S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

JON HOUGHTON, Conservator of the Estate of JOANN JOHNSON,	UNPUBLISHED August 1, 2000
Plaintiff-Appellant/Cross-Appellee,	
v	No. 212961 Oakland Circuit Court LC No. 96-531098-NF
AUTOMOBILE CLUB INSURANCE ASSOCATION,	
Defendant-Appellee/Cross-Appellant.	

Before: Hood, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting partial summary disposition in favor of defendant and denying plaintiff's request for attorney fees. Defendant cross-appeals from the trial court's order granting partial summary disposition in favor of plaintiff. We affirm in part, reverse in part, and remand.

Plaintiff is the conservator of the estate of his sister, Joann Johnson, who is incapacitated as a result of severe brain injuries sustained in an automobile accident. Defendant was Johnson's no-fault insurer at the time of the accident. Plaintiff filed suit seeking reimbursement for expenses for guardian/conservator services necessitated by the accident pursuant to the no-fault statute, MCL 500.3107(1)(a); MSA 24.13107(1)(a). The parties stipulated that the guardian/conservator expenses at issue were divided into two categories. Category I expenses were expenses routinely incurred in guardian/conservator proceedings. Category II expenses were incurred as a result of the difficulties presented by the involvement of Johnson's husband, Ronald Keller, in this case.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10). Plaintiff asserted that category I and II expenses were reasonable expenses payable by defendant pursuant to statute. Therefore, defendant withheld payment without any basis, and an award of attorney fees was warranted. Defendant argued that it withheld payment of category I expenses in an attempt to challenge the decision upon which the expenses were allowed. Defendant also argued that it was not responsible for category II expenses when they were incurred due to family discord. The trial court granted

plaintiff's motion for partial summary disposition of category I expenses based on the appellate decision of *Heinz v Auto Club Ins Ass'n*, 214 Mich App 195; 543 NW2d 4 (1995). The trial court also held that payment of category II expenses was beyond the scope of the statute and sua sponte granted summary disposition in favor of defendant regarding those expenses. Lastly, the trial court denied plaintiff's request for attorney fees by concluding that any delay in payment was the result of a legitimate question of statutory construction. Each party appealed the adverse decision.

Plaintiff first argues that the trial court erred in failing to award attorney fees for defendant's unreasonable refusal to pay expenses. We agree. A trial court's finding regarding the reasonableness of a refusal to pay or delay in paying benefits will not be reversed on appeal unless the finding is clearly erroneous. *Attard v Citizens Ins Co*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999). A finding is clearly erroneous if there is no evidence to support it or there is evidence to support it, but this Court is left with a definite and firm conviction that a mistake has been made. *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999). A delay in failing to make payments is not unreasonable if it is based on a legitimate question of statutory construction, constitutional law, or factual uncertainty. *Attard, supra* at 317. The trial court concluded that defendant presented a legitimate basis for challenging the statutory construction of the statute. We disagree. *Heinz, supra*, in which leave was denied by the Supreme Court in 1996, was controlling authority as to the Category I expenses, and those expenses were therefore not a legitimate question of statutory construction. Attorney fees for unreasonable failure to pay expenses should have been awarded.

Plaintiff next argues that the trial court erred in failing to award category II expenses. We disagree. Our review of a trial court's ruling on a summary disposition decision is de novo. *Zine, supra*, at 269. MCL 500.3107; MSA 24.13107 provides, in relevant part:

> (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
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> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. Allowable expenses within personal protection insurance coverage shall not include charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except if the injured person requires special or intensive care, or for funeral and burial expenses in the amount set forth in the policy which shall not be less than $1,750.00 or more than $5,000.00.

In *Heinz, supra*, the plaintiff was appointed as guardian and conservator for William Bannister who was incapacitated as a result of an automobile accident. Two years after the accident, Bannister died. The plaintiff then became the personal representative of Bannister's estate. The plaintiff sought to recover fees and expenses associated with the guardianship during Bannister's period of incapacity. The defendant argued that § 3107 was limited to recovery of medical care expenses. We held that "if a person is so seriously injured in an automobile accident that it is necessary to appoint a guardian and

conservator for that person, the services performed by the guardian and conservator are reasonably necessary to provide for the person's care." *Id*. at 198.

Plaintiff argues that, consistent with the statutory language of § 3107 and the holding of *Heinz*, category II expenses, the extraordinary expenses incurred due to the family dispute, are also payable by defendant. We disagree. Statutory construction presents a question of law that we review de novo. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 120; 602 NW2d 390 (1999). If statutory language is clear and unambiguous, additional judicial construction is neither necessary nor permitted, and the language must be applied as written. *Ahearn v Bloomfield Twp*, 235 Mich App 486, 498; 597 NW2d 858 (1999). However, if reasonable minds could differ regarding the meaning of a statute, judicial construction is appropriate. *Adrian School District v Michigan Public School Employees' Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998). The primary goal of statutory interpretation is to give effect to the intent of the legislative body. *Ballman v Borges*, 226 Mich App 166, 167; 572 NW2d 47 (1997). We may depart from a strict literal interpretation of a statute that is inconsistent with the purposes and policies underlying the provision and would lead to absurd and unjust results. *Albright v Portage*, 188 Mich App 342, 350 n 7; 470 NW2d 657 (1991).

In *Gooden v Transamerica Ins Corp*, 166 Mich App 793, 800-801; 420 NW2d 877 (1988), we set forth the rationale underlying the no-fault insurance act as discussed in the context of parked vehicles[1]:

> The basic goal of the no-fault insurance system is to provide individuals injured in motor vehicle accidents assured, adequate and prompt reparation for certain economic losses at the lowest cost to the individual and the system. The no-fault act does not purport to compensate accident victims for all economic losses. In *Miller, supra,* p 641 [*Miller v Auto-Owners Ins Co*, 411 Mich 633; 309 NW2d 544 (1981)], the Supreme Court stated that the policy underlying the parked vehicle exclusion was to eliminate from no-fault coverage those injuries where the involvement of the motor vehicle did not relate to its character as such. By limiting the coverage of no-fault benefits, "it appears that the Legislature was attempting to maintain cost controls over the system by limiting its scope." To expand coverage to include activity which is removed from the general use of motor vehicles would increase the costs of insurance and the incidence of litigation, thereby thwarting the legislative intent in enacting the no-fault system. In other words, to allow no-fault recovery, without regard to whether the injury resulted from a motor vehicle being used as such, would open up the system beyond its intended scope. [Citations omitted.]

As we noted, effect must be given to the intent of the legislative body when interpreting the statute. *Ballman, supra*. We are confident that the Legislature did not envision that family disputes regarding

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[1] We note that the issues and facts involved in *Gooden* are not relevant to the dispute before us. We cite to the decision only because the language is instructive regarding the basis for enacting the no-fault system.

appointment of guardians would be included as expenses payable by the no-fault system. It is unlikely that the Legislature imagined that at a time of crisis, family members would not put aside their personal differences and unite for the benefit of an injured or incapacitated family member. Furthermore, family members would have no incentive to compromise for the benefit of the injured person where expenses incurred in personal disputes are not taken from the injured's estate, but rather, are subsidized by the insurance system. The interpretation urged by plaintiff would lead to absurd and unjust results, contrary to the intent underlying the no-fault system. *Albright, supra*. Accordingly, plaintiff's position is without merit.

Lastly, defendant argues that category I expenses incurred from guardian and conservator expenses should not have been awarded and the *Heinz* decision was erroneously decided. We disagree. The statute in dispute provides that reasonably necessary services are payable. When a person is incapacitated, the guardian provides a service for the person who is unable to make determinations. *Heinz, supra*. We see no need to revisit this issue.

Affirmed in part, reversed in part, and remanded for assessment of attorney fees as indicated. We do not retain jurisdiction.

/s/ Harold Hood
/s/ David H. Sawyer
/s/ Mark J. Cavanagh