

STATE OF MICHIGAN
COURT OF APPEALS

JEANNE L. McKINLEY and RICHARD M.
McKINLEY,

UNPUBLISHED
November 30, 2001

Plaintiffs-Appellants,

v

No. 223955
Clinton Circuit Court
LC No. 98-008823-CZ

MR. K. ENTERPRISES, INC., d/b/a ROYAL
SCOT GOLF & BOWL,

Defendant,

and

NORTH POINTE INSURANCE COMPANY,

Defendant-Appellee.

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant North Pointe Insurance Company (defendant). We affirm.

Plaintiff Jeanne L. McKinley (plaintiff) was injured when she slipped and fell while bowling at the Royal Scot bowling alley. As a result, she incurred medical, dental, and physical therapy expenses. Defendant insured Royal Scot under a commercial general liability policy that included coverage for medical payments. This so-called “medical pay provision” states that the insurer “will pay medical expenses as described below for ‘bodily injury’ caused by an accident,” and the insurer “will make these payments [for the enumerated medical expenses] regardless of fault.” The insured and its employees are excluded from this coverage.

On appeal, plaintiff contends that the trial court erred in concluding that plaintiff was not a third-party beneficiary of the medical pay provision of defendant’s insurance policy. We disagree. This Court’s review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

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

In Michigan, third-party beneficiary status is defined by MCL 600.1405.¹ An objective standard is used to determine the plaintiff's status. *Krass v Tri-County Security, Inc*, 233 Mich App 661, 665-666; 593 NW2d 578 (1999). The law presumes that a contract has been executed for the benefit of the parties thereto. *Oja v Kin*, 229 Mich App 184, 193; 581 NW2d 739 (1998). The mere fact that a third person would incidentally benefit does not give the third person a right to sue for its breach. *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 190; 504 NW2d 635 (1993).

In *Allstate Ins Co v Keillor*, 190 Mich App 499, 502; 476 NW2d 453 (1991), this Court held that a person injured by another is not an intended third-party beneficiary of a contract between the person who caused the injury and that person's liability insurer where the insurer has contractually promised to indemnify the insured. Although our Supreme Court reversed *Keillor* in part in *Allstate Ins Co v Hayes*, 442 Mich 56; 499 NW2d 743 (1993), the *Hayes* decision held that "the Court of Appeals correctly concluded that Keillor was not a third-party beneficiary." *Id.* at 63. However, the Court noted:

The policy issued by Allstate is not one of indemnity, that is, the policy does not require that the insured first pay any judgment before the insurer is liable to its insured. The policy is, instead, one of liability. That is, the insured is not required to first pay the judgment. After all, "the purpose of the liability policy is to shield the insured from being required to make any payment on the claim for which he is liable." 11 Couch, Insurance, 2d (rev ed), § 44:4, p 188. [442 Mich at 62 n 6.]

See also 17 Couch on Insurance 3d, § 242:24, p 242-24 n 38.

In this case, plaintiff contends that the intended beneficiaries of the medical pay provision are plaintiff and other similarly situated persons, that is, invitees injured at the insured's premises "regardless of fault." However, as the above-quoted footnote in *Hayes* makes clear, liability contracts such as this one are intended to shield the insured from having to pay on a claim. The insured is the intended beneficiary and any benefit to plaintiff is incidental. See e.g. *Zegar v Sears Roebuck and Co*, 211 Ill App 3d 1025; 570 NE2d 1176 (1991) ("no fault" medical expenses payment provision in the insured general liability insurance policy did not contemplate an injured party's direct action against insurer). Accordingly, the trial court did not err in

¹ MCL 600.1405 provides, in pertinent part:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.

granting summary disposition for defendant.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker