STATE OF MICHIGAN

COURT OF APPEALS

LEONARD THORNTON, Plaintiff-Appellant,	UNPUBLISHED February 3, 2009
v	No. 282309 Wayne Circuit Court
ALLSTATE INSURANCE COMPANY, Defendant-Appellee.	LC No. 06-616764-NF

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's dismissal of his claims pursuant to the one-year-back rule, MCL 500.3145(1). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of a motor vehicle accident that occurred on December 14, 2001 (Complaint, ¶ 2). Plaintiff was injured in the accident and filed a claim for personal injury protection (PIP) benefits with defendant, the insurer of the vehicle. When defendant refused to pay, plaintiff filed an action in LC No. 02-241629-NF seeking payment of such benefits. (Complaint, ¶¶ 3-7.) The parties ultimately agreed to dismiss the action without prejudice and attempt to resolve the dispute through facilitation (Louie Aff, ¶ 3; Venable Aff, ¶ 2).

Plaintiff filed the instant action on June 12, 2006, after the parties failed to reach a settlement through facilitation (Complaint; Louie Aff, ¶ 7). Defendant thereafter filed a motion for partial summary disposition, arguing that the one-year-back rule barred recovery for losses incurred more than one year before plaintiff filed his second complaint (MSD). The trial court agreed and dismissed plaintiff's claims that were incurred before June 12, 2005 (7/16/07 Order; 11/8/07 Order).

Plaintiff argues that the trial court erred by granting defendant's motion for partial summary disposition because there existed a genuine issue of material fact whether defendant waived the one-year-back rule defense. We disagree. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought

under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id*. at 30-31.

The one-year-back provision of MCL 500.3145(1) states that a "claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." As the plain language of the statute indicates, this provision precludes recovery of PIP benefits "for allowable expenses incurred more than one year before the filing of [a] complaint." *Liptow v State Farm Mut Auto Ins Co*, 272 Mich App 544, 549; 726 NW2d 442 (2006), lv den 477 Mich 1056 (2007). Plaintiff argues that defendant agreed to waive its defense under the one-year-back rule when the parties stipulated to dismiss the prior action in LC No. 02-241629-NF. Such an agreement was not placed on the record, there exists no writing evidencing the purported agreement, and defendant disputes that it ever agreed to waive its one-year-back rule defense. As such, plaintiff relies on an affidavit of his former counsel asserting that the parties agreed to "preserve the one-year-back dates" from the previous action (Louie Aff, ¶ 9).

Plaintiff's affidavit was insufficient to defeat defendant's motion for summary disposition. At the time the parties entered into the alleged agreement, MCR 2.507(H) provided:

> An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.[1]

This Court has held that "[a] contract for the settlement of pending litigation that fulfills the requirements of contract principles will not be enforced unless the agreement also satisfies the requirements of MCR 2.507(H)." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 456; 733 NW2d 766 (2006); see also *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 668-669; 649 NW2d 760 (2002), lv den 467 Mich 925 (2002).

Although the parties' alleged agreement was not a contract for the settlement of the litigation, it was, if it existed, a contract entered into in an effort to settle the litigation. Therefore, it was required to comply with MCR 2.507(H), which was not limited to settlement agreements. Because the alleged agreement was not placed on the record or reduced to a writing, it is not binding on defendant under MCR 2.507(H). *Columbia Assoc, LP, supra* at 670.

Plaintiff also argues that defendant's motion for summary disposition should have been denied based on promissory estoppel. Promissory estoppel, however, requires reasonable reliance on behalf on the promisee. *Northern Warehousing, Inc v Dep't of Ed*, 475 Mich 859; 714 NW2d 287 (2006); *State Bank of Standish v Curry*, 442 Mich 76, 83-84; 500 NW2d 104 (1993). We cannot conclude that plaintiff's reliance on defendant's alleged agreement to waive the one-year-back rule defense was reasonable in light of the requirements of MCR 2.507(H),

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[1] This identical provision has been recodified as MCR 2.507(G).

directing that the agreement be placed on the record or reduced to a writing signed by defendant. Therefore, even if an agreement existed, promissory estoppel did not require the denial of defendant's motion for summary disposition.

Finally, because the trial court properly granted defendant's motion for partial summary disposition, plaintiff's argument that the court erred by denying his motion for reconsideration lacks merit.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra