

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES H. CARIGNAN,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

January 17, 2012

No. 302482

Washtenaw Circuit Court

LC No. 09-001006-NF

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Defendant appeals as of right from that part of a January 19, 2011, order awarding plaintiff attorney fees pursuant to MCL 500.3148(1) of the no-fault act, MCL 500.3101 *et seq.* We vacate the portion of the order awarding attorney fees and remand for further proceedings consistent with this opinion.

On July 4, 2008, plaintiff was riding his motorcycle when he was struck by a car driven by Cheryl Collon, defendant's insured. Plaintiff suffered traumatic injuries including amputation of his left leg. Following the accident, defendant paid some personal injury protection (PIP) benefits to plaintiff, but a dispute eventually arose over payment of monies for home modifications, attendant care, case management services, and other miscellaneous expenses.

On August 24, 2009, plaintiff filed a complaint against defendant. Plaintiff asserted that his physicians prescribed, among other things, 24-hour attendant care, case management services, and home modifications, and that defendant refused to pay. The case proceeded through discovery and, shortly before trial, defendant agreed to pay many of the disputed expenses. Defendant issued checks to plaintiff totaling over \$30,000 and the case proceeded to a jury trial with respect to home modifications, attendant care, and penalty interest. After a two day trial, the jury found in favor of plaintiff. The jury found that plaintiff incurred \$2,500 in allowable expenses for home modification and \$8,500 for attendant care. Because the jury also found that payment for some of the expenses plaintiff was entitled to was overdue, it awarded penalty interest pursuant to MCL 500.3142.

Following the verdict, plaintiff filed a motion requesting \$107,975 in attorney fees pursuant to § 500.3148(1) because defendant unreasonably refused to pay his claims or unreasonably delayed in making proper payment. After a hearing on the motion, the trial court granted plaintiff's motion and awarded him the full amount requested.

MCL 500.3148(1) provides, in part, that "attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." "What constitutes reasonableness is a question of law, but whether the defendant's denial of benefits is reasonable under the particular facts of the case is a question of fact." *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008), quoting *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008). A trial court's factual findings are reviewed for clear error and the award of attorney fees is reviewed for an abuse of discretion. *Id.*

In *Moore*, 482 Mich at 517, our Supreme Court succinctly explained the requirements for awarding attorney fees under MCL 500.3148(1):

MCL 500.3148(1) establishes two prerequisites for the award of attorney fees. First, the benefits must be overdue, meaning "not paid within 30 days after [the] insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2). Second, in postjudgment proceedings, the trial court must find that the insurer "unreasonably refused to pay the claim or unreasonably delayed in making proper payment." MCL 500.3148(1). Therefore, assigning the words in MCL 500.3142 and MCL 500.3148 their common and ordinary meaning, "attorney fees are payable only on overdue benefits for which the insurer has unreasonably refused to pay or unreasonably delayed in paying." *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 485; 673 NW2d 739 (2003) (emphasis omitted).

Plaintiff argues that he was entitled to attorney fees because the benefits were overdue, and defendant unreasonably refused to pay or unreasonably delayed in making payment. A review of the lower court record, however, reveals that the trial court never made any determination regarding the reasonableness of defendant's delay or refusal to pay. "MCL 500.3148(1) requires that the trial court engage in a fact-specific inquiry to determine whether 'the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.'" *Moore*, 482 Mich at 522, quoting MCL 500.3148(1). While the trial court addressed the reasonableness of the attorney fees requested, it failed to specifically address the reasonableness of defendant's actions.

Accordingly, we vacate the portion of the order requiring defendant to pay attorney fees under § 500.3148(1). The case is remanded to allow the trial court to engage in a fact specific inquiry to determine the reasonableness of defendant's refusal to pay plaintiff's claim or delay in making payment under the circumstances of this case.

Vacated in part and remanded for further proceedings consistent with this opinion.
Jurisdiction is not retained.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter