

STATE OF MICHIGAN
COURT OF APPEALS

COMMUNITY RESOURCE CONSULTANTS,
INC.,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 7, 2009

No. 281966
Macomb Circuit Court
LC No. 04-002536-CK

Before: Saad, C.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

In this action seeking payment of no-fault personal protection insurance (PIP) benefits for services rendered to defendant's insureds, plaintiff appeals by leave granted the trial court's order granting defendant's motion for judgment notwithstanding the verdict (JNOV). Because we conclude that the trial court erred in granting JNOV, we reverse and remand for entry of an order reinstating the July 10, 2007 judgment.

I. Facts and Procedural History

Wilma Judkins, who was insured under a no-fault policy of insurance issued by defendant, suffered injuries in an automobile accident on December 28, 2000. After providing rehabilitative services or case management services to Judkins, plaintiff sued defendant for payment of the services. In its answer to plaintiff's complaint, defendant asserted the one-year-back rule, MCL 500.3145(1), as an affirmative defense to plaintiff's claim. The trial court subsequently consolidated the case with 14 other cases in which plaintiff sought payment from defendant for services rendered to defendant's insureds. Plaintiff has asserted, and defendant does not contest, that the consolidated complaints requested \$357,648.10 from defendant for services rendered to defendant's insureds.

An eight-day jury trial on the 15 consolidated cases commenced on August 29, 2006. After both parties completed their presentation of proofs, defendant raised the one-year-back rule

in a discussion with the trial court and plaintiff in chambers. It then moved for a directed verdict on plaintiff's claims for payment of services rendered more than one year before the filing of the complaints.¹ The trial court took the motion under advisement, "but for the time being preclude[d] . . . defendant from referring" to the one-year-back rule. The trial court explained that defendant had not raised the one-year-back rule either during pretrial proceedings or trial and that, by only raising the issue after the proofs had been completed, defendant had denied plaintiff the "opportunity to rebut." The jury returned verdicts in favor of plaintiff in 14 of the 15 cases, awarding plaintiff \$205,649.52 for services rendered and \$24,681.94 in statutory interest. The trial court entered judgment against defendant in the amount of \$431,502.25, which included costs, fees, and interest.

Defendant then moved for JNOV. It argued that, based on the Supreme Court's decisions in *Cameron v Auto Club Ins Ass'n*, 476 Mich 55; 718 NW2d 784 (2006), and *Devillers v Auto Club Ins Ass'n*, 473 Mich 562; 702 NW2d 539 (2005), the trial court erred in submitting to the jury plaintiff's bills for services rendered more than a year before the complaints were filed. The trial court granted the motion. It concluded that, because of the *Cameron* and *Devillers* decisions, plaintiff was precluded from recovering payment for services rendered more than one year before the complaints were filed and, therefore, it should have ruled as a matter of law that plaintiff was limited to recovering only those expenses incurred within one year of the filing of the complaints and so instructing the jury. The trial court further reasoned that plaintiff, by seeking damages to which it was not entitled, caused prejudice to defendant; plaintiff deprived defendant of a fair trial by exaggerating its claimed damages. The trial court believed that the amount of plaintiff's claims for payment barred by the one-year-back rule would be determinable by the proofs presented at trial, but if the parties were unable to agree on adjusted figures and a stipulated judgment, it ordered defendant to schedule an evidentiary hearing.

Plaintiff applied for leave to appeal the trial court's order granting JNOV. This Court granted the application. *Comm Resource Consultants, Inc v State Farm Mut Automobile Ins Co*, unpublished order of the Court of Appeals, entered December 26, 2007 (Docket No. 281966).

II. Analysis

We review de novo a trial court's decision on a motion for JNOV. *Prime Financial Services LLC v Vinton*, 279 Mich App 245, 255; 761 NW2d 694 (2008). "When deciding a motion for JNOV, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determine whether the facts presented preclude judgment for the nonmoving party as a matter of law." *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 123-124; 680 NW2d 485 (2004). A motion for JNOV should be granted only if the evidence viewed in this light fails to establish a claim as a matter of law. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003).

¹ From the record before us, it does appear that, after plaintiff's case-in-chief, defendant made several motions for a directed verdict, which the trial court took under advisement. However, defendant conceded that it had not specifically raised the one-year-back rule until after both parties had presented their proofs.

In this case, the jury awarded plaintiff \$205,649.52 for services rendered in 14 of the 15 cases. In moving for JNOV, defendant did not claim that the evidence presented to the jury, when viewed in the light most favorable to plaintiff, was insufficient to establish that plaintiff provided services worth \$205,649.52 to defendant's insureds for injuries arising out of automobile accidents. Rather, defendant argued that JNOV should be granted because the trial court submitted evidence for the jury's consideration that was contrary to the Supreme Court's decisions in *Cameron* and *Devillers*. The trial court granted JNOV on this basis. However, because there was no claim that the evidence submitted to the jury was insufficient to support the jury's verdict, and because the trial court made no such finding, the trial court used an improper basis for granting JNOV. In other words, the trial court erred in granting defendant's motion for JNOV because JNOV was not the proper method for the trial court to remedy its perceived legal error of failing to enforce the one-year-back rule. Any such error was an error of law, rather than an error in the sufficiency of the evidence.

Further, the trial court erred in reasoning that plaintiff, because it sought payment for services rendered more than a year before the filing of the complaints, denied defendant a fair trial by exaggerating its damages. Contrary to the trial court's reasoning and to defendant's argument on appeal, plaintiff was under no obligation to limit its claims for payment to services rendered within one year preceding the filing of the complaints.

A party asserting an affirmative defense has the burden of presenting evidence to establish the defense. *Attorney Gen ex rel Dep't of Environmental Quality v Bulk Petroleum Corp*, 276 Mich App 654, 664; 741 NW2d 857 (2007).

An affirmative defense is a defense that does not controvert the plaintiff's establishing a prima facie case, but that otherwise denies relief to the plaintiff. In other words, it is a matter that accepts the plaintiff's allegation as true and even admits the establishment of the plaintiff's prima facie case, but that denies that the plaintiff is entitled to recover on the claim for some reason not disclosed in the plaintiff's pleadings. [*Stanke v State Farm Mut Automobile Ins Co*, 200 Mich App 307, 312; 503 NW2d 758 (1993) (internal citation omitted).]

In *Stanke*, this Court explained that the expiration of the statute of limitations is an affirmative defense:

[A]lthough the plaintiff may very well have a valid claim and is able to establish a prima facie case, the defendant, as an affirmative matter, may nevertheless establish that the plaintiff is not entitled to prevail on the claim because the defendant can show that the period of limitation has expired and, therefore, the suit is untimely. [*Id.*]

Although the one-year-back rule, MCL 500.3145(1), is not a statute of limitations, see *Cameron, supra* at 72 (“[T]he one-year-back rule . . . does not concern when an action may be brought.”), the reasoning articulated in *Stanke* establishes that the one-year-back rule is an affirmative defense. The one-year-back rule limits the amount of PIP benefits an insured may recover: an insured may only recover the losses incurred within one year preceding the filing of the complaint. MCL 500.3145(1); *Cameron, supra* at 72; *Devillers, supra* at 574. Thus, even if an insured is able to establish a prima facie case for PIP benefits, the insurer may nonetheless

establish that the insured is not entitled to all the claimed PIP benefits on the basis that the losses were incurred more than one year before the filing of the complaint. Because the one-year-back rule is an affirmative defense, plaintiff was under no obligation to limit its claims to losses incurred within one year before the filing of the complaints.

For the above reasons, we conclude that the trial court erred in granting defendant's motion for JNOV. We reverse the trial court's order granting JNOV and remand for entry of an order reinstating the July 10, 2007 judgment.²

Reversed and remanded for entry of an order reinstating the July 10, 2007 verdict. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra

² Although the parties present arguments regarding whether the trial court properly denied defendant's motion for a directed verdict predicated on the one-year-back rule, we decline to address the merits of the trial court's decision. We do so because the record before us on the interlocutory appeal is insufficient to allow us to come to any conclusion that is not based on speculation and assumptions. Transcripts of the eight-day trial are not included in the record, nor are the exhibits that were admitted into evidence. Thus, for example, we do not know how the trial court directed the parties to bring and argue motions for directed verdict. We are also unable to evaluate whether the one-year-back rule can be applied with any certainty to the jury's verdict, given that the jury did not award plaintiff all of its requested damages. Nothing in this opinion shall be read to preclude defendant from arguing in an appeal as of right that the trial court erred in denying its motion for a directed verdict.