

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-001134-MR

ROBERT E. HARTLEY; BRENDA MITCHUM,  
INDIVIDUALLY; AND BRENDA MITCHUM, AS  
ADMINISTRATRIX OF THE ESTATE OF DANIEL  
ROBERT HARTLEY

APPELLANTS

ON REMAND FROM SUPREME COURT OF KENTUCKY  
2004-SC-000874-DG

v. APPEAL FROM MEADE CIRCUIT COURT  
HONORABLE SAM H. MONARCH, JUDGE  
ACTION NO. 01-CI-00195

GEICO CASUALTY COMPANY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, HENRY, AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE: This matter is again before the Court on remand by the Supreme Court of Kentucky pursuant to an Opinion and Order entered July 20, 2006. After granting discretionary review, the Supreme Court vacated this Court's opinion rendered September 17, 2004, and remanded the case for reconsideration in light of Foster v. Kentucky Farm Bureau Mutual Insurance

Company.<sup>1</sup> In the present case, this Court originally reversed the summary judgment dismissing the bad faith claim, holding that in cases arising under the Kentucky Motor Vehicle Reparations Act,<sup>2</sup> a plaintiff alleging bad conduct on the part of the insurance carrier regarding the late payment of basic reparation benefits is permitted to bring a private cause of action for bad faith under the Unfair Claims Settlement Practices Act.<sup>3</sup> In so holding, this Court distinguished the case of Phoenix Healthcare of Ky., LLC v. Kentucky Farm Bureau Mutual Insurance Company.<sup>4</sup> We shall now reconsider our prior holding.

Robert Hartley and Brenda Mitchum, individually and as the administratrix of the Estate of Daniel Robert Hartley, appeal from the Meade Circuit Court's April 30, 2003, Opinion and Order dismissing their bad faith claim relating to GEICO Casualty Company's handling of their claim for basic reparation benefits under the MVRA. They also appeal from the portion of the circuit court's February 15, 2002, Opinion and Order awarding them \$1000 toward reasonable attorney fees. The two issues on appeal concern whether the circuit court properly granted a summary judgment to GEICO on the bad faith claim and

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<sup>1</sup> 189 S.W.3d 553 (Ky. 2006).

<sup>2</sup> KRS 304.39, et seq.

<sup>3</sup> KRS 304.12-230.

<sup>4</sup> 120 S.W.3d 726 (Ky.App. 2003).

whether the circuit court awarded sufficient attorney fees. Upon reconsideration, we now affirm.

Mitchum and Hartley are the biological parents of Daniel Robert Hartley, who on June 29, 2000, at the age of fifteen was tragically struck and killed by an automobile driven by Joy B. Barr. Barr was insured by GEICO, a Maryland insurance company licensed and authorized to do business in the Commonwealth. Mitchum, who worked as a claims adjuster for another insurance company, was appointed as the administratrix of the Estate, and began negotiations with GEICO to settle the bodily injury and basic reparation benefits claims. While at first reserving the \$10,000 in PIP benefits for funeral expenses and survivor benefits, Mitchum later included a claim for medical expenses.

On June 28, 2001, Hartley and Mitchum filed a complaint in the Meade Circuit Court alleging violations of the UCSPA in GEICO's handling of their claim for basic reparation benefits for survivor replacement services loss and medical expenses. They demanded damages for emotional pain and suffering, \$9000 in PIP benefits, 18% interest, attorney fees, and punitive damages. In its answer, GEICO denied that it was obligated to pay benefits for survivor's economic loss or replacement service loss, but admitted that it would generally pay medical expenses in similar cases. However, GEICO denied

ever having received a claim for the reimbursement of medical expenses, although it did receive the medical bills on April 9, 2001. The same day, GEICO filed an Offer to Confess Judgment pursuant to CR 68 in the amount of \$9000, representing medical bills incurred by the Estate.

Mitchum and Hartley moved for summary judgment only on the claim regarding payment of the medical expenses, asserting that in the April 9, 2001, letter, Mitchum made a claim for basic reparation benefits in the form of medical expenses and included supporting documentation. The circuit court granted the motion, and awarded Mitchum and Hartley \$9000 in medical expenses, plus 18% interest from May 9, 2001, and an allowance toward reasonable attorney fees. In the opinion, the circuit court stated, "[o]n April 9, 2001 . . . , the estate submitted copies to GEICO of medical bills totaling \$10,293.31[] and modified its BRB claim from one for survivor's replacement service loss to a claim for medical expenses." By later order, the circuit court granted Mitchum and Hartley a judgment in the amount of \$1000 as an allowance toward reasonable attorney fees rather than the \$7,323.75 they had requested. GEICO then paid the \$9000 in medical expenses, interest, and attorney fees awarded. The portion of the Opinion and Order awarding \$1000 toward reasonable attorney fees is one of the rulings Hartley and Mitchum have challenged on appeal.

Turning to the bad faith claim, GEICO then filed a motion for summary judgment, arguing that its handling of the claim did not rise to the level of actionable bad faith as its refusal to pay the remaining basic reparation benefits was based upon a misunderstanding, and was not malicious. GEICO also argued that the statute itself contains a statutory remedy in the form of 18% interest and reasonable attorney fees, so that Mitchum and Hartley should not be permitted to bring a civil cause of action under KRS 446.070. In an Opinion and Order entered April 30, 2003, the circuit court, on the merits, dismissed all claims for damages due to the nonpayment of survivor benefits, holding that Mitchum and Hartley failed to establish that GEICO's actions rose to an actionable level of bad faith. This appeal followed.

1) BAD FAITH CLAIM

On remand, the Supreme Court has instructed us to reconsider our previous decision in light of its recent opinion of Foster v. Kentucky Farm Bureau Mutual Insurance Company. In Foster, the Supreme Court addressed whether a conflict existed between Kentucky's USCPA and the statutes under the MVRA permitting 18% interest and attorney fees for the failure of an insurance company to pay a no-fault claim without reasonable foundation. In holding that the MVRA provides the exclusive remedy in such a situation, the Supreme Court explained:

The [MVRA] provides an exclusive remedy where an insurance company wrongfully delays or denies payment of no-fault benefits. There is no other Kentucky statute, regulation or case law which permits Foster to claim work loss for BRB. The MVRA is the exclusive remedy. Grzyb v. Evans, 700 S.W.2d 399 (Ky. 1985), provides that where a statute both declares the unlawful act and specifies the civil remedy available, the aggrieved party is limited to the remedy provided by the statute. General damages are not available when a specific remedy is provided such as in this case. KRS 304.39-210 states that the penalty for any delay in payment of basic reparation benefits is payment of interest at a rate of 12% per annum on the delayed benefits, or 18% per annum if the delay was without reasonable foundation. Interest, which is set out in certain situations in KRS 304.39-220, and the award of attorney fees are the remedies provided to an insured if an insurance company fails to pay basic reparation benefits in a timely manner and/or without reasonable foundation.

Grzyb, supra, involves a special body of law, the Kentucky Civil Rights Act, KRS 344 et seq. FB Ins. Co. v. Jones, 864 S.W.2d 926 (Ky.App. 1993), does not control because it relates to general insurance law questions. The Kentucky MVRA preempts general insurance law where an insurance claim arises as a result of physical injury caused by a motor vehicle accident and establishes remedies for violations of the statute. This can be compared to the civil rights provision of Grzyb. [The] MVRA is a comprehensive act which not only relates to certain tort remedies, but also establishes the terms under which insurers pay no-fault benefits, and provides for the penalties to which insurers are subjected if they fail to properly pay no-fault benefits.<sup>5</sup>

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<sup>5</sup> Foster, 189 S.W.3d at 557.

We also recognize that this Court's earlier opinion in Phoenix Healthcare is in line with the Foster case, in that it held that KRS 304.39-210 and KRS 304.39-220, both part of the MVRA, provide the exclusive remedy for the late payment of basic reparation benefits. Relying on the holding in Phoenix Healthcare, the U.S. District Court for the Western District of Kentucky has also held that a plaintiff's claim for basic reparation benefits under Kentucky's MVRA subsumed his claim for bad faith.<sup>6</sup>

In the present case, we now hold that Mitchum and Hartley's bad faith claim under Kentucky's UCSPA is barred as the MVRA provides the exclusive remedy for the late payment of basic reparation benefits in the form of interest and reasonable attorney fees. For this reason, we must uphold the circuit court's summary judgment dismissing the bad faith claim.

## 2) AWARD OF ATTORNEY FEES

Mitchum and Hartley contend that the circuit court's award of \$1000 toward reasonable attorney fees was insufficient in light of their motion requesting fees in the amount of \$7,323.75, and that its failure to provide a basis for its ruling constituted an abuse of discretion. GEICO asserts that the award was reasonable under the circumstances, and that such

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<sup>6</sup> Allen v. Safe Auto Ins. Co., 332 F.Supp.2d 1044 (W.D.Ky. 2004).

an award is purely within the discretion of the circuit court. We agree with GEICO that the circuit court did not abuse its discretion in only awarding a portion of the fee requested. We note that the fee was "for advising and representing a claimant on a claim or in an action for basic or added reparation benefits" if the delay in the payment of benefits was without a reasonable foundation.<sup>7</sup> In this case, the amount of remaining basic reparation benefits only equaled \$9000.

For the foregoing reasons, the judgment of the Meade Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

M. Austin Mehr  
Wesley B. Deskins  
Lexington, KY

ORAL ARGUMENT FOR APPELLANTS:

M. Austin Mehr  
Lexington, KY

BRIEF FOR APPELLEE:

Perry M. Bentley  
Lucy A. Pett  
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ORAL ARGUMENT FOR APPELLEE:

Perry M. Bentley  
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<sup>7</sup> KRS 304.39-220.