STATE OF MICHIGAN

COURT OF APPEALS

BRANDON SMEJKAL and TERRY SMEJKAL,

Plaintiffs-Appellants,

v

MARK BECK and STACY DECOTA,

Defendants,

and

HOME-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
April 18, 2024
9:05 a.m.

No. 363394
Livingston Circuit Court
LC No. 22-031387-NI

Before: M. J. KELLY, P.J., and JANSEN and MURRAY, JJ.

PER CURIAM.

In this dispute involving the no-fault act, MCL 500.3101 *et seq*., plaintiffs, Brandon and Terry Smejkal, appeal by leave granted[1] the trial court's order granting defendant Home-Owners Insurance Company's partial motion for summary disposition under MCR 2.116(C)(10).[2] We

[1] *Smejkal v Beck*, unpublished order of the Court of Appeals, entered April 20, 2023 (Docket No. 363394).

[2] Brandon is Terry's son. In their appellate brief, plaintiffs explain that, since the filing of the application for leave to appeal, Brandon has settled his claims against defendants; accordingly, his case was dismissed with prejudice. Additionally, the Baraga County Probate Court appointed Terry's brother, Patrick Smejkal, to be Terry's guardian and conservator. Brandon has not moved to withdraw as an appellant, nor has Terry moved to substitute Patrick as a party in this appeal. Therefore, our focus is primarily on Terry and whether he is entitled to relief. Additionally, only defendant Home-Owners Insurance Company is involved with this appeal. Therefore, we refer to Home-Owners Insurance Company as "defendant."

conclude that the trial court erred by granting defendant's motion for partial summary disposition because Terry's automobile insurance policy provided for unlimited allowance expenses, which included attendant care. We therefore reverse the trial court's order, and remand for further proceedings.

On August 11, 2020, after the 2019 amendments to the no-fault act became effective, Terry renewed his automobile insurance policy with defendant. For purposes of this appeal, there is no dispute that Brandon was covered by Terry's insurance policy. The policy was effective from September 16, 2020, to March 16, 2021. The policy contained language explaining the then-recent changes to the no-fault act and personal protection insurance (PIP) coverage, clarifying that "Allowable Expenses (Medical)" was the only PIP coverage where a limit could be selected or changed. The policy reflected that, for the category "Allowable Expenses (Medical)," Terry selected "Unlimited person Primary." The policy later provided that allowable expenses were "subject to limitations of Chapter 31 of the Michigan Insurance Code," i.e., the no-fault act.

In December 2020, plaintiffs were injured in an automobile accident when a vehicle owned by defendant Stacy Decota and driven by defendant Mark Beck collided with plaintiffs' vehicle, after which both plaintiffs received attendant care 24 hours per day. Among other claims, plaintiffs sued defendant to recover the cost for this care as part of Terry's PIP benefits. Given the one-year-back rule,[3] Terry requested payment only for the attendant care received between February 8, 2021 to March 17, 2022, which was the date plaintiffs moved for default against defendant. Terry estimated that he incurred $157,584 in attendant care expenses; this amount is not at issue.

Defendant moved for partial summary disposition as it related to the attendant care claim, arguing that the 2019 amendments to the no-fault act capped plaintiffs' attendant care at eight hours per day, or 56 hours each week. Plaintiffs countered that the insurance policy explicitly allowed them to recover unlimited attendant care benefits, thereby entitling them to more than the statutory default of 56 hours per week. The trial court agreed with defendant's interpretation, and granted defendant partial summary disposition. Plaintiffs now appeal.

"This Court reviews de novo a trial court's decision on a motion for summary disposition, as well as questions of statutory interpretation and the construction and application of court rules." *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). A motion is properly granted under MCR 2.116(C)(10) when "there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law." *Id*. at 415. This Court "must examine the documentary evidence presented and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. A question of fact exists when reasonable minds could differ as to the conclusions to be drawn from the evidence." *Id*. at 415-416. Finally, this Court reviews de novo the construction and interpretation of an insurance policy, and the principles of ordinary contract law apply. *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

[3] "The one-year-back rule is designed to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 203; 815 NW2d 412 (2012).

"All matters of statutory interpretation begin with an examination of the language of the statute." *McQueer v Perfect Fence Co*, 502 Mich 276, 286; 971 NW2d 584 (2018). If a statute is unambiguous, it "must be applied as written." *Id*. (quotation marks and citation omitted). This Court may not read something into the statute "that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Id*. (quotation marks and citation omitted). Furthermore, statutory language "cannot be viewed in isolation, but must be construed in accordance with the surrounding text and the statutory scheme." *Id*. (quotation marks and citation omitted). In other words, a statute must be read as a whole. *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). "Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). Finally, courts "give undefined statutory terms their plain and ordinary meanings." *Id*.

"[T]he terms of a contract must be enforced as written where there is no ambiguity." *Henderson*, 460 Mich at 354. "[A] court should not create ambiguity in an insurance policy where the terms of the contract are clear and precise." *Id*. To aid in determining a word's common, everyday meaning, a court may consult dictionaries. *Id*. at 357. A contract is to be construed in favor of the insured only when an ambiguity exists, but "this does not mean that the plain meaning of a word or phrase should be perverted, or that a word or phrase, the meaning of which is specific and well recognized, should be given some alien construction merely for the purpose of benefitting an insured." *Id*. at 354. If a relevant term is undefined, this does not make the policy ambiguous, and the fact that dictionaries define words differently will not create an ambiguity. *Id*. at 354-355. In this matter, the trial court determined that there was no ambiguity and that it would not consider extrinsic evidence, and neither party has ever argued that the policy was ambiguous.[4]

"More than 50 years ago, Michigan's no-fault act, 1972 PA 294, was enacted by the Legislature as an innovative social and legal response to the long payment delays, inequitable payment structure, and high legal costs inherent in the tort (or 'fault') liability system." *Andary v USAA Cas Ins Co*, 512 Mich 207, 216; 1 NW3d 186 (2023) (quotation marks and citation omitted). "Unsurprisingly, Michigan's no-fault automobile insurance system has been the subject of continual debate, praise, criticism, amendment, and litigation since its creation . . . ." *Id*. at 217. PIP benefits are part of the no-fault statutory scheme, which provide, "at minimum, for payment of [a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care[,] recovery, or rehabilitation, subject to exceptions . . . ." *Id*. (quotation marks and citations omitted; first alteration in original).

"Prior to 2019, there was no statutory cap on the number of reimbursable hours of prescribed attendant care that could be provided to a covered individual by family members (as opposed to a commercial provider), nor were there limits on reimbursement rates for medical providers beyond a requirement that the cost for the service be reasonable and necessary." *Id*. at 218. However, "[i]n 2019, the Michigan Legislature made sweeping changes to Michigan's no-

[4] Although Terry acknowledges this, he nonetheless references extrinsic evidence in his appellate brief. Given the trial court's ruling and Terry's acknowledgment that the policy is unambiguous, we need not examine the extrinsic evidence.

fault statutes when it enacted 2019 PA 21 and 2019 PA 22," and these changes affected MCL 500.3157, *id.*, which is the primary statutory provision at issue in the present appeal.

The default restrictions for attendant care benefits are contained within MCL 500.3157(10):

> For attendant care rendered in the injured person's home, an insurer is only required to pay benefits for attendant care *up to the hourly limitation in section 315 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.315*. This subsection only applies if the attendant care is provided directly, or indirectly through another person, by any of the following:
>
> (a) An individual who is related to the injured person.
>
> (b) An individual who is domiciled in the household of the injured person.
>
> (c) An individual with whom the injured person had a business or social relationship before the injury. [Emphasis added.]

MCL 418.315(1) of the Worker's Disability Compensation Act of 1969, MCL 418.101 *et seq.*, caps attendant care from a "spouse, brother, sister, child, parent, or any combination of these persons" at 56 hours per week. For purposes of this appeal, the parties have never disputed that those providing attendant care to Terry fall under the categories listed in Subsection (10). Therefore, unless some other statutory provision applies, Terry's attendant care was indeed capped at 56 hours per week.

MCL 500.3157(11) contains such an exception to the default cap of 56 hours per week, and it provides that "[a]n insurer may contract to pay benefits for attendant care for more than the hourly limitation under subsection (10)." This is in keeping with Michigan law allowing for insurance policies to provide broader coverage than the minimum mandated by the no-fault act. See *Bronson Health Care Group, Inc v State Auto Prop & Cas Ins Co*, 330 Mich App 338, 342; 948 NW2d 115 (2019). Additionally, Michigan law has long held that attendant care benefits are an allowable expense for purposes of the no-fault act. See, e.g., *Douglas v Allstate Ins Co*, 492 Mich 241, 259-264; 821 NW2d 472 (2012); *Booth v Auto-Owners Ins Co*, 224 Mich App 724, 729-730; 569 NW2d 903 (1997).

The 2019 amendments added new provisions as well, one of which is MCL 500.3107c. See 2019 PA 21 and 2019 PA 22. See also *State Farm Mut Auto Ins Co v Fortin Estate*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 363755); slip op at 10. Relevant to this appeal, MCL 500.3107c(1) provides:

> (1) Except as provided in sections 3107d and 3109a, and subject to subsection (5), for an insurance policy that provides the security required under section 3101(1) and is issued or renewed after July 1, 2020, the applicant or named insured shall, in a way required under section 3107e and on a form approved by the director, select 1 of the *following coverage levels for personal protection insurance benefits* under section 3107(1)(a):

(a) A limit of $50,000.00 per individual per loss occurrence for any personal protection insurance benefits under section 3107(1)(a). . . .

* * *

(b) A limit of $250,000.00 per individual per loss occurrence for any personal protection insurance benefits under section 3107(1)(a).

(c) A limit of $500,000.00 per individual per loss occurrence for any personal protection insurance benefits under section 3107(1)(a).

(d) *No limit for personal protection insurance benefits under section 3107(1)(a).* [Emphasis added.]

As this Court recently explained, § 3107c(1) allows insurers to "now offer less-than unlimited PIP coverage, provided certain statutory requirements are satisfied." *Fortin Estate*, ___ Mich App at ___; slip op at 10 (quotation marks and citation omitted). The provision "provides four possible coverage amounts, ranging from $50,000 per individual, MCL 500.3107c(1)(a), to unlimited coverage, MCL 500.3107c(1)(d)." *Id.*

In the present case, the policy notified Terry of the changes to Michigan's no-fault act. More specifically, it informed him that PIP benefits would be split into four different coverages. One of these was "Allowable Expenses (Medical)," and this was the only coverage that Terry could modify. The policy explicitly listed attendant care as being included under the umbrella of allowable expenses. Moreover, as previously discussed, Michigan law has long held that attendant care is included under allowable expenses. The trial court determined that attendant care is a statutorily recognized allowable expense, and the parties have never disputed this point. The policy reflected that, for the category "Allowable Expenses (Medical)," Terry selected "Unlimited person Primary."

The parties dispute the meaning of Terry's selection, i.e., the meaning of "Unlimited person Primary." Terry contends that this unlimited selection meant that he selected unlimited attendant care hours and, accordingly, contracted around the default cap within MCL 500.3157(10). In other words, Terry argues that he met the requirements of MCL 500.3157(11). In contrast, the trial court essentially determined that Terry's unlimited selection merely meant that he was selecting an unlimited *dollar* amount for purposes of MCL 500.3107c(1). The policy did not define the word "unlimited." Using a dictionary, one could define "unlimited" as "lacking any controls : UNRESTRICTED"; "BOUNDLESS, INFINITE"; or "not bounded by exceptions : UNDEFINED." Merriam-Webster Dictionary, *unlimited* <https://www.merriam-webster.com/dictionary/unlimited> (accessed March 8, 2024). Therefore, by selecting unlimited allowable expense coverage, Terry was selecting allowable expenses that were boundless, infinite, and not subject to any exceptions. Given that attendant care was included under allowable expenses, one could argue that this boundless, infinite coverage necessarily included the number of attendant care hours because there were no exceptions listed in the policy.

On the other hand, we see some merit to the trial court's interpretation of both the policy and the no-fault act. MCL 500.3107c and MCL 500.3157 are separate provisions addressing separate aspects of PIP coverage. As previously discussed, MCL 500.3107c lists four dollar

amounts of overall PIP coverage that an insured can select, one of which is unlimited coverage. See MCL 500.3107c(1)(d). The policy informed Terry about these four amounts, and Terry chose to select unlimited coverage. In contrast to the *dollar* amounts of PIP coverage listed in MCL 500.3107c, MCL 500.3157(10) instead addresses the number of attendant care *hours* that an insured by default is entitled to be reimbursed for under the PIP coverage when the attendant care is provided by a certain type of person(s). In other words, MCL 500.3157(10) has nothing to do with the overall dollar amount of PIP coverage. Therefore, by selecting unlimited coverage, one could argue, as the trial court reasoned, that Terry merely selected an unlimited *dollar* amount for purposes of MCL 500.3107c and that he needed to more explicitly select additional *hours*.

Reading both statutory provisions in this way, an insured may select an unlimited *dollar* amount while still nonetheless being restricted to 56 hours of attendant care per week if that care is provided by the statutorily listed person(s). The unlimited dollar amount would essentially provide for 56 hours per week of attendant care in perpetuity. Moreover, if the insured decided to switch to attendant care not provided by the statutorily listed person(s), the 56-hour cap would not apply. The trial court reasoned that, by selecting an unlimited *dollar* amount under MCL 500.3107c(1)(d), an insured was not necessarily *automatically* contracting around MCL 500.3157(10) via Subsection (11). The trial court believed that Terry's interpretation rendered MCL 500.3157(10) and (11) meaningless because, whenever an insured selected an unlimited dollar amount under MCL 500.3107c(1)(d), that insured would *always* necessarily trigger MCL 500.3157(11). The trial court determined that more explicit language was needed to trigger MCL 500.3157(11).

Although we recognize the trial court's concerns, they are inapplicable to the present case because of the policy's particular language. The policy explicitly listed "Allowable Expenses (Medical)," which explicitly included attendant care, and Terry selected unlimited coverage. This was not a situation in which Terry selected a mere unlimited *dollar* amount for PIP coverage and later sought to extrapolate this to attendant care. Rather, Terry explicitly selected boundless and infinite coverage for allowable expenses, which included attendant care. The policy did not list any exceptions. Accordingly, we do not believe that MCL 500.3157(10) and (11) were rendered meaningless by Terry's interpretation. The policy in the present case was clear and unambiguous in its language.

One could easily envision a different policy in which the parties distinguished between an unlimited dollar amount for PIP benefits versus unlimited attendant care hours. In other words, nothing about Terry's interpretation prevents future parties from allowing for unlimited PIP benefits in terms of the dollar amount while still restricting attendant care hours to 56 hours per week. To avoid the result in the present case, insurers must simply not allow insureds to select unlimited allowable expenses. Insurers could also simply include a provision explicitly providing that unlimited coverage does not include attendant care hours. In its interpretation of the no-fault act, the trial court appears to have focused too much on the statute rather than the policy language.

Furthermore, nothing in MCL 500.3157(11) *requires* that an insured must use special language beyond the "unlimited" language used in the policy. The provision merely allows parties to "contract to pay benefits for attendant care for more than the hourly limitation under subsection (10)." MCL 500.3157(11). In other words, there is no language suggesting that "unlimited" allowable expenses is insufficient language to trigger the exception. By selecting "unlimited"

allowable expenses, Terry selected unlimited dollar amounts *and* attendant care hours, thereby not subjecting him to only eight hours per day. As previously discussed, parties may contract for broader coverage than what the no-fault act mandates. See *Bronson*, 330 Mich App at 342. The trial court's ruling disrupts this principle.

Notwithstanding defendant's failure to submit a brief on appeal, we will address another of its arguments raised in the trial court. The policy provided that allowable expenses were "subject to limitations of Chapter 31 of the Michigan Insurance Code." One could argue, as defendant did in the trial court, that this limited the attendant care hours to 56 hours. However, this is a stretched interpretation of the provision. This appears to be a boilerplate, general incorporation of the no-fault act rather than an explicit invocation of the default hourly cap within MCL 500.3157(10). Our interpretation is supported by reading other policy provisions in which identical boilerplate language can be found incorporating the no-fault act from a general standpoint.

In other words, it appears that the policy included this language merely to alert the parties that the policy was subject to the various statutory limitations set forth within the no-fault act. Many of these limitations, such as the hourly cap within MCL 500.3157(11), are able to be contracted around. For those reasons already discussed, this appears to be what the parties did in the present case. Furthermore, one could also argue that, by generally incorporating the no-fault act, this necessarily incorporated both MCL 500.3157(10) *and* the exception in Subsection (11).

Finally, defendant's argument ignored the opening language of the policy's PIP benefits section. This section began by providing, "*Subject to the provisions of this endorsement* and of *the policy* to which this endorsement is attached, we will pay personal injury protection benefits . . . subject to the provisions of Chapter 31 of the Michigan Insurance Code." In other words, the policy provided that it would pay PIP benefits under the no-fault act unless the policy's language provided otherwise. This yet again reflects the ability for parties to contract for broader coverage than that required by statute. See *Bronson*, 330 Mich App at 342. Here, the parties did so, and the trial court erred by ruling otherwise. Defendant was not entitled to partial summary disposition on the issue of Terry's attendant care claims because Terry was not limited to 56 hours per week.

The trial court's order granting defendant partial summary disposition is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Christopher M. Murray