

STATE OF MICHIGAN
COURT OF APPEALS

JESSE RUFFIN, by his Guardian MARGARET
RUFFIN,

UNPUBLISHED
November 18, 2010

Plaintiff-Appellee,

and

ELAINE RUFFIN,

Plaintiff,

and

WILLIAM BEAUMONT HOSPITAL and
PATRICK WIATER, M.D., P.C.,

No. 292687
Wayne Circuit Court
LC No. 07-701216-NF

Intervening Plaintiffs-Appellants,

and

BEVERLY HILLS ORTHOPAEDIC,

Intervening Plaintiff,

v

AUTO CLUB INSURANCE COMPANY,

Defendant.

Before: O'CONNELL, P. J., and BANDSTRA and MURRAY, JJ.

PER CURIAM.

In this dispute over liability for attorney fees arising from the recovery of personal injury protection benefits under the no-fault act, MCL 500.3101 *et seq.*, intervening party William

Beaumont Hospital (“Beaumont Hospital”) appeals as of right from the trial court’s order granting plaintiff’s motion for attorney fees.¹ We reverse.

Jesse Ruffin was injured in an automobile accident and was treated at Beaumont Hospital. His guardian submitted a claim for no-fault benefits to the Assigned Claims Facility and also hired counsel to assist with identifying any applicable policies that might provide coverage. Counsel identified two policies, one of which provided coverage and the other did not. After investigating plaintiff’s claim, defendant approved the claim for medical expenses and issued a check jointly payable to plaintiff’s counsel and to Beaumont Hospital. Plaintiff’s counsel claimed a right to one-third of the amount paid pursuant to a contingency fee agreement and *Aetna Cas & Surety Co v Starkey*, 116 Mich App 640; 323 NW2d 325 (1982). The trial court awarded counsel a fee of \$15,600 from the payments issued to the hospital, representing 52 hours at \$300 an hour.

The trial court’s decision to award attorney fees and the amount of the fees awarded are both reviewed for an abuse of discretion. *Miller v Citizens Ins Co*, ___ Mich App ___; ___ NW2d ___ (Docket No. 290522, issued May 13, 2010), slip op at 4. “An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

“Under the ‘American rule,’ attorney fees are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, common-law exception, or contract.” *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). Attorney fees are authorized by statute in no-fault cases. MCL 500.3148(1) provides:

An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney’s fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

A common-law exception to the “American rule” is the “common-fund exception, which . . . applies when a prevailing party creates or protects a common fund that benefits himself and others.” *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16, 38 n 11; 576 NW2d 641 (1998). “Courts of equity hold it unfair to allow others to benefit at the expense of the prevailing party without contributing to the costs incurred in securing the common fund.” *Id.* The common-fund exception is generally applicable in class action suits and shareholder derivative actions. See *In re Attorney Fees of Kelman, Loria, Downing, Schneider & Simpson*, 406 Mich 497, 503-504; 280 NW2d 457 (1979).

Here, the trial court did not rely on the standard statutory or common-law attorney fee provisions. Rather, the court awarded quantum meruit attorney fees. Accordingly, the award is

¹ According to Beaumont Hospital’s brief on appeal, intervening party Dr. Patrick Wiater has withdrawn his appeal.

unlike the award this Court upheld in *Aetna Cas & Surety Co v Starkey*, 116 Mich App 640; 323 NW2d 325 (1982). In *Starkey*, the Court determined that the insured's counsel was entitled to an attorney fee pursuant to MCL.500.3148(1), on the ground that insurance benefits were overdue. *Id.* at 648. The Court also noted that as a matter of equity, the fee was chargeable against the benefits paid for medical expenses because the medical providers had submitted their bills to the insurer, which denied payment. *Id.* The insured's counsel then persuaded the insurer that benefits, including medical expenses, were payable, and the medical providers accepted counsel's assistance knowing that it would result in payment of their bills. *Id.*

The fee award in this case is also unlike the award in *Miller*, in which this Court determined that the common-fund exception supported awarding an attorney fee to an insured's counsel. ___ Mich App at ___; slip op pp 6-7. In *Miller*, the insurer had rescinded the policy when the claim was submitted and had denied the claim. The insured retained counsel, who filed suit against the insurer. The medical provider knew that the claim had been denied and that the plaintiff had retained counsel, but did nothing to indicate that it did not want the plaintiff's counsel to pursue the matter on its behalf. This Court determined that the medical provider relied upon plaintiff's counsel's efforts to obtain payment. *Id.* Under those circumstances, the Court found the attorney fee award appropriate.

The case at bar is more closely aligned with *Garcia v Butterworth Hosp*, 226 Mich App 254; 573 NW2d 627 (1997), in which the Court held that the insured's counsel was not entitled to the attorney fee award. The *Garcia* plaintiff had submitted a claim to the Assigned Claims Facility. *Id.* at 255. The plaintiff retained counsel, who filed suit but never served the complaint. *Id.* at 255-257. The designated insurer and the medical provider reached an agreement without intervention by plaintiff's counsel, and the insurer paid the claim. *Id.* This Court determined that plaintiff's counsel's efforts did not warrant a fee against the benefits payable to the medical provider. *Id.* at 257.

Here, as in *Garcia*, equitable principles weigh against the attorney fee award. Advomas, a financial advocate assisting both Beaumont Hospital and the patient, helped plaintiff's guardian submit a claim to the Assigned Claims Facility. Advomas then worked directly with the designated insurer, State Farm. When plaintiff's counsel identified a potentially applicable policy issued by AAA, State Farm notified Advomas, which wrote to plaintiff's counsel and informed him that the hospital did not require his services and would not pay his fee. Advomas continued to deal directly with AAA, and Beaumont Hospital submitted its bills to AAA. It was eventually determined that the AAA policy identified by plaintiff's counsel was not applicable, but that a policy issued by defendant provided coverage. Defendant approved the claim. AAA advised Advomas that the bills did not need to be resubmitted and would be paid under defendant's policy. Payment of the medical bills was approved near the time plaintiff's complaint was filed. The bulk of the litigation concerned counsel's claim for fees, and the claim against defendant was ultimately dismissed. Under these circumstances, the trial court abused its discretion in awarding an attorney fee chargeable against the medical expenses paid.

Reversed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Christopher M. Murray