STATE OF MICHIGAN

COURT OF APPEALS

ANTONIO MACIAS, JR.,

Plaintiff/Counter-Defendant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant/Cross-Defendant,

and

HOME-OWNERS INSURANCE COMPANY,

Defendant/Cross-Defendant-Appellee,

and

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY,

Defendant/Counter-Plaintiff/Cross-Plaintiff/Third-Party Plaintiff-Appellant,

and

RICHARD NOEL NUNEZ-HERNANDEZ, RICARDO SIXTO PASTOR and TITAN INSURANCE COMPANY,

Third-Party Defendants.

UNPUBLISHED
September 10, 2009

No. 286204
Oakland Circuit Court
LC No. 06-072483-CK

Before: O'Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Michigan Municipal Risk Management Authority (MMRMA) appeals as of right the denial of its motion for summary disposition and the grant of summary disposition in favor of Home-Owners Insurance Company (Home-Owners) in this action to recover for personal injury protection (PIP) benefits. We affirm.

I. Factual and Procedural History

The facts relevant to this appeal are undisputed. Plaintiff, Antonio Macias, Jr., was injured in a motor vehicle accident that occurred on February 21, 2005. Plaintiff was standing outside the truck he was using as an employee of the City of Pontiac. Plaintiff was assisting his son, Antonio Macias, III, when the vehicle his son was driving became disabled. Plaintiff sustained injuries when another driver[1] struck the son's vehicle, pinning plaintiff between his son's car and his truck. MMRMA provided coverage for plaintiff's work vehicle, while the vehicle driven by plaintiff's son was insured with Citizens Insurance (Citizens). Home-Owners is the insurer for plaintiff's personally owned vehicles.[2]

On November 4, 2005, plaintiff's attorney forwarded a letter to Auto-Owners Insurance Company.[3] The letter indicated that plaintiff might pursue an uninsured motorist claim against Home-Owners. Subsequently, on February 15, 2006, plaintiff initiated a lawsuit against Home-Owners, Citizens and MMRMA for uninsured/underinsured motorist benefits. After the accident MMRMA paid PIP benefits to plaintiff, believing plaintiff was inside the city-owned vehicle when the accident occurred. After learning that plaintiff was actually standing on the rear bumper of the vehicle, MMRMA filed a cross-claim against Citizens and Home-Owners on May 17, 2006, seeking reimbursement from Home-Owners for no-fault PIP benefits paid to plaintiff and seeking a determination that it retained no liability or obligation to continue paying no-fault PIP benefits to plaintiff. On May 24, 2006, plaintiff filed an amended complaint seeking no-fault benefits.

Home-Owners filed a motion for summary disposition, in accordance with MCR 2.116(C)(10), asserting the notice provided by MMRMA was untimely, pursuant to MCL 500.3145(1). In a separate motion, MMRMA sought summary disposition, pursuant to MCR 2.116(C)(10), seeking reimbursement from Home-Owners for PIP benefits mistakenly paid to plaintiff by MMRMA. The trial court held a hearing on both motions and found that MMRMA was not entitled to reimbursement because "the indemnification claim was not properly made within the one year time frame as permitted by the statute." The trial court indicated that the notice provided to Home-Owners regarding uninsured/underinsured coverage was "insufficient to serve as notice to Home-Owners that MMRMA would be seeking indemnification for PIP

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[1] Defendant, Richard Noel Nunez-Hernandez.

[2] Defendant, Richard Noel Nunez-Hernandez, was driving the vehicle owned by defendant, Ricardo Sixto Pastor, without his permission. Consequently, the insurer for Pastor's vehicle, Titan Insurance, did not incur any liability for the accident.

[3] Reportedly, claims made under a policy issued by Home-Owners is processed or administered through Auto-Owners.

benefits mistakenly paid to Plaintiff." MMRMA filed a motion for reconsideration, which was denied by the trial court and this appeal ensued.

II. Standard of Review

As stated by our Supreme Court in *Cameron v Auto Club Ins Assoc*, 476 Mich 55, 60; 718 NW2d 784 (2006):

> We review de novo a trial court's grant or denial of a motion for summary disposition. Questions of statutory interpretation are also reviewed de novo. As always, our primary goal when interpreting statutes is to discern the intent of the Legislature by focusing on the best indicator of that intent, the language the Legislature adopted in the statute. [Footnotes and citations omitted.]

III. Analysis

Primarily, the dispute that arises between the parties concerns the interpretation of MCL 500.3145, which states, in relevant part:

> (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

MMRMA contends that the statute requires only the receipt of a generic form of notice and that plaintiff's provision of a letter and filing of a complaint for uninsured/underinsured motorist benefits within one year of the date of the accident comprised sufficient notice. Home-Owners asserts that the failure of MMRMA to file a specific claim for reimbursement of PIP benefits within the one-year timeframe following the accident precludes any such claim in accordance with the plain meaning of the statutory language.

Citing its holding in *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005), our Supreme Court discussed MCL 500.3145(1), stating:

> [The statute] contains two limitations on the time for commencing an action and one limitation on the period for which benefits may be recovered:

> "(1) An action for personal protection insurance [PIP] benefits must be commenced not later than one year after the date of accident, *unless* the insured gives written notice of injury or the insurer previously paid [PIP] benefits for the injury.
> "(2) *If* notice has been given or payment has been made, the action may be commenced at any time within one year after the most recent loss was incurred.
> "(3) Recovery is limited to losses incurred during the one year preceding commencement of the action."

> Thus, an action for PIP benefits must be commenced within a year of the accident unless the insured gives written notice of injury or previously received PIP benefits from the insurer. If notice was given or payment was made, the action can be commenced within one year of the most recent loss. Recovery, however, is limited to losses incurred during the year before the filing of the action. [*Cameron, supra* at 61 (emphasis in original).]

Although plaintiff filed his claim within the one-year limitations period it was limited to a request for uninsured/underinsured motorist benefits. It was not until more than one year after the accident, on March 17, 2006, when MMRMA filed is cross-claim that Home-Owners received any form of notice of a claim for PIP benefits. Hence the notice requirement was not fulfilled. As stated previously in *Welton v Carriers Ins Co*, 421 Mich 571, 579-580; 365 NW2d 170 (1984), overruled in part on other grounds *Devillers, supra* at 562:

> Until a specific claim is made, an insurer has no way of knowing what expenses have been incurred, whether those expenses are covered losses, and indeed, whether the insured will file a claim at all . . . . tolling would not begin until a claim for *specific* benefits is submitted to the insurer. [Emphasis added, footnotes omitted.]

As argued by Home-Owners and determined by the trial court, the failure to provide notice of a specific claim for PIP benefits until after the one-year time period required by MCL 500.3145(1) had lapsed, precludes MMRMA from recovery of mistakenly paid benefits. Further, MMRMA's contention that the trial court improperly relied on *Devillers* in its ruling rather than *Johnson v State Farm Mut Automobile Ins Co*, 183 Mich App 752; 455 NW2d 420 (1999)[4] is misplaced. Our Supreme Court specifically overruled *Johnson* as being in direct contravention of the plain meaning the statutory language of MCL 500.3145(1). *Devillers, supra* at 564.

Finally, MMRMA contends the action is saved by the relation back doctrine of MCR 2.118(D), which states:

> An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose

[4] Overruled by *DeVillers, supra* at 564.

> out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

Pursuant to Black's Law Dictionary (8th ed), an amendment is defined as "A formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specif., a change made by addition, deletion, or correction; esp., an alteration in wording." Contrary to MMRMA's contention, the filing of its cross-claim must be construed as a "pleading" and not an amendment. MCR 2.110(A)(2). As such, MCR 2.118(D) is not applicable.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens