STATE OF MICHIGAN

COURT OF APPEALS

HIRAM SETTLER,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

AUTO CLUB INSURANCE ASSOCIATION,

Third-Party Defendant.

UNPUBLISHED
December 22, 2020

No. 350925
Wayne Circuit Court
LC No. 17-006883-NF

Before: SWARTZLE, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant based on alleged fraud by plaintiff in connection with a claim for benefits under the no-fault act. On appeal, plaintiff argues that the trial court erred when it concluded that the fraud provision in the insurance policy at issue was enforceable against plaintiff. Plaintiff also argues the trial court erred when it concluded that defendant was entitled to deny all coverage to plaintiff under the insurance policy as result of plaintiff's alleged misrepresentations to defendant. Because the result in this case is controlled by the Supreme Court's opinion in *Meemic* and this Court's opinion in *Haydaw*, we vacate the decision of the trial court and remand for proceedings consistent with this opinion.

I. BACKGROUND

Plaintiff was injured in a motor-vehicle accident on January 21, 2017, when he was traveling in a vehicle rented by his second cousin, Michael Billington. Plaintiff was listed as a secondary driver on the rental agreement between Billington and North End Collision, an auto-

repair shop that was working on Billington's personal vehicle. While out of town, Billington allowed plaintiff to use the rented vehicle because plaintiff did not have his own transportation.

According to the police report prepared after the accident, an unidentified driver ran a stop sign and collided with plaintiff. Officer Mary Kue testified that plaintiff refused medical care and asked to be taken to the police department where he would be picked up by a friend who was also a police officer. That officer later dropped off plaintiff at his girlfriend's house. Plaintiff's then-girlfriend, Danielle Smith, stated that plaintiff appeared injured when he arrived at her house. Approximately one hour later, while sitting on the edge of a bed, plaintiff passed out and fell to the floor. Smith called emergency services, which transported plaintiff to the hospital. Plaintiff was diagnosed with a traumatic head injury and placed in a medically-induced coma; he spent approximately two weeks in the hospital and another three months at a rehabilitation facility.

As a result of injuries that he sustained in the accident, plaintiff sought benefits, including attendant-care services, under the insurance policy between defendant and North End Collision. Although the parties dispute whether plaintiff personally completed the application for benefits, defendant produced an application form on which plaintiff purportedly stated that he did not previously experience the same or similar symptoms to those he experienced as a result of the accident. The application form also stated that the injury occurred while plaintiff was at work.

Approximately three months after plaintiff sought benefits from defendant, he filed this lawsuit seeking payment of all no-fault benefits to which he asserted he was entitled.[1] Defendant moved for summary disposition under MCR 2.116(C)(10), asserting that under the fraud provision of the insurance policy, defendant was entitled to deny coverage because plaintiff made numerous fraudulent statements with respect to the accident, his prior medical history, and his need for attendant-care services. The trial court concluded that the fraud provision of the insurance policy was enforceable against plaintiff and granted defendant's motion based on plaintiff's submission of attendant-care forms, which the trial court concluded contained fraudulent statements about services needed or performed.

This appeal followed.

II. ANALYSIS

A. STANDARD OF REVIEW

We review de novo the interpretation of a contract, such as an insurance policy. *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005). To the extent that this Court must interpret and apply the provisions of the no-fault act, we review de novo questions of statutory

[1] After plaintiff filed suit, defendant filed a third-party complaint against Auto Club Insurance Association, claiming that at the time of the accident, plaintiff was living with his father, who was insured by Auto Club. According to defendant, Auto Club was the priority insurer responsible for plaintiff's claims. These issues were not resolved by the trial court and are not at issue on appeal. Defendant and Auto Club stipulated to the dismissal of defendant's third-party complaint against Auto Club subject to the outcome of this appeal.

interpretation. *Tree City Props LLC v Perkey*, 327 Mich App 244, 247; 933 NW2d 704 (2019). We also review de novo a trial court's grant or denial of a motion for summary disposition. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *West*, 469 Mich at 183.

B. PLAINTIFF IS AN INSURED UNDER THE POLICY

On appeal, plaintiff argues the provisions of the insurance policy issued by defendant to North End Collision cannot be enforced against him because he was not an insured under that policy. Plaintiff argues that the requirements of the no-fault act, MCL 500.3101 *et seq.*, rather than the insurance policy, solely govern plaintiff's entitlement to benefits. We reject plaintiff's argument because he qualifies as an insured under the plain language of the insurance policy.

The insurance policy issued by defendant defines an "insured" to include North End Collision's "garage customers." The term "garage customer," in turn, is defined in the insurance policy as "[a]ny person while using an auto owned, maintained or used in your garage business" or "[a]ny of your customers or any prospective buyer to whom an auto has been loaned or furnished by you." In accordance with the policy's definitions, plaintiff was an insured under the policy because plaintiff was an individual to whom North End Collision "loaned or furnished" the rental vehicle that was involved in the accident. Indeed, plaintiff was listed as a secondary driver on the rental agreement. In plaintiff's complaint, he even alleged that he "was covered under the provisions of a motor vehicle insurance policy issued by defendant insurance company which was then in effect." Accordingly, the trial court did not err when it concluded that plaintiff was an insured under the insurance policy issued by defendant.

C. CONTRACTUAL FRAUD PROVISION

Plaintiff next argues that fraud provisions in insurance policies are, by their nature, contrary to the no-fault act. Thus, even if the insurance policy issued by defendant covers plaintiff's claim, plaintiff asserts the fraud provision contained in the policy cannot be enforced against him. The Michigan Supreme Court recently addressed the enforceability of fraud provisions contained in auto-insurance policies, in light of the no-fault act. In *Meemic Ins Co v Fortson*, __ Mich __, __; __ NW2d __ (____) (Docket No. 158302); slip op at 2, the Supreme Court held that fraud provisions in insurance policies "are valid when based on a defense to mandatory coverage provided in the no-fault act itself or on a common-law defense that has not been abrogated by the act." An insurance policy, however, cannot "go beyond either the statutory or common-law defenses and thereby limit mandatory coverage to a greater extent than either the statute or the common law." *Id.* at ___; slip op at 10.

> To allow such provisions would reduce the scope of the mandatory coverage required by the no-fault act, as supplemented by the common law. It would, in short, vitiate the act. This result is plainly prohibited by our longstanding caselaw that forbids parties from contracting to vitiate an insured's duty to promptly pay benefits as required by the no-fault act. [*Id.*]

A fraud defense is not a statutory defense to PIP coverage under the no-fault act. *Id*. at ___; slip op at 12. Moreover, "[a]t common law, the defrauded party could only seek rescission, or avoidance of the transaction, if the fraud related to the inducement to or inception of the contract." *Id*. at ___; slip op at 13-14. Thus, under the no-fault act, an insurer may only deny all coverage under an auto-insurance policy based on fraud if the policy itself was procured by fraud, but not if the fraud related to postprocurement activity. *Id*. at ___; slip op at 15-16.

Defendant does not assert that the auto-insurance policy in this case was procured by fraud, nor does defendant assert that the rental agreement, which led to plaintiff being covered under the policy, was procured by fraud. Rather, defendant asserts that plaintiff's application for benefits and statements made during litigation were fraudulent. Under *Meemic*, such alleged fraud cannot be the basis for denial of plaintiff's entitlement to benefits under the fraud provision of the auto-insurance policy. The trial court, which did not have the benefit of *Meemic* when it rendered its decision, erred when it concluded that defendant was entitled to deny all coverage to plaintiff based on purportedly false statements that plaintiff made after the insurance policy was in place.

D. ATTENDANT-CARE FORMS

Finally, plaintiff argues that genuine issues of material fact exist with regard to whether his submission of attendant-care forms from Five Star Comfort Care contained false statements. In contrast, defendant argues that the surveillance videos, coupled with the information on the attendant-care forms, show that there is no issue of fact that plaintiff made false statements by claiming services he did not need or actually receive.

Generally speaking, fraudulent statements made after litigation is initiated cannot form the basis for an insurer to deny coverage altogether. *Haydaw v Farm Bureau Ins Co*, __ Mich App __, __; __ NW2d __ (2020) (Docket No. 345516); slip op at 3. "False statements made during discovery do not provide grounds to void the policy because, by that time, the claim has been denied and the parties are adversaries in litigation. Once suit is brought, what is truth and what is false is a matter for a jury or a judge acting as factfinder." *Id*. at ___; slip op at 5. "We read *Haydaw* as standing for the unremarkable proposition that an insurer cannot assert that it denied a claim because of fraud that occurred after litigation began; the fraud must have occurred before the legal proceedings." *Fashho v Liberty Mut Ins Co*, __ Mich App __, __; __ NW2d __ (2020) (Docket No. 349519), slip op at 4.

Plaintiff filed his complaint against defendant on May 5, 2017. The attendant-care forms on which defendant relies were submitted for services allegedly rendered in February 2018 and beyond. Thus, the representations upon which defendant relies for its fraud defense are all postlitigation representations made by plaintiff. Under *Haydaw*, these statements cannot form the basis for denial of coverage. The trial court, which did not have the benefit of *Haydaw* when it rendered its decision, erred when it concluded otherwise.

The only source of statements that may form the basis of a viable fraud defense would be those made by plaintiff on his application for benefits. Defendant produced an application form, purportedly executed by plaintiff, in which he denied experiencing in the past the same or similar symptoms as those from the auto accident. The application form also stated that the injury occurred while plaintiff was at work, and plaintiff admitted during the course of discovery that this

was not true. Plaintiff also testified, however, that he did not recognize the application for benefits and did not recognize his purported signature on the application form.

The trial court did not address whether the application for benefits contained false statements, concluding only that the attendant-care forms were sufficient for defendant to deny coverage. Moreover, the trial court did not analyze the case through the framework set forth in *Meemic* and *Haydaw*, both issued after the trial court rendered its decision. Thus, we remand the case to allow the trial court to address defendant's other arguments in the first instance and to apply the holdings of *Meemic* and *Haydaw*. See *Wilson v BRK, Inc*, 328 Mich App 505, 526; 938 NW2d 761 (2019).

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

/s/ Brock A. Swartzle
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher