STATE OF MICHIGAN

COURT OF APPEALS

PREFERRED MEDICINE, INC., JOANNA ROHL, FATMEH CHEHAB, MADISON MEDICAL CENTER, P.C., d/b/a/ SPINE SPORTS & OCCUPATIONAL MEDICINE, P.C., and RAM GUNABALAN,

Plaintiffs-CounterDefendants-Appellees,

v

ALLSTATE INSURANCE CO. and ENCOMPASS INSURANCE CO.,

Defendant-CounterPlaintiffs-Appellants.

UNPUBLISHED
December 5, 2006

No. 263451
Wayne Circuit Court
LC No. 03-336693-CZ

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant-Counter-Plaintiff Allstate Insurance Company ("Allstate"), and its subsidiary Encompass Insurance Company ("Encompass"), (collectively, "defendants") appeal as of right the trial court's orders granting summary disposition to plaintiffs-counter-defendants[1] Preferred Medicine, P.C. ("Preferred"), Dr. Ram Gunabalan, Fatmeh Chehab, Joanna Rohl and Madison Medical Center, P.C. ("Madison"), doing business as Spine Sports & Occupational Medicine, PC ("Spine Sports"). We affirm.

Defendants argue that the trial court erred by concluding that Preferred, Rohl, Chehab and Gunabalan did not breach the settlement agreement entered into by the parties to resolve the prior lawsuit between them. We disagree.

[1] This Court's docket sheet identifies Preferred, Spine Sports, Gunabalan, Rohl and Chehab as plaintiffs-counter-defendants. However, only Preferred instituted the instant action; the remaining "plaintiffs" were brought into this action when they were named as third-party defendants in a counter-complaint filed by Allstate and Encompass.

This issue was raised before and decided by the trial court. Therefore, it is properly preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30; 651 NW2d 188 (2002). Whether contract language is ambiguous and the proper interpretation of a contract are questions of law also reviewed de novo. *Wilkie v Auto-Owners, Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Klapp v United Insur Group Agency*, 468 Mich 459, 463; 663 NW2d 447, reh den 469 Mich 1222 (2003); *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

The trial court did not err in concluding that plaintiffs did not breach the settlement agreement as placed on the record before the trial court on July 13, 2000. Contrary to defendants' assertion, that agreement did not require that Gunabalan divest himself of his ownership interest in Preferred, or that he not have an ownership interest in Spine Sports. It merely required that Preferred's corporate structure be changed and that physician services be billed to Allstate by Spine Sports, and it prevented Gunabalan from "having further business" with Preferred, from treating Allstate insureds or from testifying against Allstate. There is no genuine issue of material fact that Gunabalan did not treat Allstate insureds or testify against Allstate. And, Gunabalan's passive ownership in Preferred for a time after the settlement was placed on the record does not constitute "further business" with Preferred.

A settlement agreement is a contract, governed by principles applicable to the interpretation of contracts. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999); *Reed v Citizens Ins Co*, 198 Mich App 443, 447; 499 NW2d 22 (1993), lv den 444 Mich 964 (1994), overruled on other grds, *Griffith ex rel Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 697 NW2d 895 (2005). When "ascertaining the meaning of a contract, [courts] give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). Thus, in determining whether a contract is ambiguous, the language of the contract is to be given its plain and ordinary meaning. *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997). See also, *Klapp*, *supra* at 469. Merely because the parties ascribe different meanings does not render the contract ambiguous. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 355 n 3; 596 NW2d 190 (1999). Rather ambiguity must arise from the language of the contract itself. *Meagher*, *supra* at 721-722. "In interpreting contracts capable of two different constructions, [this Court] prefers a reasonable and fair construction over a less just and less reasonable construction." *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 188; 565 NW2d 887 (1997). "Once a contract to settle legal claims has been entered into, a unilateral change of mind is not a ground for excusing performance." *Reed*, *supra* at 447.

As noted above, the parties' settlement agreement as stated on the record, provided in relevant part that:

> . . . [I]n consideration for the payment of $32,000, *Preferred [] has agreed to change its corporate structure effective August 1st*.

> After August 1st, my understanding is that Preferred [] will submit its bills under its new name to Allstate [] for payment. Also Doctor [Ram] Gunabalan *will have no further, from this date further, no further business with Preferred* [], *he will not treat any Allstate insured, nor will he testify against Allstate* [] unless specifically subpoenaed to do so. [Emphasis added.]

Defendants assert that the settlement agreement required that Gunabalan engage in no business with Preferred, including maintaining his ownership interest, following the settlement. However, mere passive ownership does not constitute "doing business with." *Lakes States Engineering Corp v Lawrence Seaway Corp*, 15 Mich App 637, 650; 167 NW2d 320 (1969). Thus, by its plain language, the settlement agreement did not prevent Gunabalan from having an ownership interest in Preferred. It is undisputed that, while Gunabalan held an ownership interest in Preferred until September 2002, and continues to hold an ownership interest in Spine Sports, he has not personally treated any patients or referred any patients to or from Preferred or Spine Sports, he has not participated in the management of or decision-making for either entity, and has not been on the premises since the settlement. Thus, the trial court did not err in concluding that there was no question of material fact that Gunabalan did not breach the settlement agreement.

A closer question is presented regarding Preferred's obligation to change its corporate structure by August 1, 2000. While the agreement may be ambiguous as to the exact change in structure contemplated,[2] it does not appear from the record that Preferred's corporate structure changed in any way until September 2002, when Gunabalan sold his interest in Preferred to Rohl and Chehab. Defendants assert that this delay, which plaintiffs attribute to protracted negotiations for the sale, constitutes a breach of the settlement agreement. However, regardless whether the delay in changing the corporate structure constitutes a breach, defendants have not shown that they were harmed in any way by this delay. Further, even were this Court to determine that plaintiffs breached the settlement agreement and therefore, that defendants are entitled to rescind it, defendants remain obligated to reimburse plaintiffs for medical services lawfully rendered to defendants' insureds under the no-fault act, as construed by this Court's recent decision in *Miller v Allstate Insur Co*, ___ Mich App ___; ___ NW2d ___ ; 2006 WL 2686287 (September 19, 2006).

In *Miller*, discussed more fully below, this Court explained that the no-fault act does not bar recovery of benefits for treatment, where the treatment itself was lawfully rendered by licensed providers, even in the face of underlying corporate formation issues that have nothing to do with the rendering of treatment. Thus, "[a] clinic or institution is lawfully rendering treatment when licensed employees are caring for and providing services and treatment to patients despite the possible existence of corporate defects irrelevant to treatment." *Id.*, slip op, pp 2-3. Under

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[2] Defendants rely on pre-agreement letters between counsel to argue that the agreement was that Preferred would dissolve, or that Gunabalan and "the lay employees" Rohl and Chehab would no longer have any stake in the company. However, the agreement as placed on the record did not contain any such requirement, providing only that "Preferred has agreed to change its corporate structure effective August 1, 2000."

Miller, then, even if defendants are entitled to rescind the settlement agreement because of Preferred's delay in changing its corporate structure, defendants remained otherwise obligated by the no-fault act to reimburse for services rendered to those insureds by Preferred and Spine Sports, despite any defect in corporate form, so long as the services for which reimbursement was sought were rendered by properly licensed caregivers. *Id.* Therefore, regardless of the viability of the settlement agreement, defendants would not be entitled to refund of reimbursements paid for such services, because of Preferred's improper corporate form.

In their issues II-V, defendants contend that the trial court erred in precluding defendant from challenging Preferred's corporate formation and structure as relevant to defendant's payment of benefits under MCL 500.3157. Defendants argue that Preferred is not lawfully incorporated and that the interrelated operations of Preferred and Spine Sports violate applicable law. Therefore, defendants argue that neither Preferred nor Spine Sports is entitled to recover for treatment rendered to defendants' insureds, because that treatment was not lawfully rendered as required by MCL 500.3157. We disagree.

These issues were raised before and decided by the trial court. Therefore, they are properly preserved for appeal. *Fast Air, supra* at 549. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel, supra* at 561; *Spiek, supra* at 337; *Rice, supra* at 30. We also review questions of statutory interpretation de novo. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995).

Subsequent to the trial court's rulings from which defendants appeal, this Court determined that the no-fault act, and particularly MCL 500.3157, does not bar recovery of benefits for treatment rendered by licensed providers, regardless whether those providers are employed by corporations that have underlying formation issues that are irrelevant to the rendering of that treatment. *Miller, supra,* slip op, pp 2-3. Defendants concede that, "[p]ursuant to MCR 7.215(J)(1), *Miller's* rule of law must be applied to the 'corporation' and § 3157 arguments presented in Issues III-V. [And that] Issue II – which explains why the merits of Issues III-V should be decided – could be viewed as moot." Therefore, pursuant to *Miller*, these issues plainly lack merit.

In *Miller, supra,* this Court explained:

MCL 500.3157 provides:

> A physician, hospital, clinic or other person or institution *lawfully rendering treatment* to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury, may charge a reasonable amount for the products, services and accommodations rendered. The charge shall not exceed the amount the person or institution customarily charges for like products, services and accommodations in cases not involving insurance. [Emphasis added.]

Under the above provision, "only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-

fault benefit." *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 64; 535 NW2d 529 (1995); see also *Cherry v State Farm Mut Automobile Ins Co*, 195 Mich App 316, 320; 489 NW2d 788 (1992). "If the treatment was not lawfully rendered, it is not a no-fault benefit and payment for it is not reimbursable." *Id.*

Here, Allstate contends that PT Works did not lawfully render its physical therapy services because it was incorporated under the Business Corporation Act (BCA), MCL 450.1101 *et seq.*, instead of the Professional Service Corporation Act (PSCA), MCL 450.221 *et seq.* Allstate argues that PT Works was required to be formed under the PSCA because providing physical therapy services constituted engaging in a professional service. Moreover, according to Allstate, the PSCA mandates that the shareholders of PT Works be licensed as physical therapists, and they are not so licensed. We note, however, that there does not appear to be any dispute that the treatment received by Miller was directly performed by licensed physical therapists.

The trial court found that PT Works was properly incorporated under the BCA and that it was not required to be formed under the PSCA. We need not determine, however, whether it was necessary for PT Works to incorporate under the PSCA and whether the shareholders who formed PT Works complied with the PSCA. Assuming, without deciding, that PT Works was improperly incorporated and that its shareholders must be licensed physical therapists, *the no-fault act, and particularly MCL 500.3157, does not bar recovery of benefits for services rendered, where the treatment itself was lawfully rendered by licensed physical therapists*. MCL 500.3157, by its plain and unambiguous language, requires that the *treatment* itself be lawfully rendered. Reference to the terms "rendering" and "treatment" clearly places the focus on the act of actually engaging in the performance of services, here conducting physical therapy sessions, rather than on some underlying corporate formation issues that have nothing to do with the rendering of treatment. *A clinic or institution is lawfully rendering treatment when licensed employees are caring for and providing services and treatment to patients despite the possible existence of corporate defects irrelevant to treatment.* [Slip op, pp 1-3.]

In reaching this result, the Court "easily" distinguished its previous decision in *Cherry v State Farm Mut Automobile Insur Co*, 195 Mich App 316, 320; 489 NW2d 788 (1992), cited by defendants:

Cherry is easily distinguishable from the case at bar because, in that case, acupuncture services were directly provided to the injured party by a nurse who was not licensed to perform acupuncture. This Court found that only a licensed physician could administer acupuncture under the law. *Cherry, supra* at 320. Therefore, acupuncture treatment was not lawfully rendered, in that a licensed physician did not perform the services. The licensing of an individual, such as a doctor, dentist, chiropractor, or physical therapist, who personally provides services to a client or patient, has a direct correlation to the rendering of treatment. The connection between the rendering of treatment and the manner in which PT Works was incorporated and the nature of the incorporation is too

> attenuated to make the physical therapy provided to Miller an unlawfully rendered service. PT Works' shareholders did not render physical therapy services to Miller; therefore, their licensing status is not pertinent. [*Id.*, slip op, p 3.]

Here, as in *Miller*, defendants concede that the treatment was rendered by properly licensed providers, but they assert that plaintiffs are not entitled to payment for services rendered by licensed providers because of corporate improprieties. Pursuant to *Miller*, plaintiffs are entitled to payment for services rendered by properly licensed caregivers under the no-fault act, even if those caregivers are employed by a corporation that is not properly organized under the PSCA. Further, the reasoning set forth in *Miller* extends to other corporate improprieties, including self-referrals and unlicensed shareholders as alleged by appellants here, which pertain to the formation or operation of the corporate employer and which are likewise irrelevant to treatment, so long as "licensed employees are caring for and providing serves and treatment to patients." *Id.*, slip op, p 3. Thus, as defendants concede, Issues II-V lack merit. Accordingly, we affirm the trial court's decision granting plaintiffs summary disposition, albeit for different reasons than those cited by the lower court. *Id.*; *Gleason v Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

With respect to defendants' final argument, *Miller* rendered the issue whether individual plaintiffs were proper parties to this action moot. As discussed above, pursuant to *Miller*, plaintiffs are entitled to payment for services rendered by properly licensed caregivers under the no-fault act, despite the alleged "wrongdoing" asserted by defendants, including alleged deficiencies in corporate formation and operation, and the alleged self-referrals. Thus, even were such conduct to be attributable to the corporate officers, directors and or shareholders individually, it does not relieve defendants of their obligation to pay for medical services lawfully rendered to their insureds by properly licensed employees of Preferred and Spine Sports. *Miller, supra,* slip op, pp 2-3.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens