

STATE OF MICHIGAN
COURT OF APPEALS

EVELYN YOUNG,

Plaintiff-Appellant,

v

MICHIGAN MILLERS MUTUAL INSURANCE
COMPANY,

Defendant,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 21, 2000

No. 212751

Macomb Circuit Court

LC No. 97-005464-NF

Before: Gribbs, P.J., and Doctoroff and T. L. Ludington*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the opinion and order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sought first party no-fault insurance benefits for injuries she suffered in an accident. Plaintiff did not own an automobile, and was riding in a van owned by a person she identified as her employer, Edward Lax. Defendant State Farm insured plaintiff's estranged husband. Defendant denied coverage based on plaintiff's statement.

Plaintiff provided a contradictory affidavit indicating that she was an independent contractor, and that she had ceased working for Lax prior to the accident. State Farm requested additional documentation to support these contentions, but ultimately paid the requested benefits.

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

Plaintiff sought attorney fees under MCR 500.3148; MSA 24.13148, which provides in part:

(1) An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

When considering whether attorney fees are warranted, the inquiry is not whether coverage is ultimately determined to exist, but whether the insurer's initial refusal to pay was reasonable. *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 635; 552 NW2d 671 (1996). A delay is not unreasonable if it is based on a legitimate question of statutory construction, constitutional law, or factual uncertainty. *Id.*; *Liddell v DAIIE*, 102 Mich App 636; 302 NW2d 260 (1981). A trial court's finding on reasonable refusal or delay will not be reversed on appeal unless it is clearly erroneous. *McCarthy v Auto Club Ins Assn*, 208 Mich App 97, 103; 527 NW2d 524 (1994).

Here, a bona fide question of factual uncertainty existed. Plaintiff's initial statement supported a finding that defendant was not responsible for providing coverage. Her affidavit did not conclusively establish plaintiff's employment situation. Defendant could reasonably delay paying benefits until the factual uncertainty was cleared.

Affirmed.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington