

STATE OF MICHIGAN
COURT OF APPEALS

NEIL BEGIN,

Plaintiff-Appellee,

v

MICHIGAN BELL TELEPHONE COMPANY,
and SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,

Defendant-Appellants.

FOR PUBLICATION
June 25, 2009

No. 279891
Kent Circuit Court
LC No. 05-012253-NI

NEIL BEGIN,

Plaintiff-Appellee,

v

MICHIGAN BELL TELEPHONE COMPANY,

Defendant-Appellant.

No. 284114
Kent Circuit Court
LC No. 07-12151-NI

Advance Sheets Version

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

HOEKSTRA, J. (*concurring*).

I agree with and join with the majority in its resolution of Docket No. 284114.

In Docket No. 279891 I concur in the result, but write separately to express my disagreement with the majority's conclusion that *Davis v Citizens Ins Co of America*, 195 Mich App 323; 489 NW2d 214 (1992), is controlling. The majority aptly noted that in *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521; 697 NW2d 895 (2005), "our Supreme Court without mentioning this Court's decision in *Davis*, clarified judicial construction of MCL 500.3107(1)(a), on which the *Davis* Court relied." *Ante* at 7. In my opinion, the clarification stated in *Griffith* is applicable to all cases where compensation is sought for allowable expenses, including vans, under MCL 500.3107(1)(a). Thus, to receive compensation for his modified van, plaintiff was required to establish that the charge was reasonable, that the expense was reasonably necessary, that the expense was incurred, and that the van was "for" his care, recovery, or rehabilitation. *Griffith, supra* at 532, 532 n 8.

Nonetheless, I join with the majority in rejecting defendants' claim that *Griffith* advocates a bright-line rule that precludes as an allowable expense any motor vehicle similar to one owned by the injured person before the injury. As stated by the majority, an analysis of a case's specific facts and circumstances is required. However, because of the entry of the parties' consent judgment, an inquiry into the present case's facts and circumstances is foreclosed. Consequently, I join in the result of affirming the trial court's order denying defendants' motion for summary disposition.

/s/ Joel P. Hoekstra