insurance action. Defendant contests the trial court's finding that defendant unreasonably delayed or denied payment of personal protection insurance benefits to plaintiff. We affirm.

A trial court's finding of an unreasonable refusal to pay or delay in paying benefits will not be reversed on appeal unless the finding is clearly erroneous. *Attard v Citizens Insurance Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999).

Michigan's automobile no-fault act provides that an attorney is entitled to a reasonable fee for representing a claimant in an action for personal protection insurance benefits that are overdue "if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." MCL 500.3148(1). An insurer's delay in making payments is not unreasonable if it is based on a legitimate question of statutory construction, constitutional law, or factual uncertainty. *Attard, supra* at 317. In determining whether an insurer's delay was reasonable, this Court focuses not on whether the insurer was ultimately held responsible for a given expense, but whether its refusal to pay the expense was unreasonable. *McCarthy v Auto Club Ins Assoc*, 208 Mich App 97, 105; 527 NW2d 524 (1994).

Although bona fide factual disputes arguably existed regarding certain benefits plaintiff claimed, defendant had no reasonable basis for denying or delaying payment of other benefits. Specifically, neither plaintiff's treating physicians nor defendant's independent medical examiners disputed that plaintiff's chronic neck pain was caused by injuries plaintiff sustained in the automobile accident. Although the fact that an insurer may be liable for some expenses does not necessarily establish its liability for all of the expenses, *Nasser v Auto Club Ins Ass'n*, 435 Mich. 33, 51; 457 NW2d 637 (1990), the fact that a defendant has a bona fide reason for

disputing some claims does not justify the refusal to pay undisputed claims. *McKelvie v Auto Club Ins Ass'n*, 203 Mich App 331, 336; 512 NW2d 74 (1994).

In the present case, because defendant failed to pay undisputed PIP benefits, the trial court did not clearly err in awarding attorney fees to plaintiff.

Affirmed.

/s/ Richard Allen Griffin

/s/ Harold Hood

/s/ David H. Sawyer