STATE OF MICHIGAN

COURT OF APPEALS

SHARON L. STROZEWSKI, as Next Friend of AMYRUTH L. COOPER and LORALEE A. COOPER, Plaintiff-Appellee, v AUTO CLUB INSURANCE ASSOCIATION, Defendant-Appellant.	UNPUBLISHED May 28, 2009 No. 261736 Washtenaw Circuit Court LC No. 03-000367-NF ON REMAND

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

This case returns to this Court on remand from the Supreme Court for resolution of issues initially placed before, but not decided by, this Court. We now affirm the trial court.

Amyruth L. Cooper and Loralee A. Cooper were, respectively, one and two years old in 1987, when they sustained severe brain injuries in an automobile accident. At the time, they were passengers in a car driven by their mother and next friend in this case, Sharon L. Strozewski. Both children initially required skilled care, but after two years, only one continued to require continuous skilled care. The other child could be cared for at home. Defendant insurer encouraged the mother to leave her job and to provide that at-home care herself. Defendant offered her various rates of compensation. The mother commenced this suit in 2003, alleging that defendant underpaid her. Our Supreme Court has provided a comprehensive discussion of the procedural history of this case. See *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 402-405; 751 NW2d 443 (2008). In salient part, the mother contended that she was entitled to additional PIP benefits under the no-fault act, MCL 500.3101 *et seq*, and in addition, she contended that she had been fraudulently induced to accept an unreasonably low rate of compensation. Defendant filed a variety of motions for summary disposition, which were denied. The parties stipulated to an award of damages, subject to defendant's right to appeal.

When we first considered this matter, we viewed the only *functional* issue as whether the mother was entitled to anything at all for damages that were incurred more than a year prior to her filing of the suit. In other words, the issue as we saw it was whether the one-year-back rule found in MCL 500.3145(1) applied to the entirety of the claims. We concluded that the minority tolling provision, MCL 600.5851(1), was inapplicable to the one-year-back rule, and further that the fraud claim was merely a restatement of the no-fault claim.

However, on appeal, our Supreme Court explained that "[t]here is a distinction between claiming that an insurer has refused to pay no-fault benefits to its insureds and claiming that the insurer has defrauded its insureds." *Cooper*, *supra*, 481 Mich at 407. The Supreme Court discussed the distinction at length, but the gravamen is that it reversed the portion of this Court's opinion that held that the fraud claim was merely a re-labeled restatement of the no-fault claim. Furthermore, the Supreme Court explained that a fraud claim was actionable "even where a self-contained system, such as the no-fault system, exists." *Id*. at 410. It just so happens that, on the basis of the allegations, the loss from the alleged fraud would be primarily a loss of statutory benefits – although possibly other consequential losses as well. *Id*. at 412. In short, the fraud claim is wholly independent of the no-fault claim, and as a consequence, the one-year-back rule is simply irrelevant thereto. Our Supreme Court did not address our prior determination that the minority tolling provision is inapplicable to the one-year-back rule. The Court then remanded this case to this Court with instructions "to address the remaining issues raised by the parties." *Id*. at 417.

The first remaining issue is whether the mother is a proper claimant for no-fault benefits in this action, given that the children themselves actually received care. The mother is the plaintiff in this action as the children's next friend rather than on her own behalf, although she is the person who would receive additional compensation should plaintiff prevail. As discussed, the one-year-back rule of the no-fault act is unaffected by the minority tolling provision; furthermore, defendant does not contest its obligations under the no-fault act aside from the tolling argument. This issue is therefore essentially moot. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). However, in light of the Supreme Court's remand order, and out of concern for any other issues that may arise if plaintiff's children are deemed ineligible to participate in this case as claimants, we will address it.

MCL 500.3112 provides that "[p]ersonal protection insurance benefits are payable to or for the benefit of an injured person. . . ." Citing this language, this Court has stated as follows:

> This statute expressly confers a cause of action on the injured party to collect PIP benefits for expenses incurred as the result of his injury. We find no indication from the statute that the right to PIP benefits necessarily accrues to the person who is legally responsible for the expenses incurred as a result of the injury. [*Geiger v Detroit Automobile Inter-Ins Exchange*, 114 Mich App 283, 287; 318 NW2d 833 (1982), overruled in part by *Cameron v Auto Club Ins Ass'n* (*Cameron II*), 476 Mich 55; 718 NW2d 784 (2006).]

Citing the statute and *Geiger*, this Court more recently held as follows:

> The statute confers a cause of action on the injured party and does not create an independent cause of action for the party who is legally responsible for the injured party's expenses. Further, a parent's cause of action to recover benefits for expenses incurred during an insured's minority is derivative of the injured minor's rights under the no-fault act. Therefore . . . the right to bring an action for personal protection insurance benefits, including claims for attendant care services, belongs to the injured party. [*Hatcher v State Farm Mut Automobile Ins Co*, 269 Mich App 596, 600; 712 NW2d 744 (2006).]

In *Cameron II*, *supra* at 63-64, the Supreme Court overruled "*Geiger*'s conclusion that the minority/insanity tolling provision applies to extend the one-year-back rule . . . ." However, because that is not the purpose for which *Hatcher* cited *Geiger*, *Hatcher* remains good law. This Court has thus established that an injured person has standing to sue for damages on behalf of that person's caregiver.

In *Lakeland Neurocare Centers v State Farm Mut Automobile Ins Co*, 250 Mich App 35, 39; 645 NW2d 59 (2002), this Court noted that MCL 500.3112 includes "the phrase 'benefits are payable to or for the benefit of an injured person,'" and held that the statute "specifically contemplates the payment of benefits to someone other than the injured person." In this case the children do indeed have standing to make the claims asserted on their behalf by their mother and next friend, who herself may recover without having the status of plaintiff in an individual capacity. The trial court did not err in its ruling that "it is the law of the state that the tolling provision does apply to these claims and it is a claim of the—of the minor—of the injured person."

The major remaining issue is whether the mother can invoke the minority tolling provision to save her fraud claim from the operation of the six-year statute of limitations set forth in MCL 600.5813. We hold that she can.[1]

Our Supreme Court provided us with some "cautionary notes," including an enumeration of the elements of a fraud claim: "(1) that the insurer made a material representation; (2) that it was false; (3) that when the statement was made, the insurer knew that it was false, or the insurer made it recklessly without any knowledge of its truth and as a positive assertion; (4) that the insurer made the statement with the intention that it would be acted upon by the insureds; (5) that the insureds acted in reliance upon the statement; and (6) that the insureds consequently suffered injury." *Cooper*, *supra*, 481 Mich at 414. Given the procedural posture of this case, we presume that the first three elements have at least been sufficiently well pleaded. Defendant argues that no misrepresentations were made to the children, and the fraud claim belongs only to the mother in her own personal capacity, so she cannot avail herself of the minority tolling provision. We find defendant's reasoning inapposite.

The last three elements of a fraud claim do not depend on *to whom* a misrepresentation is made. The gravamen of the final three elements is that false statements were, in the passive voice, made and were calculated to trick some particular party. The party to whom misstatements were made is relevant, and indeed in the *typical* situation, it may be unlikely for a third party to rely on statements made to another. An illustrative case is *Int'l Brotherhood of Electrical Workers v McNulty*, 214 Mich App 437; 543 NW2d 25 (1995). That case involved a suit by a union against a company that allegedly won a contract bid by claiming that it would pay its workers prevailing wages but in fact underpayed those workers and threatened them into

[1] If the fraud claim accrued in 1989 and 1990, then six years would have passed by the time suit was filed in 2003. However, the alleged fraudulent misrepresentations are asserted to have taken place "in 1990 and continuing," suggesting the possibility of an ongoing wrong, some of which might have taken place within six years of filing suit. Because we cannot determine that from the record, we merely note this as a point of interest; it is not part of the basis for our conclusion.

silence about it. This Court stated that "misrepresentations made to a third party [do] not constitute a valid fraud claim," but its reasoning was that the union itself had not acted in reliance on the false statements made by the defendant. *Id*. at 447. Again, proving reliance may be difficult where a misrepresentation is not made directly to the allegedly defrauded party, but we cannot conclude that it is legally impossible.

In this case, we find that reliance by the children has been sufficiently well pleaded. The alleged loss is a loss of statutory benefits under the no-fault act. As discussed, this constitutes a loss to the children (as the insureds) irrespective of whether they actually received the care for which the benefits were intended to pay. The person to whom the alleged misrepresentations were made was, at all relevant times, *acting solely on the children's behalf*. She participates in this case as the children's next friend, and the misrepresentations were made to her as the children's caretaker. A misrepresentation to the caretaker, intended to induce the caretaker to take some action or omission that affects the children's statutory benefits is, as a realistic matter, a misrepresentation calculated to induce reliance by the insureds. Indeed, the only way the insureds could have any dealings with their insurer is through their mother.

We conclude that, as a practical matter, the alleged fraud in this case was perpetrated against the insured children, albeit through their mother in her role as their caretaker. We find that the minority tolling provision is therefore applicable to the fraud claim in this case, and so the six-year limitations period does not bar the claim.

We therefore need not reach any of the other remaining issues.

The trial court is affirmed.

/s/ William B. Murphy
/s/ Alton T. Davis