STATE OF MICHIGAN

COURT OF APPEALS

MARY LOMERSON and DAVID LOMERSON,

Plaintiffs-Appellants,

v

FRANK BUJOLD and CHANDLER, BUJOLD, & CHANDLER,

Defendants-Appellees.

UNPUBLISHED
June 25, 2002

No. 231505
Oakland Circuit Court
LC No. 00-020089-NM

Before: Zahra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendant in this legal malpractice action. We affirm.

On appeal, plaintiff argues that the trial court erred in dismissing his legal malpractice claim because he "had a legal claim under Michigan's No-Fault Act to compensation for the care-taking services his mother provided to him," i.e., David was the person entitled to receive no-fault benefits. We disagree. This Court reviews the grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Because the trial court looked beyond the pleadings in reaching its decision, we will consider the motion granted under MCR 2.116(C)(10). See *Ottaco, Inc v Gauze*, 226 Mich App 646, 650; 574 NW2d 393 (1997).

To establish a legal malpractice claim, the plaintiff must plead and prove the following elements: (1) an attorney-client relationship, (2) the attorney negligently represented the plaintiff, (3) the negligence was a proximate cause of an injury, and (4) the fact and extent of the claimed injury. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994), quoting *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993). In this case, the trial court effectively held that David did not establish an actual injury even if defendant was negligent and, accordingly, could not establish a legal malpractice claim. We agree with the trial court.

Pursuant to the no-fault act, particularly MCL 500.3105 and MCL 500.3112, personal protection insurance (PIP) benefits are payable to or for the benefit of a person who sustained an accidental bodily injury as a result of a motor vehicle accident as provided in the act. PIP benefits are payable for "[a]llowable expenses consisting of all reasonable charges incurred for

reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). The value of attendant care services provided by a parent is such an allowable expense. See *Booth v Auto-Owners Ins Co*, 224 Mich App 724, 729-730; 569 NW2d 903 (1997). Insurers may, and commonly do, render the payment of PIP benefits directly to their insured's service provider. See MCL 500.3112; *Lakeland Neurocare Centers v State Farm Mut Auto Ins Co*, 250 Mich App 35; ___ NW2d ___ (2002). Disagreements between the insured's service provider and the no-fault insurer related to PIP payment issues may result in litigation. See, e.g., *Mercy Mt Clemens Corp v Auto Club Ins Ass'n*, 219 Mich App 46, 48; 555 NW2d 871 (1996); *Munson Medical Center v Auto Club Ins Ass'n*, 218 Mich App 375, 378; 554 NW2d 49 (1996).

Here, it is undisputed that David was entitled to PIP benefits and, in 1988, his mother, Mary, sought and received direct payments for attendant care services that she provided to David. This claim arises as a consequence of Mary allegedly receiving negligent advice from defendant regarding the value of these services, which allegedly resulted in her receiving inadequate payments from David's PIP insurer. However, for David to establish a legal malpractice claim he must prove that he was actually injured by defendant's alleged negligence. It is well established that a claim of malpractice requires a showing of actual injury caused by the malpractice. See *Colbert v Conybeare Law Office*, 239 Mich App 608, 620; 609 NW2d 208 (2000); *Keliin v Petrucelli*, 198 Mich App 426, 430; 499 NW2d 360 (1993). Plaintiff argues on appeal that, because David was entitled to PIP benefits, he automatically has a cause of action because of defendant's negligent advice concerning those benefits. Plaintiff's position is untenable because it disregards a critical element—the fact and extent of the claimed injury, i.e., actual injury.

Here, David received attendant care services, as provided by the no-fault act. David's mother, Mary, received payments for the attendant care services that she provided to David. Although Mary claims that she was under-compensated for her services as a result of defendant's allegedly negligent advice, David has failed to establish that he sustained an actual injury as a result of defendant's allegedly negligent advice to his mother regarding the value of her attendant services. In other words, David has failed to demonstrate an identifiable and appreciable loss suffered as a result of defendant's alleged malpractice. See *Gebhardt v O'Rourke*, 444 Mich 535, 545; 510 NW2d 900 (1994). Consequently, the trial court's summary dismissal of his legal malpractice action was proper. In light of our resolution of this dispositive issue, we need not consider plaintiff's other issue on appeal.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Helene N. White