

STATE OF MICHIGAN
COURT OF APPEALS

JAWAD A. SHAH, M.D., PC, INSIGHT PAIN
MANAGEMENT CENTER, INSIGHT PHYSICAL
THERAPY AND REHAB CENTER, INSIGHT
RADIOLOGISTS, PC, INSIGHT HEALTH AND
FITNESS CENTER, INC, and INSIGHT HEALING
CENTER,

Plaintiffs-Appellants,

v

PROGRESSIVE MARATHON INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 17, 2021

No. 353865
Oakland Circuit Court
LC No. 2018-169207-NF

Before: MURRAY, C.J., and FORT HOOD and RICK, JJ.

PER CURIAM.

In this action seeking no-fault personal protection insurance benefits (PIP), plaintiffs seek to appeal as of right a June 1, 2020 stipulated order of dismissal without prejudice of the claims remaining in the case after the trial court previously dismissed plaintiffs’ other claims when it granted defendant’s motion for partial summary disposition. Because the June 1, 2020 order is not a final order under the court rules, we dismiss this appeal for lack of jurisdiction.

I. BACKGROUND

On June 28, 2017, Justin Brooks was involved in a motor vehicle accident and suffered serious injuries. Defendant, as the insurer of Brooks’s vehicle, is the first in priority to pay PIP benefits. Upon Brooks’s discharge from the hospital, he was transported to plaintiff Insight Healing Center (IHC). Brooks had two stays at IHC: one from July 26, 2017, through June 3, 2018, and another from September 21, 2018, through October 11, 2018. In between Brooks’s two stays, IHC received its adult foster-care license from the state on June 7, 2018. Thus, his first stay with IHC was when IHC had no license, but IHC was licensed during Brooks’s second stay.

Plaintiffs filed a two-count complaint, alleging in Count I that plaintiffs were entitled to no-fault insurance benefits for caring for Brooks, and were entitled to attorney fees and costs for overdue bills. In Count II, plaintiffs alleged that defendant violated statutory duties and contractual duties or both. Defendant moved for partial summary disposition, arguing that any claims for services provided by IHC before it received its adult foster-care license were barred because, without that license, it was not lawfully rendering services as required by the no-fault act, MCL 500.3101 *et seq.* The trial court agreed and granted defendant's motion, dismissing these claims for services predating June 8, 2018.

Plaintiffs subsequently moved for partial summary disposition related to their claims for services rendered after issuance of the foster-care license. Plaintiffs argued that because the license was issued in June 2018, there was no basis to dispute the claims for services covering September 2018 and October 2018. Plaintiffs further argued that because those payments were overdue, they were entitled to attorney fees under the no-fault act. The trial court denied plaintiffs' motion. Regarding the first part of plaintiffs' argument, the court noted that the issue was moot because defendant had already paid plaintiffs the amounts sought, including interest. Regarding plaintiffs' request for attorney fees, the trial court denied the motion because the time for determining whether an insurer unreasonably refused to pay or delayed in making payment is postjudgment and, in any event, viewing the evidence in a light most favorable to defendant, there were genuine issues of material fact regarding whether defendant's denial was reasonable.

The parties thereafter stipulated to the dismissal of the pending claims, i.e., the claims for services incurred after June 2018, without prejudice, and plaintiffs filed the instant appeal as of right.

II. JURISDICTIONAL ANALYSIS

Under MCR 7.203(A), this Court has jurisdiction over appeals by right from certain types of orders, including a "final order," MCR 7.203(A)(1), which is defined in pertinent part as "the first judgment or order that disposes of all the claims *and* adjudicates the rights and liabilities of all the parties," MCR 7.202(6)(a)(i) (emphasis added).

There is no question that the stipulated order of dismissal *disposed* of all remaining claims, leaving no active claims. However, because the dismissal was without prejudice, it cannot be said that the dismissal *adjudicated* the claims.

Citing *Detroit v Michigan*, 262 Mich App 542; 686 NW2d 514 (2004), defendant argues that such a stipulated order is not a final order under the court rules. Similar to the present case, *Detroit* involved a stipulation to dismiss claims without prejudice. *Id.* at 545. The plaintiff brought an action for injunctive and declaratory relief against the state and the State Fair Development Group, LLC. *Id.* at 544. The state moved for summary disposition, which the trial court denied. *Id.* After the parties stipulated to the dismissal of the remaining claims without prejudice, the state appealed. *Id.* This Court held that it lacked jurisdiction because a final order had not been entered, explaining:

The parties' stipulation to dismiss the remaining claims without prejudice is not a final order that may be appealed as of right; it does not resolve the merits

of the remaining claims and, as such, those claims are “not barred from being resurrected on that docket at some future date.” *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 136; 624 NW2d 197 (2000). The parties’ stipulation to dismiss the remaining claims was clearly designed to circumvent trial procedures and court rules and obtain appellate review of one of the trial court’s initial determinations without precluding further substantive proceedings on the remaining claims. This method of appealing trial court decisions piecemeal is exactly what our Supreme Court attempted to eliminate through the “final judgment” rule. MCR 7.202(6)(a)(i); *McCarthy & Assoc, Inc v Washburn*, 194 Mich App 676, 680; 488 NW2d 785 (1992). [*Detroit*, 262 Mich App at 545.¹]

Detroit is controlling and clearly holds that stipulated dismissals *without* prejudice are not final orders because they do not “resolve the merits of the remaining claims and, as such, those claims are ‘not barred from being resurrected on that docket at some future date.’ ” *Id.* (citation omitted). That is the situation here, where the purported final order did not adjudicate or resolve the remaining claims, but instead dismissed them without prejudice, allowing them to be resurrected at a later time.

Our conclusion that the stipulated order of dismissal without prejudice is not a final order is also supported by *MLive Media Group v Grand Rapids*, 321 Mich App 263, 268; 909 NW2d 282 (2017), in which this Court reiterated, “Parties cannot create a final order by stipulating the dismissal of remaining claims without prejudice after a trial court enters an order denying a motion for summary disposition addressing only some of the parties’ claims.” We see no reason why the fact that the trial court in *MLive* had previously *denied* a motion for summary disposition instead of *granted* a motion for summary disposition, requires a different result. See also *Acorn Investment Co v Mich Basic Prop Ins Ass’n*, 495 Mich 338, 355-356; 852 NW2d 22 (2014) (“A stipulated order of dismissal based on a settlement agreement is not a ‘judgment’ in the sense that it is not a final determination by the *court* of the rights and obligations of the parties.”). On the basis of this authority, we hold that this Court lacks jurisdiction to hear this appeal as of right, and accordingly, dismiss the appeal.

Dismissed.

/s/ Christopher M. Murray

/s/ Karen M. Fort Hood

/s/ Michelle M. Rick

¹ Although this Court determined that it lacked jurisdiction to hear the appeal as of right, it nonetheless exercised its discretion to treat the appeal as an application for leave to appeal and granted it. *Detroit*, 262 Mich App at 546. We decline to exercise that discretion because that would defeat the purpose of the final order rule because, according to the parties, the claims that were dismissed without prejudice were dismissed to avoid trial and to obtain an appellate ruling on the issues decided by the trial court. Avoidance of this type of piecemeal litigation is precisely why the final order rule exists.