STATE OF MICHIGAN

COURT OF APPEALS

VICTORIA JONES and MICHAEL JOHNSON,

Plaintiffs,

and

HENRY FORD HEALTH SYSTEM,

Intervening Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant,

and

GARY WHITE,

Defendant.

UNPUBLISHED
November 23, 2010

No. 293206
Wayne Circuit Court
LC No. 08-110526-NI

Before: BORRELLO, P.J., and CAVANAGH and OWENS, JJ.

PER CURIAM.

Defendant, Farmers Insurance Exchange (defendant), appeals as of right from a judgment entered in favor of intervening plaintiff, Henry Ford Health System (HFHS), in this action for recovery of no-fault benefits. We affirm.

Plaintiffs were injured in an automobile accident on May 8, 2007. Defendant was appointed by the Assigned Claims Facility to pay no-fault benefits. Plaintiffs filed their complaint for no-fault benefits on April 25, 2008, seeking payment of medical expenses, wage loss, and other expenses.

On February 25, 2009, HFHS filed a motion for leave to intervene as a plaintiff. HFHS alleged that plaintiff Jones had been hospitalized as a result of her injuries in the accident and incurred a medical bill of $15,316.75. The date of service was May 9, 2007. The trial court granted the motion to intervene in an order dated March 6, 2009. HFHS filed its intervening complaint on April 6, 2009.

On May 11, 2009, defendant moved for summary disposition with respect to HFHS's intervening complaint pursuant to MCR 2.116(C)(8) and (10). Defendant argued that MCL 500.3145(1) barred HFHS from recovering any benefits for expenses incurred more than one year before April 6, 2009, when it filed its intervening complaint. In response, HFHS contended that, because plaintiffs' initial action was filed less than one year after the accident, MCL 500.3145(1) did not bar HFHS's recovery. In other words, for purposes of the one-year-back rule, "the action was commenced" when plaintiffs filed their complaint on April 25, 2008. The trial court denied defendant's motion, holding: "The intervening party here Henry Ford Hospital System provided medical care to the Plaintiff, who was the Plaintiff in this case. Their claim is derivative of hers. Standing alone they wouldn't have any claim. Their claim relates back to hers." On July 8, 2009, the court entered a judgment for $20,000 in favor of HFHS and against defendant. This appeal followed.

Defendant argues that its motion for summary disposition should have been granted because the one-year-back rule, MCL 500.3145(1), began to run with regard to HFHS when HFHS filed its intervening complaint, not when plaintiffs' complaint was filed. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a complaint by the pleadings alone and may be granted only where the claims alleged are clearly unenforceable as a matter of law. *Id*. at 118-119. A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint and may be granted only when there is no genuine issue of any material fact. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Issues of statutory interpretation are reviewed de novo as a matter of law. *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005).

The parties here do not dispute that a health care provider may bring an action against an insurer to recover no-fault benefits payable for the benefit of an insured injured person. See *Lakeland Neurocare Ctrs v State Farm Mut Auto Ins Co*, 250 Mich App 35, 39; 645 NW2d 59 (2002). The parties also do not dispute that the one-year-back rule generally applies to health care providers who bring an action against an insurer when the insured has not commenced an action against the insurer. See e.g., *Henry Ford Health Sys v Titan Ins Co*, 275 Mich App 643, 647; 741 NW2d 393 (2007). Here, however, the insured plaintiffs had commenced an action against the insurer defendant and HFHS subsequently intervened in that action. Thus, the issue in this case is: On what date does the one-year-back rule begin to run with regard to the health care provider—on the date that the insured commenced the action or on the date the health care provider filed its complaint after being permitted to intervene in that same action? For the answer we look to well-established rules of statutory construction.

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010). We first turn to the language of the statute. *Id*. If the statutory language is unambiguous, the Legislature is presumed to have intended the meaning clearly expressed, and the statute must be enforced as written. *Id*. The fair and natural import of the terms employed, in view of the subject matter of the law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998).

MCL 500.3145(1) provides, in pertinent 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 stated in *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005), the statute "contains two limitations on the time for filing suit and one limitation on the period for which benefits may be recovered." The recovery limitation is referred to as the "one-year-back" rule or provision. *Id*. Thus, our focus turns to this third sentence—the recovery limitation provision.

The starting date of the one-year-back rule is "the date on which the action was commenced." MCL 500.3145(1). "A civil action is commenced by filing a complaint with a court." MCR 2.101(B). In the recovery limitation provision, the Legislature used the word "the" with respect to "action." "The" is a definite article which, when used especially before a noun like "action," has a specifying or particularizing effect. See *Robinson v City of Lansing*, 486 Mich 1, 14; 782 NW2d 171 (2010) (citations omitted). Because the recovery limitation provision refers to "the action," we must determine to which "specific or particular" action it is referring. The phrase "the action" in this provision, plainly read, refers to the term "action" referenced in the preceding sentences. The first sentence sets forth a time limitation on the commencement of "[a]n action for recovery of personal protection insurance benefits." The second sentence further restricts the time for commencement of "the action." Thus, the phrase "the action" in the recovery limitation provision must refer to "[a]n action for recovery of personal protection insurance benefits . . . ," as set forth in the first sentence of the provision.

Here, the insured plaintiffs commenced "[a]n action for recovery of personal protection insurance benefits" on April 25, 2008. On February 25, 2009, HFHS filed a motion for leave to intervene in this action that had already been commenced, and that motion was granted. Thus, "the action" "for recovery of personal protection insurance benefits" was already commenced at the time HFHS sought to intervene. Accordingly, "the date on which the action was commenced" was April 25, 2008—and that is the date the one-year-back rule began to run. Because HFHS sought payment for medical services rendered on May 9, 2007, its intervening claim was not barred by the one-year-back rule. Accordingly, the trial court properly denied defendant's motion for summary disposition, albeit for the wrong reason. See *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed. Intervening plaintiff, HFHS, is entitled to costs as the prevailing party. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ Mark J. Cavanagh
/s/ Donald S. Owens