

STATE OF MICHIGAN
COURT OF APPEALS

NORMA KAKISH and RAJAIE KAKISH,

Plaintiffs-Appellees,

v

DOMINION OF CANADA GENERAL
INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
December 29, 2005

No. 260963
Ingham Circuit Court
LC No. 04-000809-NI

Before: Fitzgerald, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying its motion for summary disposition. We affirm in part, reverse in part, and remand.

This case stems from a suit filed by plaintiff,¹ a Canadian resident, against defendant, Dominion of Canada General Insurance Company, her automobile insurer, for unidentified motorist benefits and no-fault benefits. Plaintiff tried to avoid an unidentified car that started to merge into her lane of traffic on I-96 in Ingham County. As a result, she lost control of her vehicle and hit a tree.

At the time of the accident defendant insured plaintiff under a policy that provided unidentified motorist benefits. Defendant is a Canadian insurance company and the policy in question was sold through an agency whose offices are in Ontario. Defendant is not licensed to write automobile insurance policies in Michigan, but had voluntarily filed a certificate of compliance with Michigan no-fault insurance laws pursuant to MCL 500.3163(2).

Following the accident plaintiff filed a complaint in Ingham Circuit Court demanding defendant pay unidentified motorist coverage as provided for in the insurance contract. Defendant filed a timely motion for summary disposition pursuant to MCR 2.108(C)(1), MCR 2.1116(C)(1), and MCR 2.1116(C)(10) arguing that the court lacked personal jurisdiction over it.

¹ Rajaie Kakish sought damages for loss of consortium. Given the derivative nature of this claim, reference throughout this report to "plaintiff" will be to Norma Kakish only.

The trial court dismissed the motion without prejudice to allow plaintiff to amend her complaint. Plaintiff then amended her complaint to add a claim for no-fault benefits. Defendant renewed its motion for summary disposition and argued that the court lacked personal jurisdiction over it in relation to plaintiff's claim for unidentified motorist benefits, that the insurance contract contained an exclusive forum selection clause naming Ontario as the appropriate forum, and, alternatively, that the court should dismiss plaintiffs' claims on the ground of forum non conveniens. The trial court denied defendant's motion on all grounds.

Defendant argues that the trial court erred by exercising personal jurisdiction over it with regard to plaintiff's claim for unidentified motorist benefits. We agree.

Whether a court has personal jurisdiction over a party is a question of law that this Court reviews de novo. *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001). The plaintiff bears the burden of establishing jurisdiction over the defendant, but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 282; 636 NW2d 291 (2001). The court must consider the affidavits, together with any other documentary evidence submitted by the parties. All factual disputes for the purpose of deciding the motion are resolved in the plaintiff's favor. *Id.*

"The exercise of general jurisdiction is possible when a defendant's contacts with the forum state are of such nature and quality as to enable a court to adjudicate an action against the defendant, even when the claim at issue does not arise out of the contacts with the forum state." *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 166; 677 NW2d 874 (2003). A court can exercise general personal jurisdiction over a corporation based on the existence of any of the following three relationships between the corporation and Michigan: (1) incorporation under the laws of this state, (2) consent, or (3) the carrying on of a continuous and systematic part of its general business within the state. *Id.*, 166-167; MCL 600.711. None of these relationships are present here. Accordingly, because defendant's contacts with the forum state are insufficient to confer general jurisdiction, personal jurisdiction may only be exercised based on defendant's specific acts or contacts with Michigan. *Electrolines, supra* at 166.

This Court engages in a two-step inquiry to determine whether a Michigan court may exercise specific limited personal jurisdiction over a defendant: First, this Court determines whether jurisdiction is authorized by Michigan's long-arm statute, and next this Court determines whether the exercise of jurisdiction is consistent with the requirements of the Due Process Clause of the Fourteenth Amendment. *Vargas, supra* at 282-283.

"Michigan's long-arm statute, MCL 600.715, authorizes the assertion of limited personal jurisdiction over an out-of-state corporation arising out of the act or acts that create any of five designated relationships between the corporation and the state." *Vargas, supra* at 283. MCL 600.715 provides in relevant part:

The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such

corporation arising out of the act or acts which create any of the following relationships:

(1) The transaction of any business within the state.

* * * *

(4) Contracting to insure any person, property, or risk located within this state at the time of contracting.

An insurer that does not, or is not authorized, to write insurance in Michigan may voluntarily file a certificate of compliance with Michigan's no-fault act under MCL 500.3163(2).² *In re Certified Question*, 433 Mich 710, 727; 449 NW2d 660 (1989). Filing a certificate of compliance with the Michigan no-fault insurance law pursuant to MCL

² MCL 500.3163 provides:

(1) An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under this act.

2) A nonadmitted insurer may voluntarily file the certification described in subsection (1).

(3) Except as otherwise provided in subsection (4), if a certification filed under subsection (1) or (2) applies to accidental bodily injury or property damage, the insurer and its insureds with respect to that injury or damage have the rights and immunities under this act for personal and property protection insureds, and claimants have the rights and benefits of personal and property protection insurance claimants, including the right to receive benefits from the electing insurer as if it were an insurer of personal and property protection insurance applicable to the accidental bodily injury or property damage.

(4) If an insurer of an out-of-state resident is required to provide benefits under subsections (1) to (3) to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in this state, the insurer is only liable for the amount of ultimate loss sustained up to \$500,000.00. Benefits under this subsection are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

500.3163(2) gives rise to limited jurisdiction under MCL 600.715(1) or (4). *Kriko v Allstate Ins Co of Canada*, 137 Mich App 528; 357 NW2d 882 (1984). But the act of filing such a certificate is not sufficient to confer jurisdiction over plaintiff's claim for unidentified motorist benefits under Michigan's long-arm statute. Unidentified motorist benefits are purely contractual and not governed by Michigan's no-fault act. *Scott v Farmers Ins Exchange*, 266 Mich App 557, 561; 702 NW2d 681 (2005). In the context of limited personal jurisdiction the act giving rise to limited jurisdiction must also give rise to the underlying cause of action for a court to properly exercise jurisdiction over a claim. *Electrolines*, *supra* at 169. Here, the act giving rise to jurisdiction, filing a certificate of compliance, is not related to and does not give rise to plaintiff's cause of action for unidentified motorist benefits, which is properly characterized as a benefit dispute between two Canadian residents over a contract formed in Canada. Accordingly, the trial court did not have personal jurisdiction over defendant pursuant to MCL 600.715 for plaintiff's claim for unidentified motorist benefits.³

Further, due process requires "the cause of action arise from the defendant's activities in the state." *Electrolines, Inc*, *supra* at 167. In *Kriko*, this Court concluded "[s]ince defendant has voluntarily subjected itself to the provisions of the no-fault insurance act, we find it both fair and reasonable (and foreseeable by defendant) that the courts of this state should have personal jurisdiction over defendant **in cases concerning no-fault benefits** provided for by the Michigan no-fault insurance act." *Kirko*, *supra* at 533-534 (emphasis added). Because plaintiff's claim for unidentified motorist benefits does not arise from defendant's activities in Michigan, the exercise of personal jurisdiction over defendant related to this claim is not consistent with due process. *Electrolines*, *supra* at 169. The trial court erred by denying defendant's motion for summary disposition of the claim for unidentified motorist benefits.

Defendant also argues that the trial court erred by denying its motion to dismiss the case on the ground of forum non conveniens. We need only address this argument with regard to plaintiff's claim for no-fault benefits in light of our conclusion that defendant is entitled to summary disposition of the claim for unidentified motorist benefits.

This court reviews a trial court's decision to grant or deny a motion to dismiss on the basis of forum non conveniens for an abuse of discretion. *Miller v Allied Signal, Inc*, 235 Mich App 710, 713; 599 NW2d 110 (1999). "An abuse of discretion is found only in extreme cases where the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id.*

The doctrine of forum non-conveniens allows a court to "resist imposition upon its jurisdiction although such jurisdiction could properly be invoked." *Miller*, *supra* at 713. After a party moves for dismissal based on forum non conveniens, the court must consider two things: 1) whether this forum is inconvenient; and 2) whether a more appropriate forum exists. *Robey v Ford Motor Co*, 155 Mich App 643, 645; 400 NW2d 610 (1986). If no more appropriate forum

³ In light of our conclusion, we need not address defendant's alternative argument that the insurance contract required that plaintiff's claim for unidentified motorist benefits be brought in an Ontario Court.

exists, the court cannot resist jurisdiction. *Id.* Even if another more appropriate forum exists, the court still may not resist jurisdiction unless its own forum is “seriously inconvenient.” *Id.* The trial court should weigh the following factors in making its decision:

1. The private interest of the litigant.
 - a. Availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining attendance of willing witnesses;
 - b. Ease of access to sources of proof;
 - c. Distance from the situs of the accident or incident which gave rise to the litigation;
 - d. Enforceability of any judgment obtained;
 - e. Possible harassment of either party;
 - f. Other practical problems which contribute to the ease, expense and expedition of the trial;
 - g. Possibility of viewing the premises.
2. Matters of public interest.
 - a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
 - b. Consideration of the state law which must govern the case;
 - c. People who are concerned by the proceeding.
3. Reasonable promptness in raising the plea of *forum non conveniens*.
[*Russell v. Chrysler Corp*, 443 Mich 617, 623; 505 NW2d 263 (1993) quoting *Cray, supra* at 395-396.]

“A plaintiff’s selection of a forum is ordinarily accorded deference” and should not be disturbed unless the balance of the factors is strongly in the defendant’s favor. *Anderson v Great Lakes Dredge & Dock Co*, 411 Mich 619, 628; 309 NW2d 539 (1981).

Defendant has not shown that plaintiff’s choice of forum is seriously inconvenient or that the trial court abused its discretion in retaining jurisdiction over plaintiff’s claim for no-fault benefits. The underlying accident occurred in Michigan, and the insurance contract provides that liability will be established under the law of the place of the accident. According to plaintiff, she received her initial treatment for her injuries in Michigan and has received follow up treatment or examination with three specialists also located in Michigan. Additionally, it appears undisputed that all eyewitnesses to the accident have agreed to appear in Michigan for depositions and trial. The record reveals no evidence that plaintiff filed suit in Michigan to harass defendant or that a Michigan judgment will be difficult to enforce. There is no indication that Michigan was

selected by plaintiff to harass defendant or that a judgment will be difficult to enforce. Additionally, as noted by the trial court, Michigan has an interest in ensuring the proper administration of its no-fault act. Under these circumstances, we conclude that the trial court did not abuse its discretion by denying defendant's motion for summary disposition of the claim for no-fault benefits that was based on forum non conveniens.⁴

Affirmed in part, reversed in part, and remanded. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Kirsten Frank Kelly

I concur in result only.

/s/ Peter D. O'Connell

⁴ We recognize that it may appear inconsistent for Michigan to have personal jurisdiction over defendant with regard to the claim for no-fault insurance benefits but not to have personal jurisdiction over defendant with regard to the claim for unidentified motorist benefits. But the law is clear that unidentified motorist benefits are not governed by Michigan's no-fault act and therefore the Certificate of Compliance with the Michigan no-fault insurance law does not give rise to jurisdiction over this claim.