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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001138-MR

ATLANTA SPECIALTY
INSURANCE COMPANY — APPELLANT

v.

APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 00-CI-90100

GARY A. GRIGGS — APPELLEE

OPINION
AFFIRMING IN PART - REVERSING IN PART AND REMANDING
** ** ** ** **

BEFORE: BUCKINGHAM, GUIDUGLI AND HUDDLESTON, JUDGES.

GUIDUGLI, JUDGE. Atlanta Specialty Insurance Company (Atlanta) appeals an order of the Montgomery Circuit Court which required it to pay $10,000 to Gary Griggs (Griggs) as personal injury protection (PIP) benefits for loss wages after Atlanta had already paid $10,000 in PIP benefits for medical expenses to several medical providers. We affirm in part, reverse in part, and remand.

On June 21, 1998, Griggs was involved in a single car motor vehicle accident in Clark County. Griggs sustained serious injuries and is now a quadriplegic. As a result of the accident, his medical expenses exceeded One Million Dollars. At the time

of the accident, Griggs was insured by Atlanta under a policy of motor vehicle insurance which provided for a payment of $10,000 in no-fault benefits pursuant to the Kentucky Motor Vehicle Reparations Act (MVRA). Griggs was also insured under a health and accident insurance policy issued by Anthem Blue Cross/Blue Shield.

On or about July 2, 1998, Atlanta received information of the accident and the serious nature of Griggs's injuries. Attempts to contact Griggs's wife were unsuccessful. Shortly after receiving notice of the accident, Atlanta began receiving medical bills relating to medical care rendered Griggs following the accident. On July 14, 1998, Atlanta paid $1,157.20 to several care givers based upon medical bills it had received. Thereafter, on July 17, 1998, Atlanta exhausted Griggs's PIP benefits by paying an additional $8,842.80 to the University of Kentucky Chandler Medical Center (U.K. Medical Center) where Griggs was hospitalized. On that same day (July 17, 1998), Atlanta sent a letter to Griggs stating that the PIP benefits were exhausted, and no more overage was available for medical bills. Atlanta closed its file relative to Griggs's accident.

However, on September 18, 1998, Griggs's attorney contacted Atlanta and requested that Atlanta make wage loss PIP benefits available to his client. Atlanta informed Griggs's legal representative that the PIP benefits had been exhausted on medical benefits. Griggs then filed a complaint against Atlanta on June 20, 2000, requesting judgment for loss wages due under his insurance policy in the sum of $10,000. After discovery was

completed, each party moved for summary judgment. On April 2, 2001, the Montgomery Circuit Court granted Griggs's motion for summary judgment awarding Griggs $10,000 for basic reparations benefits, plus interest at 18% per annum from July 17, 1998, as well as a reasonable sum for attorney fees.

Instead of this being the end of the matter, it was the beginning of a flurry of new pleadings. Atlanta filed a motion to set aside the order, which was granted, in part, in order to allow time for Atlanta to file a third-party complaint against U.K. Medical Center and Clark Regional Medical Center, Inc. (Clark Medical Center), the two health care providers that received the $10,000 PIP medical benefits. Thereafter, each third-party defendant filed answers and separate claims against Griggs seeking indemnification. Atlanta filed an additional motion to file a counter-claim against Griggs based upon unjust enrichment. Atlanta filed another motion to alter, amend or vacate and Griggs and Atlanta filed additional memoranda in support of their position relative to that motion. Finally Griggs filed answers to the third-party defendants' claims against him. All this was accomplished by May 11, 2001. On May 18, 2001, the trial court entered a new order and judgment which incorporated the findings of fact and conclusions of law from the previous order entered April 2, 2001, and further denied Atlanta's motion to alter, amend or vacate. As to all remaining issues (counterclaim and third-party claims), they were ordered held in abeyance. On May 25, 2001, the court entered an amended order and judgment which duplicated the May 18, 2001 order, but

added an award of $5,000 to be paid by Atlanta for reasonable attorney's fees and taxable costs. This appealed followed.

On appeal, Atlanta argues that Griggs is not entitled to recover wage loss benefits because he failed to submit documentation of such loss; he never formally made a wage-loss benefit claim; payment of an additional $10,000 in PIP benefits would violate KRS 304.39-050(3); and that Griggs had been unjustly enriched. Atlanta also contends that the award of interest and attorney's fees should be reversed. Griggs responds by claiming that Atlanta simply chose the fastest and cheapest way to close the insurance claim by paying the PIP benefits in medical expenses without the advice, knowledge or consent of Griggs, and thus, violated its legal, contractual and fiduciary duties owed Griggs. He also insists that the award of attorney's fees and interest are justified because of Atlanta's disregard of the law and his rights. However, Griggs does concede that the trial court erred in its calculation of interest. He agrees that interest should not have been assessed from July 17, 1998, but rather pursuant to KRS 304.39.130 interest should be assessed from the date that each weekly payment (he believes it should be $200 per week) was due.

While we question why Griggs did not include in his complaint his primary health insurance carrier and the medical providers who had received the PIP payments from Atlanta, and while we are concerned that the trial court did not resolve the indemnification issues between Atlanta and the medical providers, we believe the trial court correctly resolved the issue of wage

loss benefits between Atlanta and Griggs. At no time prior to the benefit disbursement by Atlanta did Griggs or his wife have any contact with Atlanta. Although it appears someone provided the medical providers with information concerning Griggs's automobile insurance coverage through Atlanta, there is nothing in the record to suggest that Atlanta received this information from the Griggses. Atlanta concedes that its attempts to contact or notify the Griggses proved futile. The Griggses made no claim, submitted no form and requested no benefits of Atlanta. In fact, considering the catastrophic injuries Griggs sustained and the life and death struggle he was fighting, it is hard to imagine that he or his wife was concerned with medical insurance or payment of the bills at that time. In times of such distress, it is reasonable to believe all thoughts and efforts were to provide the best medical treatment possible and not be concerned about the costs until some later time.

Under these conditions, it is difficult to believe that Atlanta was merely concerned with meeting its statutory obligation to pay reasonable medical expenses within thirty (30) days of submission. KRS 304.39-210(1). Rather, it is more reasonable to believe, as did the trial court, that Atlanta acted unreasonably in paying the medical PIP prior to receiving a PIP application. The trial court also noted that neither party had placed a copy of the insurance policy in question in the record and the court believed "there was no language in the policy which allowed [Atlanta] to make payment without authorization from [Griggs]." The court then found that under current law (KRS

304.39-241, which went into effect July 15, 1998) such language in a policy would be contrary to law. Specifically, KRS 304.39-241 states:

> An insured may direct the payment of benefits among the different elements of loss, if the direction is provided in writing to the reparation obligor. A reparation obligor shall honor the written direction of benefits provided by an insured on a prospective basis.

This statute was not in effect on the date of the accident (June 21, 1998), but was effective prior to the time the majority of the benefits had been paid by Atlanta (on July 14, 1998 Atlanta paid $1,157.20 to several health providers and on July 17, 1998, paid $8,542.80 to U.K. Medical Center). The trial court made the following findings in its April 12, 2001, order based upon these facts:

> In the newly revised statute of KRS 304.39-241, the carrier clearly is obligated by statute to make payment as directed by the insured. However, this Court also finds that prior to July 15, 1998, the insurer had an obligation to ascertain (1) whether all of the injuries did in fact occur as a result of the motor vehicle accident, and (2) how the insured desired to have the benefits disbursed. It is evident, by the fact that payment was made on the date of the bills were received, and without even receipt of a PIP application, that the Defendant merely wanted to exhaust the PIP in order to close the file and alleviate the cost of administration.

In addition to the new statute, the trial court relied upon Blue Cross & Blue Shield of Ky. v. Baxter, Ky. App., 713 S.W.2d 478 (1986), as a basis for ruling for Griggs. Baxter, although factually similar, is procedurally different in that the injured party brought suit against the health insurance company.

In Baxter, her automobile insurer paid over $9,000 to the hospital for medical expenses incurred by Baxter in the accident. When Baxter requested Blue Cross/Blue Shield to duplicate those medical expenses that the automobile insurance company had already paid, Blue Cross/Blue Shield refused. Baxter then sued Blue Cross/Blue Shield. This Court, in affirming the trial court's summary judgment in favor of Baxter, held:

> If economic loss (exclusive of medical expenses) exceeds the maximum BRB to which a claimant is entitled, coordination is impermissible. In this case, Helen's economic loss in wages alone exceeds the $10,000.00 maximum to which she is entitled. If we were to permit Blue Cross to coordinate its responsibility for medical bills with the payments which Helen has received from the no-fault carrier, it would effectively depreciate her recovery under the no-fault act. This we cannot sanction. It would vitiate the public policy set forth in the Motor Vehicle Reparations Act. KRS 304.39-010.
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> ....
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> It is clear to us that in enacting no-fault legislation, the intent was to provide a remedy to automobile accident victims that could not be impinged upon by any means whatsoever. This was the victim's reward for sacrificing traditional tort rights. See Fann v. McGuffey, Ky., 534 S.W.2d 770 (1975); KRS 304.39-060(2); KRS 304.39-030(1). No-fault is a specie of compulsory insurance. 7 Am.Jur.2d Automobile Insurance §§ 20 and 341 (1980). It is remedial in nature and thus will be broadly construed to carry out its beneficial purpose of providing compensation for persons injured by automobiles. 7 Am.Jur.2d Automobile Insurance § 28 (1980). Although our statute provides that an injured party may not collect from more than one "reparation obligor" (KRS 304.39-050[3]), there is every indication the legislature intended that his one-time recovery not be diminished. The statute defines reparation obligor as "an insurer, self-insurer, or

> obligated government providing basic or added reparation benefits under the statute." KRS 304.39-020(13). The statute does not include insurers, such as Blue Cross, who are not providing insurance under the no-fault statute. Further, BRB are qualifiedly exempt from execution (KRS 304.390260[1]), and are not subject to deductions or set-off. KRS 304.39-250. Apparently the only authorized deductions in BRB are those arising from social security or workers' compensation. KRS 304.39-120.
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> In view of the foregoing, we believe it offensive to the public policy manifested in the act to permit Blue Cross to coordinate under the circumstances. Blue Cross has a right to contract, but the right is not unlimited. 17 Am.Jur.2d Contracts § 174 (1964).

Baxter, 713 S.W.2d at 480. Although Griggs filed his action directly against his automobile insurer, we believe the result is the same. Atlanta cannot ignore its duties to provide a remedy to automobile accident victims. It cannot ascertain the wishes and needs of its insured. It cannot expeditiously and without direction or authorization pay out the victim's benefits merely to close its file and alleviate the costs of administration. To do so is offensive to the public policy manifested in the MVRA as set forth in KRS Chapter 304.39. As such, we believe the trial court correctly granted summary judgment in favor of Griggs on that issue.

As to the remaining issues of attorney's fees and interest, we believe the trial court did not abuse its discretion in granting attorney's fees to Griggs in this matter. As to interest, Griggs concedes that interest should not be paid except on each weekly payment as it came due and we reverse and remand with direction that the trial court conduct a new hearing on the

amount of weekly wage-loss benefits due as well as interest due on said weekly benefits.

For the foregoing reasons, we affirm in part, reverse in part, and remand with directions the order of the Montgomery Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Ronald L. Green
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ORAL ARGUMENT FOR APPELLANT:

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