STATE OF MICHIGAN

COURT OF APPEALS

HARMAIL SIDHU,

Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant/Third-Party Plaintiff-Appellant,

and

ALLSTATE INSURANCE COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED
September 11, 2008

No. 277472
Washtenaw Circuit Court
LC No. 05-000752-NF

Before: Donofrio, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

In this action between insurers for recovery of no-fault benefits mistakenly paid, defendant Farmers Insurance Exchange appeals as of right, challenging the trial court's order dismissing its third-party complaint against Allstate Insurance Company under MCR 2.116(C)(7) and (10). We may decline to consider the issue raised in this appeal on the basis that this Court's prior decision in *Sidhu v Farmers Ins Exch*, unpublished order of the Court of Appeals, entered December 29, 2006 (Docket No. 272896), is the law of the case. In any event, the trial court did not err in ruling that defendant's claim against Allstate was barred by the one-year limitations period found in MCL 500.3145(1), and additionally, there was no genuine issue of material fact that Allstate did not receive written notice of a claim for PIP benefits on plaintiff 's behalf within a year of plaintiff 's accident. For all of these reasons, we affirm.

Plaintiff Harmail Sidhu was injured in a bicycle-motor vehicle accident on July 24, 2004. Defendant initially paid no-fault PIP benefits to plaintiff, believing that he was a covered insured under a no-fault policy it had issued to plaintiff's girlfriend or fiancée. Defendant later determined that plaintiff was not covered under its policies and ceased paying benefits. After plaintiff filed a complaint against defendant for breach of contract, defendant filed a third-party complaint against Allstate Insurance Company, the insurer of the driver of the vehicle involved in the accident, alleging that Allstate was liable for plaintiff's PIP benefits and seeking recovery

of the PIP benefits that defendant had previously paid to plaintiff by mistake. Defendant did not file its third-party complaint until December 2005, more than one year after plaintiff's accident. The trial court determined that defendant failed to provide timely notice of its claim within the one-year limitations period of the no-fault act, MCL 500.3145(1), and granted Allstate's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10).

Defendant argues that the trial court erred in determining that MCL 500.3145(1) applies to its action to recover benefits mistakenly paid. It also argues that even if this statute does apply, the evidence showed that Allstate timely received notice of its liability for plaintiff's PIP benefits.

Initially, we agree with Allstate that this Court's previous order denying defendant's application for leave to appeal the trial court's order granting Allstate's motion for summary disposition is the law of the case, because this Court denied the application "for lack of merit in the grounds presented." *Sidhu v Farmers Ins Exch*, unpublished order of the Court of Appeals, entered December 29, 2006 (Docket No. 272896). Cf. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). Even if we were to exercise our discretion and revisit the merits of this issue, see *Freeman v DEC Int'l, Inc*, 212 Mich App 34, 37-38; 536 NW2d 815 (1995), we would not grant relief.

The trial court properly determined that actions between insurers for the recovery of no-fault benefits mistakenly paid are governed by the one-year limitations period in MCL 500.3145(1). *Titan Ins Co v North Pointe Ins Co*, 270 Mich App 339, 343-344; 715 NW2d 324 (2006); *Amerisure Companies v State Farm Mut Auto Ins Co*, 222 Mich App 97, 100-103; 564 NW2d 65 (1997). Further, there was no genuine issue of material fact that Allstate did not receive the necessary written notice of a claim for PIP benefits as prescribed in MCL 500.3145(1). The adjuster's notes on which defendant relies show only that Allstate considered the possibility that it might be liable for PIP benefits as the insurer of the driver of the vehicle involved in the accident. Those notes are not evidence that Allstate received notice of any actual claim. The purpose behind the notice requirement is to apprise the insurer that a claim is being or might be asserted. *Heikkinen v Aetna Cas & Surety Co*, 124 Mich App 459, 463-464; 335 NW2d 3 (1981).[1] Here, Allstate was not notified that a claim would be pursued for PIP benefits on behalf of plaintiff until more than one year after the accident giving rise to the claim. Accordingly, the trial court did not err in granting Allstate's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d

[1] Defendant improperly relies on *Johnson v State Farm Mut Auto Ins Co*, 183 Mich App 752; 455 NW2d 420 (1990). That case was specifically overruled in *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 580-581, 593; 702 NW2d 539 (2005), on the issue of the sufficiency of the notice provided.

834 (1995); *Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald