STATE OF MICHIGAN

COURT OF APPEALS

UNIVERSITY OF MICHIGAN REGENTS, Plaintiff-Appellee,	UNPUBLISHED March 12, 2009
v	No. 281917 Jackson Circuit Court
AUTOMOBILE CLUB INSURANCE ASSOCIATION, Defendant-Appellant.	LC No. 06-005897-NF

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying its motion for partial summary disposition in this action for reimbursement of medical care expenses under the no-fault act. We reverse, and decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Factual and Procedural History

Plaintiff provided medical care to two persons who sustained injuries in a motor vehicle accident on December 26, 2003. On November 16, 2006, plaintiff filed this action against defendant, the insurer of the vehicle involved in the accident, seeking reimbursement of allowable expenses pursuant to MCL 500.3107(1)(a). Defendant sought to limit plaintiff's recovery to expenses incurred within one year of the filing of the complaint pursuant to the one-year-back rule of MCL 500.3145(1).

Defendant moved for partial summary disposition and argued that plaintiff was not entitled to recover for services, products, or accommodations that were provided before November 17, 2005, citing MCL 500.3145(1), which includes time limits governing commencement of actions to recover PIP benefits. Defendant argued that in *Liptow v State Farm Mut Auto Ins Co*, 272 Mich App 544, 555-556; 726 NW2d 442 (2006), this Court held that the exception set forth in MCL 600.5821(4) concerned statutes of limitation and not "damage limitation provisions" such as the one-year-back rule of MCL 500.3145(1).

In response, plaintiff relied on the exception contained in MCL 600.5821(4). Plaintiff contended that *Liptow* was incorrectly decided and in direct conflict with this Court's earlier decision in *Univ of Michigan Regents v State Farm Mut Ins Co*, 250 Mich App 719, 733; 650

NW2d 129 (2002). Plaintiff argued that the trial court was not constrained or bound by *Liptow* because of the existence of the conflict.

The trial court concurred that a conflict existed, and found that *Univ of Michigan Regents* was dispositive of the presented issue, ruling that the "university is not constrained by the statute of limitations in this matter." Following entry of the order denying defendant's motion for partial summary disposition, plaintiff and defendant resolved the amounts that were at issue. Specifically, the court entered a judgment for $17,000, which "payment will be made forthwith and will not be subject to any appeal," and $103,048.35 that defendant would pay if "the appellate courts of this State ultimately determine that the remainder of Plaintiff's claim is not barred by MCL 500.3145(1) . . . ."

II. Standard of Review

This Court reviews de novo a trial court's ruling on a motion for summary disposition and questions of statutory interpretation. *Liptow*, *supra* at 549. Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999).

III. Analysis

The dispute in this matter centers on the applicability of two alternative statutory provisions. Defendant relies on MCL 500.3145(1), which states in relevant part:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the 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 explained in *Devillers v Auto Club Ins Ass'n,* 473 Mich 562, 574; 702 NW2d 539 (2005), this provision "contains two limitations on the time for commencing an action and one limitation on the period for which benefits may be recovered." In contrast, plaintiff cites to MCL 600.5821(4), which provides:

> Actions brought in the name of the state of Michigan, the people of the state of Michigan, or any political subdivision of the state of Michigan, or in the name of any officer or otherwise for the benefit of the state of Michigan or any political subdivision of the state of Michigan for the recovery of the cost of maintenance, care, and treatment of persons in hospitals, homes, schools, and other state institutions are not subject to the statute of limitations and may be

> brought at any time without limitation, the provisions of any statute notwithstanding.

Resolution of the issue requires this Court to examine the existence of the alleged conflict and distinction between the statute of limitations exception of MCL 600.5821(4) applied in *Univ of Michigan Regents* and the one-year back rule of MCL 500.3145(1) as distinguished by *Liptow* Court.

In *Univ of Michigan Regents,* an insured was injured in a motor vehicle accident on November 30, 1990, and died on January 4, 1991. On April 14, 1998, the plaintiff filed suit against two insurers to recover the costs incurred for his care. The action exceeded the limitations period for commencing the action as well as the limitation on the period for which benefits may be recovered. This Court reviewed whether the trial court correctly rejected the argument that the claim was "barred by the one-year statute of limitations for personal protection benefits specified in subsection 3145(1)" because MCL 600.5821(4) superceded that provision. *Id*. at 731. This Court did not differentiate between the limitations period for commencing the action and the limitation period for the recovery of benefits, but simply referred to the "one-year statute of limitations," and determined that MCL 500.3145(1) did not bar the plaintiff's action. *Id.* at 733. Thus, the plaintiff was able to recover medical expenses that were incurred more than seven years before the suit was filed.

In *Liptow, supra,* a minor child was injured in a motor vehicle accident on February 1, 1994, and received care until her death on January 24, 2002. The plaintiff filed a complaint on January 16, 2003, seeking reimbursement for medical expenses, attendant care expenses, lost wages and services, and survivor's loss benefits. The intervening plaintiff, the Michigan Department of Community Health (MDCH), sought recovery of Medicaid payments that had been made on behalf of the child. This Court concluded MCL 500.3145(1) "preclude[d] both plaintiff and the MDCH from recovering any PIP benefits for allowable expenses incurred more than one year before the filing of the instant complaint." *Id*. at 549. The plaintiff had relied on the minority/insanity saving provision, MCL 600.5851(1), but the Court recognized that the saving provision addressed when a person may "make the entry or bring the action," and did not address what damages would be recoverable in the action. *Id*. at 550-553, citing *Cameron v Auto Club Ins Ass'n,* 476 Mich 55; 718 NW2d 784 (2006). The MDCH relied on a different provision, MCL 600.5821(4), but this Court likewise rejected the position that the provision exempted the MDCH from the one-year-back rule in MCL 500.3145(1). This Court concluded that *Univ of Michigan Regents* was inapposite because that decision addressed "statutes of limitation," not "the damages-limiting portion of MCL 500.3145(1), the one-year-back rule." *Id*. at 554-555. As a matter of first impression, this Court concluded that the language in MCL 600.5821(4), providing that specified actions "are not subject to the statute of limitations and may be brought at any time without limitation, the provisions of any statute notwithstanding," "does not address damage limitation provisions or any other limiting provisions." *Id*. at 555-556. Accordingly, the MDCH's recovery was limited to expenses incurred in the year preceding the filing of the complaint.

In the present case, the trial court determined that, based on the conflict between *Liptow* and *Univ of Michigan Regents*, the earlier decision should be followed. However, as explained in *Liptow, supra* at 555-556, the decision in *Univ of Michigan Regents* concerned "statutes of limitation," not "the damages-limiting portion of MCL 500.3145(1), the one-year back rule."

Consequently, there is no conflict between *Univ of Michigan Regents* and *Liptow*. Because this case concerns the damages-limiting portion of MCL 500.3145(1), the trial court was required to follow *Liptow*, and therefore erred in denying defendant's motion for partial summary disposition.

Plaintiff argues that a distinction may be drawn between the MDCH, "a payment source akin or analogous to an insurance carrier or a guarantor of payment," and plaintiff, "the direct provider of medical care . . . ." However, the controlling statutes do not include any language to support the contention that the difference between the entities is material.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher