

STATE OF MICHIGAN
COURT OF APPEALS

HEALING PLACE, LTD., ANOTHER STEP
FORWARD, and HEALING PLACE OF
DETROIT, INC.,

UNPUBLISHED
December 27, 2011

Plaintiffs-Appellees,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and PAULA COUCH,

No. 299098
Washtenaw Circuit Court
LC No. 07-000031-NF

Defendants-Appellants.

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendants appeal the trial court's order denying their request to file a motion for summary disposition outside the date set by the trial court's scheduling order. This Court stayed the lower court proceedings and granted leave to appeal. The stay previously imposed is hereby lifted. We remand this matter and direct the trial court to consider defendants' motion.

I. FACTS AND PROCEEDINGS BELOW

Plaintiffs the Healing Place ("THP"), Ltd, Another Step Forward, and THP of Detroit, Inc., filed this case against defendant State Farm Mutual Automobile Insurance Company, a no-fault insurer, and Paula Couch, a State Farm employee, as a result of State Farm's refusal to pay for services plaintiffs rendered to the insured, Gary Raymond, who was involved in a motor vehicle accident in which he suffered a closed head injury. Plaintiffs are "Michigan corporations engaged in the business of providing rehabilitation services to individuals suffering from traumatic brain injury, addictive disorders and/or psychiatric disorders in the State of Michigan."

THE CLAIMS

Plaintiffs have a "declaratory relief" and a "tortious interference with contractual relationship" claim pending in the underlying litigation. For the first claim, plaintiffs asserted

that defendant¹ was obligated to pay for \$115,233.17 worth of services they rendered to Raymond. Plaintiffs asked the court to determine whether the no-fault act applied to plaintiffs' claims and to determine the amount of money defendants owed plaintiffs. For the tortious interference claims, plaintiffs asserted that defendants interfered with their contractual relationship when they informed Raymond's mother that plaintiffs did not have a proper license, and that she should move Raymond to another facility because State Farm would not pay for Raymond's treatment with plaintiffs.

FIRST MOTION FOR SUMMARY DISPOSITION

In their first motion for summary disposition, defendants asserted that the no-fault act explicitly provides that an insurance company is only responsible for paying for medical services that were lawfully rendered, and, pursuant to binding authority, a service is lawfully rendered only if it is provided in accordance with Michigan's licensure requirements. According to defendants, the services at issue were not lawfully rendered because the providers were only licensed to treat substance abuse. In support of this argument, defendants relied on *Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51; 744 NW2d 174 (2007) (hereinafter *Naylor*), where this Court held that THP, Ltd., THP at North Oakland Medical Center, and New Start, Inc., were not entitled to recover under the no-fault act because the services rendered to Edgar Naylor required a psychiatric services and adult foster care license and were therefore not lawfully rendered. Regarding the tortious interference claim, defendants argued that plaintiffs could not prove that defendants' allegations were false given the decision in *Naylor*, that State Farm had a qualified privilege to disclose information about improper licensure, and that plaintiff could not prove any damages.

Plaintiffs responded that the facility in *Naylor* was different and that the services provided to Raymond did not require a foster care license.

The trial court denied defendants' motion for summary disposition as follows:

The present case is distinguishable [from *Naylor*] because the factual record is far more complex, and because defendants have offered no evidence to establish exactly how each service rendered to Mr. Raymond should be characterized; what type of license is required to render such a service; and whether or not the person(s) and organization(s) rendering the service had such a license.

* * *

Defendant has not even come close to making a showing that the services provided to Mr. Raymond were provided by persons who were not properly licensed. Their mere assertions that plaintiff was not properly licensed are insufficient to meet even the minimal burden imposed on a moving party under MCR 2.116(C)(10). Defendants do not identify the specific services provided to

¹ This claim is only applicable to defendant State Farm.

Mr. Raymond, the type of license or certification required for a provider of such services, the identities of the individuals and/or entity providing the services or the licensure(s) or certifications held by those individuals or entities.

* * *

The Court finds that there are genuine issues of material fact in dispute as to whether plaintiff has the proper licensure to provide the services it has provided to Mr. Raymond, and, therefore, as to whether plaintiff was “lawfully rendering” services within the meaning of the no fault act and under [*Naylor*.]

The trial court also held that defendants were improperly attempting to use *Naylor* to establish an issue of fact, i.e. that plaintiffs were without proper licensure to provide the services they did. It noted that the determination of a factual issue is only binding when the party seeking to establish the fact meets the requirements for collateral estoppel and/or res judicata; and found that defendants did not even attempt to make out the elements of collateral estoppel. Regarding the tortious interference claim, the trial court stated that “a reasonable trier of fact could find that defendants’ representations regarding licensure and qualifications were false and were made to induce [Raymond’s mother] to terminate her business relationship with [plaintiffs],” and that “whether plaintiff has proper licensure to provide the services it does is a disputed issue of fact.”

ADJOURNMENT OF TRIAL

On March 15, 2010, defendants moved for adjournment of trial. The motion indicated that “the United States Court of Appeals for the Sixth Circuit considered a virtually identical case between these very same parties,” that “the primary difference between [*ASF/Morgan*]² and the instant action is the identity of the State Farm insured for whom Plaintiffs were allegedly providing services, that *ASF/Morgan* “would have preclusive effect on the captioned litigation,” and that the time for moving for reconsideration, which plaintiffs indicated they would do, had not passed. Attached to the motion was a stipulated order, signed by both parties, indicating that they had agreed to adjourn the trial “so the Court may consider the effect of [*ASF/Morgan*] on the remaining issues in dispute between the parties in this case.” This stipulated order was signed by the trial court on March 25, 2010, and trial was adjourned from April 12, 2010, to July 26, 2010.

² *Another Step Forward v State Farm Mut Auto Ins Co*, 367 Fed Appx 648 (CA 6, 2010), an unpublished opinion of the United States Sixth Circuit, issued March 4, 2010 (File No. 09-1551) (hereinafter *ASF/Morgan*), which was an appeal of an unpublished opinion and order of the United States District Court, ED Michigan, Southern Division, issued March 30, 2009 (File No. 06-CV-15250); 2009 WL 879690.

SECOND MOTION FOR SUMMARY DISPOSITION

On June 23, 2010, after the date set by the trial court's scheduling order, defendants sought the trial court's permission to file a motion for summary disposition.³ Attached to their motion was their proposed motion for summary disposition. Defendants argued that summary disposition was appropriate because *ASF/Morgan* had a preclusive effect on the instant case, pursuant to the doctrine of collateral estoppel. Defendants asserted that they could not have filed before the date set by the trial court's scheduling order, because *ASF/Morgan* was not decided until after that date. Plaintiffs did not file a response to the motion.

The trial court held a hearing on June 30, 2010. At the hearing, the trial court appeared to be confused or unsure whether a Sixth Circuit case could have a preclusive effect on the instant state case, then stated that it would deny the motion because the trial date was close. Plaintiffs now appeal from this decision.

II. STANDARD OF REVIEW

"This Court reviews for an abuse of discretion a trial court's decision to decline to entertain motions filed after the deadline set forth in its scheduling order." *Kemerko Clawson LLC v RXIV, Inc*, 269 Mich App 347, 349; 711 NW2d 801 (2005). A trial court abuses its discretion when it selects an outcome that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

III. ANALYSIS

Pursuant to MCR 2.116(B)(2), a motion for summary disposition may be filed by a party "at any time." However, the court rule does not deprive the trial court of the "discretion to set a limit on the time within which a motion under MCR 2.116 may be filed, as provided by MCR 2.401(B)(2)." *Kemerko Clawson LLC*, 269 Mich App at 350. MCR 2.401(B)(2)(a)(ii) states that a trial court shall, at any time that would facilitate the progress of the case, "establish times for events the court deems appropriate, including" the "filing of motions."

Defendants' proposed motion for summary disposition argued that *ASF/Morgan* had a preclusive effect on the instant case, pursuant to the doctrine of collateral estoppel. It was impossible for defendants to file this motion before the date set by the trial court's scheduling order, because *ASF/Morgan* was not decided until well after that date.

It appears that the trial court decision was partially the result of its mistaken belief that a Sixth Circuit case could not have a preclusive effect on the instant state case. To the extent that this was the basis for its decision, this would have constituted an error of law, which by definition constitutes an abuse of discretion. *Kidder v Ptacin*, 284 Mich App 166, 170; 771

³ On March 15, 2007, the parties agreed to a scheduling order that required all dispositive motions be heard by November 28, 2007. The date for filing dispositive motions was later extended to May 28, 2008, by stipulation of the parties.

NW2d 806 (2009), citing *Koon v United States*, 518 US 81, 100; 116 S Ct 2035; 135 L Ed 2d 392 (1996). Michigan caselaw reveals that a federal court decision may have collateral estoppel implications and bar a party from relitigating issues in a state court action. See *VanVorous v Burmeister*, 262 Mich App 467, 482; 687 NW2d 132 (2004) (“when the federal court reached and decided the question in defendants’ favor, and the conduct element of plaintiff’s intentional infliction of emotional distress claim is based on the identical question of fact litigated in the district court [concerning the defendant’s civil rights violation claim], the trial court correctly concluded that collateral estoppel barred plaintiff’s claim of intentional infliction of emotional distress.”); *Bergeron v Busch*, 228 Mich App 618, 628 n 2; 579 NW2d 124 (1998) (“even where the federal court disposes of the federal claims before trial, collateral estoppel may bar the plaintiff from relitigating factual issues in a subsequent state action”); *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 144-146; 486 NW2d 326 (1992), cert den 510 US 867; 114 S Ct 189; 126 L Ed 2d (1993) (federal court decision may have collateral estoppel implications on a state court action).

Additionally, the fact that the motion was made close to the set trial date was not a valid basis for denying the motion in the instant case. As noted by defendants, it was impossible for defendants to timely file their motion for summary disposition because *ASF/Morgan* was not decided until well after the date set by the trial court’s scheduling order. Nothing in the record indicates that defendants intentionally withheld their filing for purposes of delay or to prejudice plaintiffs. Plaintiffs were clearly on notice that defendants were taking the position that *ASF/Morgan* had a preclusive effect on the instant case, because the parties had agreed to adjourn “so the Court may consider the effect of [*ASF/Morgan*] on the remaining issues in dispute between the parties in this case.” It is unclear why the trial court would agree to adjourn trial on this basis and then refuse to hear the very issue it adjourned trial for. Moreover, because the trial court declined to consider the motion, defendants would have likely asserted the collateral estoppel argument during trial, in a motion to dismiss or a motion for directed verdict. The trial court’s decision not to hear the potentially dispositive motion before the parties prepared for and participated in a trial would waste judicial resources and did not further the directive that the court rules must “be construed to secure the just, speedy, and economical determination of every action” MCR 1.105. For these reasons, the trial court’s decision not to hear defendants’ untimely motion for summary disposition fell outside the range of reasonable and principled outcomes. Thus, the trial court abused its discretion when it declined to hear the potentially dispositive motion.

The stay previously imposed is hereby lifted. We remand this matter and direct the trial court to consider defendants’ motion. We do not retain jurisdiction. Defendants may tax costs.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter