

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN PHYSICAL THERAPY AND
REHABILITATION CENTER, INC.,

UNPUBLISHED
December 9, 2004

Plaintiff-Appellant,

v

HARTFORD INSURANCE COMPANY OF THE
MIDWEST,

No. 249341
Wayne Circuit Court
LC No. 01-124448-NF

Defendant-Appellee.

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff claims that the health care provider agreement was not yet in effect and thus inapplicable to the claim for services rendered to defendant's insured but plaintiff failed to raise this claim below. Consequently, the trial court did not address it, and it is not preserved for appellate review. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000).

We also decline to consider plaintiff's allegation that its claim was not barred by the settlement of the suit filed against defendant by its insured. While that was an argument raised in defendant's motion, it does not appear to have been considered or addressed by the trial court. This Court's review is limited to issues actually decided by the trial court. *Lowman v Karp*, 190 Mich App 448, 454; 476 NW2d 428 (1991). Because the trial court never reached the issue, this

Court need not address it. *Schubiner v New England Ins Co*, 207 Mich App 330, 331; 523 NW2d 635 (1994); *Norton Shores v Carr*, 81 Mich App 715, 723; 265 NW2d 802 (1978).

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens