

STATE OF MICHIGAN
COURT OF APPEALS

DARREN FINDLING, Successor Conservator of
CAROL KOWALSKI, a Protected Person,

UNPUBLISHED
May 29, 2014

Petitioner-Appellee,

v

No. 314189
Macomb Probate Court
LC No. 2006-187349-CA

AUTO CLUB INSURANCE ASSOCIATION,

Respondent-Appellant.

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right an order granting petitioner's petition to compel payment of his conservator fees for services he rendered on behalf of his ward, Carol Kowalski (Kowalski), pursuant to MCL 500.3107(1)(a) of the no-fault act. We vacate the order and remand for further proceedings consistent with this opinion.

In 1989, Carol Kowalski was injured in a motor vehicle accident and sustained serious injuries necessitating the appointment of a guardian ad litem and conservator. Respondent was Kowalski's automobile insurer and responsible for the payment of PIP benefits.

On September 12, 2012, petitioner filed a petition to compel payment of his conservator fees as PIP benefits and to award attorney fees, costs, and interest. Petitioner's billing statement detailing his services as Kowalski's conservator was attached in support of his request for an award of \$11,352.42. Petitioner asserted that the "fees were associated with the care, recovery, and rehabilitation of" Kowalski. Respondent opposed the petition, arguing that most of the claimed conservator's fees arose from actions that were not reasonably related to Kowalski's care as required by MCL 500.3107(1)(a), or were not causally connected to Kowalski's automobile accident injuries as required by MCL 500.3105(1).

On December 19, 2012, the probate court entered an opinion and order granting, in part, the petition. The probate court noted that the conservator was appointed because of Kowalski's automobile accident injuries and, therefore, the conservator's services "are as a general rule reasonably necessary services for the 'financial' care of [] Kowalski." The court further held that services totaling \$2,530.50 were unreasonable, but awarded fees and costs in the amount of \$8,820 to be paid by respondent as PIP benefits. On February 6, 2013, the probate court stayed enforcement of the order pending appeal.

Respondent argues that the probate court erred in holding that a conservator's fees for services rendered on behalf of an injured person are necessarily "allowable expenses" under §3107(1)(a) of the no-fault act. We agree.

This Court reviews de novo as an issue of law the proper interpretation of the no-fault act. *In re Carroll (On Remand)*, 300 Mich App 152, 159; 832 NW2d 276 (2013).

There are four general categories of expenses and losses recoverable as PIP benefits and they include survivor's loss, allowable expenses, work loss, and replacement services. *Id.* At issue in this case is the category of allowable expenses. Pursuant to §3107(1)(a), allowable expenses consist "of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." As this Court explained in *In re Carroll*, 300 Mich App at 171, several criteria must be established before a product, service, or accommodation will be compensable as an "allowable expense" under §3107(1)(a). The criteria include that the particular product, service, or accommodation be causally connected to, and necessitated by, the injuries sustained in the automobile accident. *Id.* For a service to be considered an "allowable expense," as opposed to a replacement service, it must not be of a type that was required both before and after the injury, i.e., it must not be for something that the injured person would have performed for herself had she not been injured. *Id.* at 171-172. In other words, the services provided must be for the care of the injured person's peculiar needs as an injured person and not the type of ordinary tasks one might perform for the benefit of the whole household. *Id.* at 173-174.

In this case, petitioner submitted a 20-page billing summary in support of his petition to compel payment for conservator services provided on behalf of Kowalski. Although the description of each service provided was brief, the services appear to generally fall into four categories, including: (1) maintaining Kowalski's household, e.g., paying household bills and managing bank accounts; (2) settling matters related to Kowalski's slip and fall in a Kroger store, including outstanding medical bills, liens, and a lawsuit; (3) maintaining the conservatorship, e.g., preparing annual accountings and appearing in probate court; and (4) pursuing the payment of PIP benefits, including payment for the services of Kowalski's guardian ad litem.

First, it is clear from this Court's holding in *In re Carroll* that ordinary household management services are not allowable expenses under §3107(1)(a). *Id.* at 172-173. These are ordinary tasks that were required to be performed before Kowalski was injured in the automobile accident and did not arise from her peculiar needs as an injured person. See *id.* at 173-174.

Second, it is clear that the conservator's services for settling matters related to Kowalski's slip and fall in a Kroger store, including outstanding medical bills, liens, and a lawsuit, are not recoverable as allowable expenses under §3107(1)(a). These services were neither causally connected to, nor necessitated by, Kowalski's injuries sustained in the automobile accident. See *id.* at 171.

Third, as respondent concedes, conservator fees for services related to maintaining the conservatorship are allowable expenses under §3107(1)(a). These services were causally connected to, and necessitated by, Kowalski's injuries arising out of the automobile accident.

See *id.* Further, these services were provided for the care of Kowalski's peculiar needs as an injured person. See *id.* at 173-174.

Fourth, the record is unclear with regard to the conservator's services relating to the attempted recovery of PIP benefits; thus, this issue must be remanded for further proceedings. In particular, we note that it appears from petitioner's billing summary and the record evidence that at least some of the guardian ad litem's fees petitioner attempted to recover were for services unrelated to Kowalski's automobile accident injuries. That is, in 2011, petitioner had sought to compel respondent to pay for certain services of the guardian ad litem, but the probate court denied the petition after concluding that there was no causal connection between the injuries sustained in the automobile accident and the services provided by the guardian ad litem for which payment was sought.

We further note that petitioner's instant petition sought to compel payment of PIP benefits, as well as attorney fees and costs. However, we cannot determine from the probate court's order whether attorney fees were awarded. Further, if attorney fees were awarded, we cannot determine whether they were awarded as an allowable expense under §3107(1)(a) or whether they were awarded under §3148(1), the attorney fee provision of the no-fault act. But to the extent that petitioner relies on *In re Geror*, 286 Mich App 132, 134; 779 NW2d 316 (2009), to support the argument that his attorney fees should be considered an allowable expense under §3107(1)(a), petitioner's reliance is misplaced. In that case, the issue was whether attorney fees could be recovered as an allowable expense where the attorney's legal services included investigating facts to ultimately determine whether the ward was receiving necessary care from her appointed guardian. *Id.* at 136. Thus, this Court held that the legal services were "directly related to petitioner's care" and the charges were, therefore, an allowable expense under §3107(1)(a). *Id.* That is not the circumstance in the present case.

Accordingly, we vacate the probate court's order awarding \$8,820 to petitioner for services rendered as Kowalski's conservator. This matter is remanded for further proceedings, including for determination of which services provided by petitioner as Kowalski's conservator are compensable as allowable expenses under §3107(1)(a) and whether petitioner is entitled to attorney fees under §3148(1).

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens