

STATE OF MICHIGAN
COURT OF APPEALS

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

Plaintiff-Appellant,

v

CALHOUN INTERMEDIATE SCHOOL
DISTRICT,

Defendant-Appellee.

UNPUBLISHED
July 6, 2010

No. 290564
Calhoun Circuit Court
LC No. 2008-003466-NF

Before: MURRAY, P.J., and SAAD and M.J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(4) on the basis that the court lacked jurisdiction. Although we conclude the trial court had subject matter jurisdiction over this case, we nonetheless affirm the trial court's order of dismissal.

Whether the circuit court had subject-matter jurisdiction is a question of law that this Court reviews de novo. *Farmers Ins Exch v South Lyon Community Schools*, 237 Mich App 235, 240-241; 602 NW2d 588 (1999). This Court also reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

"Subject-matter jurisdiction concerns a court's abstract power to try a case of the kind or character of the one pending and is not dependent on the particular facts of a case. It is fundamental that the classes of cases over which the circuit courts have subject-matter jurisdiction are defined by this state's constitution and Legislature." *Harris v Vernier*, 242 Mich App 306, 319; 617 NW2d 764 (2000) (citations omitted). "Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.'" *Farmers Ins Exch*, 237 Mich App at 241, quoting MCL 600.605. However, MCL 600.605 "does not confer jurisdiction where a statute provides for exclusive administrative remedies that have not been exhausted." *W A Foote Mem Hosp v Dep't of Pub Health*, 210 Mich App 516, 523; 534 NW2d 206 (1995).

Generally, a party bringing an action under the Individuals With Disabilities Education Act (IDEA), 20 USC 1400 *et seq.*, must exhaust administrative remedies. *Farmers Ins Exch*, 237 Mich App at 243; *Derrick F v Red Lion Area School Dist*, 586 F Supp 2d 282, 294 (MD Pa, 2008). Therefore, if an insurer brings a declaratory action under the IDEA asserting that a school district is required to provide particular services to the student to comply with its obligation to provide a free and appropriate public education, the circuit court may lack subject-matter jurisdiction if the administrative remedies have not been exhausted. See *Allstate Ins Co v Bethlehem Area School Dist*, 678 F Supp 1132, 1137 (ED Pa, 1987).

Here, however, plaintiff's action is one to enforce its right to equitable relief and for reimbursement under MCL 500.3109(1), which provides:

Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury.

This case is quite similar to *Farmers Ins Exch* in which the plaintiff insurer sought a declaration that the defendant school district was responsible for paying for nursing services provided to a student (the plaintiff's insured) and the cost of the student's transportation, and sought reimbursement for such services already paid by the insurer. *Farmers Ins Exch*, 237 Mich App at 243. This Court held that the circuit court had subject-matter jurisdiction because the claims were not brought under the IDEA, but rather were brought under MCL 500.3109. *Id.* at 241. The school district in *Farmers Ins Exch* argued that the insurer could not show that the benefits were required to be provided because the insurer did not have standing to commence the necessary administrative procedures under the IDEA. *Id.* at 242. This Court rejected that argument and reiterated that the plaintiff did not bring the action to have the services included in the student's individual education program (IEP), but brought the action to determine its rights under MCL 500.3109(1) for services already provided to the insured. *Id.* at 243. This Court also rejected the school district's argument that the case was comparable to *Allstate Ins Co*, 678 F Supp at 1132, as that case did not involve a statute similar to MCL 500.3109(1). *Farmers Ins Exch*, 237 Mich App at 244-245.

The trial court distinguished *Farmers Ins Exch* because there the school district did not dispute the student's need for nursing services, whereas defendant disputes the necessity of nursing services in the present case. However, this Court's discussion of the parties' stipulation in *Farmers Ins Exch*, 237 Mich App at 243-244, was not critical to its analysis of the circuit court's subject-matter jurisdiction. Rather, this Court was pointing out the unnecessary nature of the administrative process in that particular situation as additional support for the outcome reached by the Court. The Court had already determined that the action was not brought pursuant to the IDEA. *Id.* at 241, 243. Moreover, when the Court distinguished *Allstate Ins Co*, 678 F Supp at 1132, it did so not on the basis that the need for the services was undisputed, but rather because the action was brought under MCL 500.3109(1) and not the IDEA. *Farmers Ins Exch*, 237 Mich App at 244-245. The insurer's inability to challenge the school district's obligations under the IDEA implicates the insurer's standing to bring a declaratory action under the IDEA, and the absence of standing implicates the subject-matter jurisdiction of the court. But where, as here and in *Farmers Ins Exch*, the insurer brings the action to enforce its rights under MCL 500.3109(1), the insurer has standing and the circuit court has subject-matter jurisdiction over the action.

Nonetheless, we affirm the trial court's grant of summary disposition to defendant. See *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009) (Court's invocation of the "right result" doctrine). As defendant points out, in its finding on defendant's motion for summary disposition, the trial court, after reviewing in camera the IEP, found that the IEPs in place at the relevant time "make no provision for the services in dispute." Plaintiff has not brought forth any evidence to dispute that finding. Consequently, because no benefits were being provided by defendant through the IEP that were also being paid for by plaintiff, plaintiff could not prevail under MCL 500.3109(1) as a matter of law. *Farmers Ins Exch*, 237 Mich App at 241.

We reject plaintiff's assertion that under *Farmers Ins Exch* it is entitled to determine through discovery whether defendant should be providing these nursing services under the IDEA. In this regard, *Farmers Ins Exch* is not directly on point, as in that case the school district stipulated that the nursing services were necessary for the student to attend school, even though they were not a part of his IEP. *Id.* at 243-244, 247. Thus, what is normally decided in the IDEA administrative process was stipulated to by the school district, and thus, the only remaining question in *Farmers Ins Exch* was the legal import of those facts. There is no similar stipulation in this case, and plaintiff admits that it has no standing (nor does it seek it) to involve itself with what services should be provided by defendant to the student in the IEP. It is under the IDEA administrative procedure where the relevant parties bring together the appropriate personnel to decide the intricacies of the appropriate IEP, *Gill v Columbia 93 School Dist*, 217 F3d 1027, 1034-1035 (CA 8, 2000), not through discovery in litigation between an insurance company and school district. To hold otherwise would be to create an avenue for third parties to second-guess the educational decisions made by the parents and school district through the proper channels of the IDEA.

Affirmed.

Defendant may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Henry William Saad
/s/ Michael J. Kelly