STATE OF MICHIGAN

COURT OF APPEALS

NADWAH HARBI and MERRY KASNONA,

Plaintiffs, and

EQMD, INC.,

Intervening Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 10, 2020

No. 352139
Wayne Circuit Court
LC No. 17-015885-NF

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

Intervening plaintiff, EQMD, Inc. ("EQMD"), appeals as of right an order denying its motion to set aside the trial court's order granting defendant State Farm Mutual Automobile Insurance Company's ("State Farm") motion for summary disposition of EQMD's claims. We affirm.

I. FACTS & PROCEDURAL HISTORY

Plaintiffs, Nadwah Harbi and Merry Kasnona, allegedly suffered injuries in a motor vehicle accident were subsequently prescribed medications for their injuries by Dr. Sam Hakki. Dr. Hakki used the services of EQMD, a self-described "pharmacy management organization" that provides "assistance with inventory management and running searches in Michigan Automated Prescription System" to furnish prescription drugs to Harbi and Kasnona. EQMD also assisted Dr. Hakki with billing and collections. EQMD billed State Farm, which insured Harbi and Kasnona, for over $20,000 in services related to Harbi and nearly $13,000 in services related to Kasnona. State Farm paid a portion of the invoice—about $9,500 of the amount billed related to Harbi and over $4,500 for Kasnona.

Harbi and Kasnona sued State Farm for payment of no-fault benefits, including the amount that State Farm did not pay EQMD. State Farm filed a motion for summary disposition and dismissal of EQMD's bills and argued (1) that EQMD was not licensed in Michigan at the time it allegedly provided services, and therefore, its services were not compensable under the no-fault act because they were not "lawfully rendered," and (2) EQMD's services were provided to Dr. Hakki, not an "injured person" as required by the no-fault act. Thereafter, Harbi and Kasnona each assigned their claim for benefits from State Farm to EQMD. Then, EQMD filed a response to State Farm's motion for summary disposition and a motion to intervene with a proposed complaint attached.

The trial court heard oral arguments on EQMD's motion to intervene and subsequently denied the motion because it believed *Covenant Medical Center, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191; 895 NW2d 490 (2017), required the court to deny the motion unless the parties stipulated to it. Thereafter, the trial court held a hearing on State Farm's motion for summary disposition. At the hearing, the trial court indicated that it had read EQMD's response to State Farm's motion, and it permitted EQMD to participate at the hearing. EQMD argued that because it does not physically handle the medication, it is not a manufacturer or wholesale distributor subject to licensing requirements. EQMD described itself as a software company that assists doctors with running an in-office pharmacy, and although EQMD's business arrangement was with Dr. Hakki, its services benefitted the injured persons, Harbi and Kasnona. Thus, according to EQMD, its bills were compensable under the no-fault act. Ultimately, the trial court granted in part State Farm's motion for summary disposition because EQMD was not licensed by the Michigan Department of Licensing and Regulatory Affairs ("LARA") at the time it dispensed the medications to Harbi and Kasnona as required by the Public Health Code, MCL 333.1101, *et seq*. EQMD moved for reconsideration, which the trial court denied.

EQMD sought leave to appeal with this Court and challenged the trial court's orders denying EQMD's motion to intervene, granting in part State Farm's motion for summary disposition, and denying EQMD's motion for reconsideration of the order regarding summary disposition. We granted immediate consideration to these applications with respect to the trial court's denial of EQMD's motion to intervene. We remanded the matter to the trial court to enter an order granting EQMD's motion to intervene. *Nadwah Harbi v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, issued February 21, 2019 (Docket No. 345584). However, we denied EQMD's interlocutory appeal for leave with respect to the trial court's partial grant of State Farm's motion for summary disposition and EQMD's motion for reconsideration. *Nadwah Harbi v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, issued February 21, 2019 (Docket No. 345924);[1] *Nadwah Harbi v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, issued February 21, 2019 (Docket No. 346362).

[1] EQMD moved for reconsideration and we denied the motion. *Nadwah Harbi v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, issued April 5, 2019 (Docket No. 345924). EQMD applied for leave to appeal to the Supreme Court, which also was denied on October 29, 2019. *Nadwah Harbi v State Farm Mut Auto Ins Co*, 504 Mich 998; 934 NW2d 243 (Mem) (2019).

On remand, the trial court entered an order granting EQMD's motion to intervene. EQMD then filed a motion to set aside the trial court's order granting in part summary disposition to State Farm on the issue of the compensability of EQMD's bills. EQMD attached to its motion a letter from LARA, dated February 21, 2019, which noted EQMD's unlicensed status, but concluded that as of that date "a violation of the Public Health Code could not be established." The trial court then denied, without a hearing, EQMD's motion for reconsideration of the issue of whether State Farm was obligated to reimburse EQMD. A final order dismissing and closing the case was entered, and EQMD filed the instant appeal from that order.

II. STANDARDS OF REVIEW

We review de novo matters of statutory interpretation and a trial court's decision regarding a motion for summary disposition. *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 199; 895 NW2d 490 (2017); *Spohn v Van Dyke Pub Schs*, 296 Mich App 470, 479; 822 NW2d 239 (2012). Although the trial court did not specify under which subsection it was granting State Farm's motion for summary disposition, it is clear from its ruling, and the fact that it considered documentary evidence in making that ruling, that it did so under MCR 2.116(C)(10).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich. 109, 120; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) should be granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law after a review of all the pleadings, admissions, and other evidence submitted by the parties, viewed in the light most favorable to the nonmoving party. *BC Tile & Marble Co, Inc v Multi Bldg Co, Inc*, 288 Mich App 576, 582-583; 794 NW2d 76 (2010). There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party. *Id.*

"The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence." *McCoig Materials, LLC v Galui Construction Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). The burden is then shifted to the nonmoving party to demonstrate that a genuine issue of material fact exists. *Id.* The existence of a disputed fact must be established by substantively admissible evidence, although the evidence need not be in admissible form. MCR 2.116(G)(6); *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 441; 814 NW2d 670 (2012). If the nonmoving party fails to establish the existence of a material factual dispute, the moving party's motion is properly granted. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001). Our review is limited to the record established by the trial court, and a party may not expand the record on appeal. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002).

We review a trial court's decision on a motion for reconsideration for an abuse of discretion which happens when the trial court's decision falls outside the range of principled outcomes. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008).

III. ANALYSIS

EQMD argues that the trial court improperly granted summary disposition based on its finding that EQMD provided unlicensed services under the Public Health Code, MCL 333.17748, and that its services were rendered unlawfully and were, therefore, non-compensable under the no fault act, MCL 500.3157. We disagree.

Under MCL 500.3157, "only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit." *Cherry v State Farm Mut Auto Ins Co*, 195 Mich App 316, 320; 489 NW2d 788 (1992). The Public Health Code requires that "[t]o do business in this state, a pharmacy, manufacturer, or wholesale distributor, whether or not located in this state, must be licensed." MCL 333.17748. "Manufacturer" is defined as:

> a person that prepares, produces, derives, propagates, compounds, processes, packages, or repackages a drug or device salable on prescription only, or otherwise changes the container or the labeling of a drug or device salable on prescription only, and that supplies, distributes, sells, offers for sale, barters, or otherwise disposes of that drug or device and any other drug or device salable on prescription only, to another person for resale, compounding, or dispensing. [MCL 333.17706(1).]

"Wholesale distributor" is defined as:

> a person, other than a manufacturer, who supplies, distributes, sells, offers for sale, barters, or otherwise disposes of, to other persons for resale, compounding, or dispensing, a drug or device salable on prescription only that the distributor has not prepared, produced, derived, propagated, compounded, processed, packaged, or repackaged, or otherwise changed the container or the labeling of the drug or device. [MCL 333.17709(5).]

Attached to its motion for summary disposition, State Farm presented evidence from EQMD's website that EQMD "offer[s] a line of custom compounded topicals" and provides physicians with certain medications through a mail order program. State Farm also provided deposition testimony from Dr. Hakki that EQMD provides his office with prescription medications. In response, EQMD argued that it was not required to obtain a license because it does not physically handle any prescription medication. Although at the time the trial court made its decision, EQMD was not a properly admitted party to the litigation, the trial court nonetheless considered EQMD's brief submitted in response to State Farm's motion for summary disposition. However, EQMD presented no evidence to substantiate its factual assertion regarding its non-handling of prescription medications. Accordingly, EQMD failed to carry its burden of rebutting State Farm's evidence and summary disposition was properly granted.

EQMD argues that the trial court abused its discretion by failing to consider the LARA letter it submitted with its motion for reconsideration. Contrary to EQMD's assertion, the LARA letter does not demonstrate that EQMD was not required to obtain a license under MCL 333.17748. Rather, it merely indicates that LARA could not conclude that EQMD had violated the Public Health Code as a result of an investigation that occurred two years after the date of the services at issue in this case. Thus, the LARA letter is insufficient to create a genuine issue of material fact

as to whether EQMD was required to be licensed pursuant to the Public Health Code at the time it distributed prescription medications to Dr. Hakki, Harbi, and Kasnona.[2]

EQMD further contends that because it does not physically handle any prescription medications, it is not required to obtain a license under the Public Health Code. However, nothing in the plain language of MCL 333.17706(1) or MCL 333.17709(5) mentions physical possession or makes any such requirement. "The courts may not read into the statute a requirement that the Legislature has seen fit to omit." *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743 (2013). EQMD argues that it is not a manufacturer or wholesale distributor because there is no evidence that it offers prescription medications for sale. Even assuming its website is merely an advertisement, as EQMD argues, it clearly states that EQMD "offer[s] a line of custom compounded topicals." The business arrangement between Dr. Hakki and EQMD demonstrates that, at some point, an agreement was reached and a sale occurred. Accordingly, we find no legal error in the trial court's analysis and conclusions.

IV. CONCLUSION

The trial court did not err when it concluded that EQMD's unlicensed services were not lawfully rendered and non-compensable under the no fault act. Accordingly, we affirm.

/s/ Anica Letica
/s/ Michael J. Riordan
/s/ Thomas C. Cameron

[2] In further support of its argument, EQMD points to the affidavit attached to its brief on appeal of Andrew Hudson, the manager of the Pharmacy and Drug Manufacturing Section of LARA's Bureau of Professional Licensing (BPL). Generally, a party may not enlarge the record on appeal. MCR 7.210(A). Nonetheless, the affidavit merely restates the contents of the LARA letter, and therefore, it suffers from the same flaws as the LARA letter.