STATE OF MICHIGAN

COURT OF APPEALS

OLLAH HIDER,

Plaintiff,

and

EQMD, INC.,

Intervening Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 15, 2021

No. 353166
Macomb Circuit Court
LC No. 2018-001105-NF

Before: BECKERING, P.J., and FORT HOOD and RIORDAN, JJ.

PER CURIAM.

EQMD, Inc., appeals as of right[1] the trial court's February 25, 2020 order denying its motion for relief from judgment. We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

This case concerns the attempts of EQMD to intervene in an underlying no-fault case and seek payment for services which it provided to plaintiff Ollah Hider in her treatment for injuries

[1] Defendant challenges this Court's jurisdiction on appeal and argues the claim of appeal was untimely. This Court already decided the jurisdictional issue when it denied defendant's motion to dismiss. *Hider v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, entered August 5, 2020 (Docket No. 353166). And, even if we lacked jurisdiction to hear this appeal as of right, we shall treat it as on leave granted in the interest of judicial economy. *Waatti & Sons Electric Co v Dehko*, 230 Mich App 582, 585; 584 NW2d 372 (1998).

sustained in a March 2017 motor-vehicle accident. As described by EQMD in the trial court, it is "a pharmacy management organization that works with physician dispensing groups that fill prescriptions to patients." Here, EQMD was "working with Dr. Nazih Iskander, M.D., and Metro Pain Clinic's medical office" in Southfield, Michigan. According to EQMD, Dr. Iskander "prescribed and dispensed" medications to Hider "utilizing EQMD's sophisticated computer software" and EQMD "incurred a balance of $2,466.62 for the service dates from March 20, 2017[,] to April 19, 2017, for which it seeks reimbursement."

Hider filed a complaint against defendant State Farm seeking personal protection insurance (PIP) benefits for injuries she allegedly suffered in the March 2017 accident. Defendant moved for partial summary disposition as it related to bills from EQMD. Defendant argued EQMD was not a Michigan corporation, had not filed paperwork with the Michigan Department of Licensing and Regulatory Affairs (LARA) to conduct business in the state, and, despite being a manufacturer and wholesale distributor as defined in the Public Health Code, MCL 333.1101 *et seq*., was not licensed to have "any pharmaceutical involvement" here. Thus, defendant asserted, EQMD's alleged products and services were unlawful and not reimbursable as a no-fault benefit. Defendant requested dismissal of Hider's claims as it related to the EQMD bills under MCR 2.116(C)(10).

In mid-December 2018, Hider assigned her rights in benefits for services rendered by EQMD to EQMD. The day after the assignment, EQMD, a nonparty, filed a response to defendant's motion for partial summary disposition. EQMD argued it was not a "pharmacy, manufacturer, or wholesale distributor" under MCL 333.17748 and, therefore, was not required to obtain a license for those fields. Additionally, the day after filing its response to defendant's motion for partial summary disposition, EQMD moved to intervene. EQMD argued intervention by right was appropriate under MCR 2.209(A). EQMD argued that it had an interest in the outstanding balance for services rendered to Hider by the assignment and that the outcome of the case may impede its ability to protect that interest. Further, EQMD argued that the parties, Hider and defendant, would not adequately represent its interest. EQMD also sought to intervene through permissive intervention under MCR 2.209(B), arguing that there were several overlapping questions of law and fact, that intervention would not unduly delay or prejudice the adjudication of the rights of the original parties, and that the dispositive motion affected its substantive rights.

After defendant responded, asserting intervention would be inappropriate, a hearing was held on defendant's motion for partial summary disposition and EQMD's motion to intervene. The trial court believed that EQMD was "not licensed as a pharmacy or a pharmaceutical warehouse of distributions in the State of Michigan." After an explanation of EQMD's business from EQMD's attorney, the trial court simply stated: "Your claim is against the doctor. I'm granting [defendant's] motion for [partial] summary disposition." The trial court also stated that it was "redenying your request for intervention." On January 7, 2019, an order was entered granting defendant's motion for summary disposition regarding expenses from EQMD and denying EQMD's motion to intervene. The order also had a handwritten note stating, "(does not close case)." On April 3, 2019, a stipulation and order of dismissal was entered. The order indicated defendant and Hider had "reached an amicable resolution" and entered into a release agreement on March 18, 2019. As a result, the order dismissed Hider's claims against defendant with prejudice, and stated that the "dismissal resolves the last pending claim and closes the case."

On January 7, 2020, EQMD moved for relief from judgment and to reinstate the case and intervene. First, EQMD argued the order dismissing EQMD's claims should be set aside because EQMD was not required to maintain a pharmacy license. EQMD asserted the January 7, 2019 order should be set aside under MCR 2.612(C)(1)(f), there were no other parties whose rights would be detrimentally affected because EQMD sought only to litigate a single bill against defendant, and extraordinary circumstances existed requiring the judgment be set aside, i.e., the issuance of a February 21, 2019 letter containing a determination from LARA that "a violation of the Public Health Code [by EQMD] could not be established[.]" Second, EQMD argued it had survived summary disposition on the licensing issue in several other cases in Wayne Circuit Court in which it had presented the February 21, 2019 letter. Third, EQMD argued it had a direct interest in the property and transaction at issue in the underlying case, explaining that a licensed physician prescribed and dispensed Hider's prescriptions, which were necessary to treat her injuries. EQMD asserted that the dismissal of its claims impeded its ability to protect its interests because it is not required to maintain a pharmacy license to conduct its business.

Defendant responded, arguing that EQMD's motion for relief from judgment was untimely and that relief was not appropriate under MCR 2.612(C)(1)(f). Defendant also argued that EQMD's motion would be more appropriately considered under MCR 2.612(C)(1)(b), on the basis of the "new" February 21, 2019 letter from LARA. However, defendant argued that the letter was not newly discovered evidence because the case was still pending in February 2019. Defendant also asserted that the LARA letter did not directly answer whether EQMD was conducting its business without a license, and simply concluded a violation of the Public Health Code could not be established.[2]

A hearing was held on EQMD's motion for relief from judgment. After summarizing the procedural background of the case, the trial court noted intervention was "denied, and it was denied in part on the licensing issue." The trial court then held:

> There is no basis for not [sic] allowing the intervention. The option of the proposed interven[o]r at that time was to file its own litigation, should the proposed provider wish to do so appeal the Court's decision which was not something [sic].
>
> There is no basis for this Court reopening the case and proceeding further. So I'm denying the motion for leave from judgment for the denial of the original proposed motion for intervention.

After the trial court's ruling, EQMD asserted that it obtained the assignment and sought to intervene because "clearly [Hider's] counsel was not able to represent [EQMD's] interest" since "they didn't know about the licensing issue," and requested that the trial court set aside the order denying intervention. The trial court responded, stating that "intervention was too late" and noting that the case was "set for case evaluation at the time." The trial court also stated that EQMD

[2] In a separate case decided after the instant litigation in the trial court, we affirmed a trial court's ruling that EQMD's unlicensed services were not lawfully rendered notwithstanding the LARA letter. See *Harbi v State Farm Mut Auto Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 10, 2020 (Docket No. 352139).

"waited seven months to come back to this Court" and that it would not reinstate the case nor "allow the motion." The trial court entered an order denying EQMD's motion for relief from judgment the same day as the hearing.

On March 17, 2020, EQMD filed its claim of appeal with this Court, appealing the trial court's February 25, 2020 order denying its motion for relief from judgment. Defendant moved to dismiss EQMD's appeal with this Court, arguing this Court lacked jurisdiction over the appeal because the claim of appeal was untimely. This Court denied defendant's motion to dismiss. *Hider v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, entered August 5, 2020 (Docket No. 353166).

II. MOTION FOR RELIEF FROM JUDGMENT

EQMD argues that the trial court abused its discretion in denying its motion to intervene and in granting partial summary disposition in defendant's favor. However, EQMD did not timely appeal within 21 days of the order denying intervention and granting partial summary disposition in defendant's favor. Thus, as defendant observes, the only order EQMD could be appealing is the order denying its motion for relief from judgment. And, here, we conclude the trial court did not abuse its discretion in denying EQMD's motion for relief from judgment as untimely.

"A trial court's decision on a motion for relief from judgment is reviewed for an abuse of discretion." *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 404; 651 NW2d 756 (2002). This Court also reviews for an abuse of discretion a trial court's decision on a motion to intervene. *State Treasurer v Bences*, 318 Mich App 146, 149; 896 NW2d 93 (2016). "An abuse of discretion occurs if the trial court's decision falls outside the range of principled outcomes." *Macomb Co Dep't of Human Servs v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

A party may seek relief from judgment under MCR 2.612(C), which provides as follows:

> (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.
>
> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> (d) The judgment is void.
>
> (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
>
> (f) Any other reason justifying relief from the operation of the judgment.

> (2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. Except as provided in MCR 2.614(A)(1), a motion under this subrule does not affect the finality of a judgment or suspend its operation.
>
> (3) This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court.

As defendant observes, EQMD claimed to move for relief from judgment under MCR 2.612(C)(1)(f), the "catchall" provision. As a general rule:

> In order for relief to be granted under MCR 2.612(C)(1)(f), the following three requirements must be fulfilled: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered. [*Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999) (internal citation omitted).]

"Subrule (f) indisputably widens the potential avenues for granting relief from a judgment. But the competing concerns of finality and fairness counsel a cautious, balanced approach to subrule (f), lest the scale tip too far in either direction." *Rose v Rose*, 289 Mich App 45, 58; 795 NW2d 611 (2010). "[W]hile permitting relief under this subrule for 'any other reason' justifying it, our courts have long required the presence of extraordinary circumstances and a demonstration that setting aside the judgment will not detrimentally affect the substantial rights of the opposing party." *Id*.

At the hearing on EQMD's motion for relief from judgment, the trial court noted that EQMD "waited seven [sic: nine] months to come back to this Court" and file its motion for relief from judgment. The trial court, thus, indicated that it was "not going to reinstate the case and allow the motion," and stated that the motion for relief from judgment was denied.

The trial court did not abuse its discretion in denying EQMD's motion for relief from judgment as untimely. EQMD was required to file its motion for relief from judgment "within a reasonable time" after the final order. MCR 2.612(C)(2). EQMD did not move for relief from the January 7, 2019 order until January 7, 2020, a year after that order was entered, and nine months after the April 3, 2019 order that initially closed the case. As defendant notes, EQMD relied on the February 21, 2019 letter from LARA in support of its motion for relief from judgment. Thus, EQMD had the LARA letter before the April 3, 2019 order was entered, slightly over a month after the trial court entered the January 7, 2019 order, and almost a year before the motion for relief from judgment was filed. As defendant further notes, EQMD has, at no point, provided an explanation for the delay between receiving the letter and its filing of the motion for relief from

judgment. And, as recognized by defendant, our Supreme Court, in *Kowalczyk v Jones*, 443 Mich 881; 504 NW2d 185 (1993), ruled that a motion for relief from judgment made nine months after learning of the basis for such a motion was not made within a reasonable time.

In *Kowalczyk*, our Supreme Court summarily reversed this Court and reinstated the trial court's judgment denying the defendant's motion to aside a default judgment. The defendant's motion for relief from judgment was not filed until approximately nine months after the defendant learned of the entry of the default judgment. Our Supreme Court held the trial court did not abuse its discretion in denying the motion because it was not made within a reasonable time. Specifically, the Court stated:

> It was not until approximately nine months later that the defendant moved to set the default judgment aside despite the fact that the defendant learned of the entry of that judgment the day following its entry. MCR 2.612(C)(2) provides that a motion for relief from judgment must be made "within a reasonable time." Under the circumstances of the case, we find that the trial judge did not abuse his discretion in denying the motion to set aside the default judgment on this basis. [*Id*. at 881.]

Like the defendant in *Kowalczyk*, EQMD waited until approximately nine months after the April 3, 2019 order (and exactly a year after the January 7, 2019 order) to move to set aside the judgment. As a result, the trial court did not abuse its discretion in denying EQMD's motion for relief from judgment on the ground that it was not brought within a reasonable time, as required by MCR 2.612(C)(2).[3]

III. CONCLUSION

The trial court did not abuse its discretion in denying the motion for relief from judgment. Accordingly, we affirm.

/s/ Jane M. Beckering
/s/ Karen M. Fort Hood
/s/ Michael J. Riordan

[3] Although defendant raises several other arguments regarding why this Court should affirm the trial court's denial of EQMD's motion for relief from judgment, we need not address them given our conclusion regarding the untimeliness of EQMD's motion. Further, because EQMD's motion for relief from judgment was not filed within a reasonable time, we need not reach the questions of whether intervention was improperly denied and summary disposition improperly granted.