STATE OF MICHIGAN

COURT OF APPEALS

DONALD BRYAN,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
December 13, 1996

No. 176215
Wayne County
LC No. 93-321299-CK

Before: Jansen, P. J., and Reilly and E. Sosnick,* JJ

PER CURIAM.

Plaintiff appeals as of right from the May 20, 1994, trial court order granting summary disposition in favor of defendant in this insurance action. We affirm.

Plaintiff was severely injured in an automobile accident. At the time, plaintiff had coordinated medical benefits coverage with the Health Alliance Plan (HAP), a health maintenance organization operating out of Henry Ford Hospital, as his primary coverage. Plaintiff also had a no-fault policy issued by defendant as his secondary coverage. After HAP physicians apparently told plaintiff that they provided him with all the services they felt were medically appropriate, plaintiff sought various services from non-HMO affiliated physicians and filed suit against defendant for breach of contract when defendant refused to pay the bills. Defendant subsequently moved for summary disposition arguing that as plaintiff's secondary insurer, it was not responsible for plaintiff's medical bills which were covered by HAP, plaintiff's primary insurer, pursuant to *Tousignant v Allstate Ins Co*, 444 Mich 301; 506 NW2d 844 (1993). The court granted defendant's motion and this appeal followed.

In *Tousignant*, our Supreme Court held that a no-fault insurer is not liable for medical expenses that the insured's health care insurer is required under its contract to pay for or provide. 444 Mich 303. Plaintiff does not dispute that his policy provided for coordinated benefits or that the services plaintiff sought by non-HAP providers were covered by HAP. Rather, plaintiff argues that *Tousignant* does

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* Circuit judge, sitting on the Court of Appeals by assignment.

not preclude his claim where the necessary medical care was unavailable or of inadequate quality at HAP facilities. Plaintiff relies on the following language from that case:

> Tousignant does not contend that HAP would not or could not provide the medical care needed. Nor is this a case in which it is claimed that the quality of the available care was such that it can be said that the benefit was not available.
>
> Where there is no claim that the health insurer would not or could not provide the necessary medical treatment, there is no basis for a finding that the benefits were not available—not "payable" or "required to be provided"—from the health insurer. [444 Mich 313.]

This language suggests that an exception to the general rule of *Tousignant* may exist when the primary health care provider could not or would not provide the medical care needed or where the quality of the available care from the primary health care provider was such that it can be said that the benefit was not available. See also *Owens v ACIA*, 444 Mich 314; 506 NW2d 850 (1993). Nevertheless, this Court need not resolve the issue of whether the above-quoted language from *Tousignant* was mere dicta or whether it actually limited the scope of the holding because, in this case, plaintiff failed to provide medical evidence that necessary medical care was unavailable or of inadequate quality at HAP facilities. The only evidence to support plaintiff's claim was his own affidavit. Summary disposition affidavits must show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit. MCR 2.119(B)(1). Plaintiff's opinion regarding the care he received from HAP facilities would not be admissible since he is not competent to testify to the facts stated in the affidavit. A lay witness may not testify to a medical question beyond the scope of lay knowledge. *Howard v Feld,* 100 Mich App 271, 273; 298 NW2d 722 (1980). Whether necessary medical care was unavailable or of inadequate quality at HAP facilities requires medical knowledge beyond the scope of a lay person. Plaintiff is not himself a physician and is thus not qualified to give an opinion regarding this issue. Compare *Owens, supra*. If plaintiff could establish a triable issue with merely his own opinion that his treatment was unsatisfactory in this situation, the statutorily authorized coordination of benefits concept would be rendered meaningless.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick