STATE OF MICHIGAN

COURT OF APPEALS

In re Conservatorship of DEANNA THERESA CISNEROS.

MARK A. FULLMER, Successor Conservator of DEANNA THERESA CISNEROS, a Protected Person,

Petitioner-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Respondent-Appellant.

UNPUBLISHED
September 27, 2011

No. 298922
St. Clair Probate Court
LC No. 07-110072-CA

Before: SERVITTO, P.J., and MARKEY and K.F. KELLY, JJ.

PER CURIAM.

On November 8, 2000, Deanna Theresa Cisneros suffered significant injuries in an automobile accident and a conservatorship was opened on her behalf. The initial conservator was removed by the probate court and petitioner, Mark A. Fullmer, was appointed as successor conservator. Respondent, Auto Club Insurance Association, appeals as of right from an order of the probate court which granted petitioner reimbursement in the amount of $11,274 for his efforts in the defense of Cisneros in real estate and indebtedness disputes, as well as fees for legal work provided on behalf of Cisneros to recover no-fault insurance benefits. The probate court found that the fees were qualified allowable expenses under § 500.3107(1)(a) of Michigan's No-Fault Insurance Act, MCL 500.3101 *et seq*. We affirm.

I. STANDARD OF REVIEW

At issue in this case is whether or not expenses incurred by a conservator in the handling of a protected person's purely economic affairs qualify as "allowable expenses" under MCL 500.3107(1)(a). "Whether a cost constitutes an allowable expense under MCL 500.3107(1)(a) is a question of statutory construction, subject to review de novo." *Hoover v Michigan Mut Ins Co*, 281 Mich App 617, 622; 761 NW2d 801 (2008).

II. ANALYSIS

MCL 500.3107(1)(a) provides the following with respect to payment of personal protection insurance benefits for "allowable expenses":

> (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonable necessary products, services and accommodations for an injured persons care, recovery, or rehabilitation. . . .

In *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521; 697 NW2d 895 (2005), the Michigan Supreme Court provided further explanation as to the meanings of "care," "recovery," and "rehabilitation." Under *Griffith*, "expenses for 'recovery' or 'rehabilitation' are costs expended in order to bring an insured to a condition of health or ability sufficient to resume his preinjury life." *Griffith,* 472 Mich at 535. "Care" is defined as "expenses for those products, services, or accommodations whose provision is necessitated by the injury sustained in the motor vehicle accident." *Id*. As mentioned in *Griffith*,

> it is important to note that the statute does not require compensation for any item that is reasonably necessary to a person's care in general. Instead, the statute specifically limits compensation to charges for products or services that are reasonably necessary "for an *injured person's* care, recovery, or rehabilitation." (Emphasis added.) This context suggests that "care" must be related to the insured's injuries. [*Id.* at 534.]

Petitioner relies heavily on *Heinz v Auto Club Ins Ass'n*, 214 Mich App 195; 543 NW2d 4 (1995). In *Heinz*, we rejected the argument that allowable expenses under MCL 500.3107(1)(a) were limited to medical expenses only and held that "if a person is so seriously injured in an automobile accident that it is necessary to appoint a guardian or conservator for that person, the services performed by the guardian and conservator are reasonably necessary to provide for the person's care*."* *Heinz*, 214 Mich App at 198.

Heinz was distinguished *In re Estate of Shields*, 254 Mich App 367; 656 NW2d 853 (2002). In that case, the petitioner was appointed conservator of an estate established for his infant daughter following an automobile accident. *Shields,* 254 Mich App at 368. The estate was funded from a payment received following settlement of a claim against the driver of the vehicle that struck the minor. *Id.* We concluded that the conservatorship was only necessary because the beneficiary of the estate was "a minor, unable to oversee her own financial affairs." *Id*. at 370. Thus, unlike the situation in *Heinz*, "the conservatorship . . . , and its related costs, did not 'arise out of' the accident for which respondent was obligated to pay [personal injury protection] benefits." *Id.*

Respondent argues that the holding in *Griffith* greatly restrains the rule of *Heinz* and leaves respondent free from liability with regard to fees charged for legal services provided by a conservator that the protected party would have required had they been injured or not. Here, there is no question that the provision of conservatorship was "necessitated by the injury sustained in the motor vehicle accident," and there is no question that Cisneros's incapacitation was solely the result of injuries sustained due to an automobile accident. In other words, but for the accident, a conservator would not have been needed. Moreover, there is no dispute as to whether the expenses charged by petitioner were reasonable. Rather, the question is whether petitioner's expenses were necessary for Cisneros's care, recovery or rehabilitation, given that they were not incurred "in order to bring an insured to a condition of health or ability sufficient to resume his preinjury life." *Griffith*, 472 Mich at 535.

Griffith explains care "is broader than 'recovery' and 'rehabilitation' because it may encompass expenses for products, services, and accommodations that are necessary because of the accident but that may not restore a person to his preinjury state." *Griffith*, 472 Mich at 535. Nonetheless, *Griffith* concluded that the food costs in issue were not "necessary for [Griffith's] care because of the injuries sustained in the accident." *Id.* at 536. "In fact," the Court observed, "if Griffith had never sustained, or were to fully recover from, his injuries, his dietary needs would be no different than they are now." *Id.*

We looked to both *Griffiths* and *Heinz* in our recent decision *May v Auto Club Ins Ass'n*, ___Mich App___; ___NW2d___ (Docket No. 292649, issued April 26, 2011). In that case, the probate court determined that because the majority of the fees sought by the conservator "involved 'marshalling assets, paying bills, meetings, and administrative and legal services'" for the protected person in issue, they were not allowable expenses under MCL 500.3107(1)(a). *May*, slip op p 2. We disagreed, noting:

> *Heinz* clearly concluded that the term "care," as used in MCL 500.3107(1)(a), was not restricted to medical care alone. Rather, it concluded that the type of care provided by a guardian could constitute "care," within the meaning of MCL 500.3107(1)(a). And we conclude that there is little basis for distinguishing the "care" provided by a guardian from that provided by a conservator." [*Id*. at slip op pp 3-4.]

A conservatorship was necessary as a part of the protected person's "care" because "he could no longer manage his own affairs as a result of a closed head injury." *Id.* at slip op p 5. Citing MCL 700.5401(4), which provides for appointment of a conservator for "an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively," *May* concluded that the services provided by the petitioner "are extraordinary professional services related to [the protected person's] care." *Id*. at slip op pp 4-5.

We then addressed the respondent's argument that a conservatorship did not constitute an allowable expense under MCL 500.3107(1)(a):

> Here, [the protected person] had a closed head injury that prevented him from being able to manage his own affairs—that is, [his] need for a conservator was causally related to the injuries [he] sustained in an accident. Admittedly,

> even if [he] had not been in the accident, he would have needed to pay his bills and manage his accounts and assets. The question therefore becomes whether the conservator's actions were needed for [his] care, recovery, or rehabilitation *from the injury*. Unlike the case in *Griffith*, petitioner here was not seeking payment of the actual expenses that he would have incurred—such as the cost of food—nor was he seeking to recover the cost of engaging a real estate agent to sell his home or the cost of advertisements. These expenses would likely have been incurred regardless of the accident. Instead, the claim here is for the *service* of having a conservator *manage* these matters; and this would not have been necessary but for the accident-related injury. . . . [B]ecause the need for the conservator was causally connected to [the protected person's] injury and the expense is reasonably necessary for his "care," it too is compensable under MCL 500.3107(1)(a). Accordingly, *Griffith* does not bar recovery of the conservator's fee. [*May,* slip op pp 6-7 (emphasis in original).]

Pursuant to *May*, we conclude that because the conservatorship was necessary to care for Cisneros as a result of bodily injuries she suffered in an automobile accident and because the reasonable expenses incurred by petitioner in managing Cisneros's business and legal affairs would not have been necessary but for the accident, those expenses were "allowable expenses" under MCL 500.3107(1)(a).

In reaching this conclusion, we specifically reject respondent's argument that petitioner's claim was one for "replacement costs" under MCL 500.3107(1)(c), which provides for payment of "[e]xpenses not exceeding $20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent." In its order, the trial court noted:

> As is apparent from the statutory citations, MCLA 500.3107(1)(a) and (c) are part of the same section of the No Fault Act, which identifies the different types of personal protection insurance benefit payments required. Adopting Auto Club's argument would give subsection (c) supremacy over subsection (a) and, in effect, would make the latter section without practical effect. Under Auto Club's reading, any services provided by a guardian or conservator would have been performed by the ward and, given the limitations of subsection (c), would be limited to $20 per day for the first three (3) years after the date of the accident. Any charges after that date would not be an allowable expense, and accordingly not recoverable. The Court believes such an interpretation is contrary to the explicit language of the statute.

We agree with the trial court's rationale. In interpreting a statute, we must give effect to every word, phrase, and clause in the statute and avoid an interpretation that would render any part of the statute surplusage or nugatory. *State Farm Fire & Cas Co v Old Republic Ins Co,* 466 Mich 142, 146; 644 NW2d 715 (2002).

Affirmed. As the prevailing party, petitioner may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly