

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of WILLIE RAMSEY.

DEIDRE RAMSEY, Personal Representative for
the Estate of WILLIE RAMSEY,

UNPUBLISHED
October 18, 2011

Plaintiff-Appellant,

V

No. 299395
Oakland Circuit Court
LC No. 2009-097896-NF

AFFIRMATIVE INSURANCE,

Defendant-Appellee.

Before: MURPHY, C.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

In this action based on the no-fault act, MCL 500.3101 *et seq.*, plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition and denying plaintiff's motion for summary disposition. We affirm.

I. FACTS¹

The decedent, Willie Ramsey, was killed in an automobile accident on January 16, 2009. On January 22, 2009, plaintiff, Deidre Ramsey, mailed defendant an application for no-fault benefits and a copy of the accident report.² On February 4, 2009, just 19 days after the decedent's fatal accident, plaintiff filed a complaint against defendant for failure to pay personal

¹ Defendant argues that many of the exhibits attached to plaintiff's brief on appeal were not part of the lower court record at the time the decision at issue was issued, a fact plaintiff admitted to with respect to numerous exhibits. We have not considered any document not properly before the circuit court at the time of the decision granting defendant's motion, *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003), and counsel should refrain from seeking to expand the record on appeal without prior approval from this Court. See MCR 7.216(A)(4).

² The accident report is not part of the record but defendant concedes that it was provided.

protection insurance (PIP) benefits within 30 days of receiving reasonable proof of fact and amount of loss sustained. No affidavits or other documentation were attached to the complaint. Plaintiff subsequently filed a demand letter on February 19, 2009, but attached only a funeral bill and a copy of the death certificate. Defendant continuously contacted plaintiff with requests for documents it deemed necessary to properly calculate survivor benefits. Plaintiff's responses to these requests were partial and haphazard. In granting summary disposition to defendant, the trial court determined that defendant made payments to plaintiff within 30 days of receiving reasonable proof of loss and that the payments were therefore not overdue.

II. ANALYSIS

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We review de novo both decisions on motions for summary disposition, *Joyce v Rubin*, 249 Mich App 231, 234; 642 NW2d 360 (2002), as well as matters of statutory interpretation, *Wexford Med Group v Cadillac*, 474 Mich 192, 202; 713 NW2d 734 (2006).

MCL 500.3142(2) provides:

Personal protection insurance [PIP] benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Any part of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. For the purpose of calculating the extent to which benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

In this case, there is no question that PIP payments were delayed for over 30 days from the time that plaintiff applied for benefits, so the only question that remains is whether those benefits were delayed 30 days from the time reasonable proof of the fact and amount of loss sustained had been submitted.

With respect to the payment for funeral expenses, this expense was reimbursed within 30 days of defendant's receipt of copies of the death certificate and funeral bill. Although defendant had not determined that coverage existed until February 26, 2009, defendant paid the funeral expenses within 30 days of February 19, 2009, the date defendant received the death certification and funeral receipt. While plaintiff had previously provided an application and accident report indicating that there was a fatality, these documents did not establish the cost of a funeral, which is the focus of the statute. Thus, plaintiff's argument that the funeral expense was automatically incurred when the decedent passed away, and that it should have immediately forwarded the statutory minimum, is of no avail.

In plaintiff's letter demanding \$88,000, plaintiff sought numerous survivor benefits, including: lost wages; the value of replacement services of tangible economic value previously rendered by the decedent; support given to dependants; the value of insurance policies held by

the decedent; the funeral costs; reimbursement for decedent's wife's medical bills; and attorney fees. Except for the accident report, funeral receipt and death certificate, there was no documentation of these expenses submitted to defendant.

With respect to the expenses demanded that were compensable, plaintiff did not initially provide replacement services logs, tax returns, W-2s, social security documentation, or any affidavits of any kind. As of the February 19, 2009, demand letter, all defendant had reasonable proof of at that time was that the decedent had died and been buried. Defendant responded with requests for materials it deemed necessary to establishing the decedent's income and the proper amount of social security set-offs to be applied to benefit payments, as well as signed replacement services logs to determine the value of those services rendered by the decedent while alive. While plaintiff forwarded the decedent's W-2s several weeks later, the other documentation was either incomplete or nonexistent, despite repeated reminders in writing to plaintiff by defendant.

Nevertheless, defendant made several payments to plaintiff in the months to follow. Besides the timely payment for funeral costs, a good-faith payment for lost wages was made within days of receiving the decedent's W-2s. A lump-sum payment for replacement services was also rendered by defendant, and while it was made nearly eight months after the date of the accident that took the decedent's life, it was made within 30 days of the deposition of decedent's widow, which marked the first time defendant was able to acquire complete replacement services logs. We conclude that, while payment of benefits to plaintiff was often fraught with delays, those delays were the uniform result of plaintiff's failure to provide defendant with basic and standard proof of the fact and amount of loss sustained. Each payment made by defendant was within 30 days of receiving reasonable documentation from plaintiff. Accordingly, the trial court did not err in granting summary disposition to defendant.

Plaintiff next argues that the trial court erred by denying plaintiff interest and attorney fees. Under MCL 500.3148(1), an insured is entitled to attorney fees in an action for PIP benefits if the court finds that the insurer "unreasonably refused to pay the claim or unreasonably delayed in making proper payment." Under MCL 500.3142(3), "[a]n overdue payment bears simple interest at the rate of 12% per annum." As noted above, the payments made by defendant were not overdue or unreasonably delayed. Accordingly, plaintiff is not entitled to the relief requested.

Finally, plaintiff argues that the trial court erred by denying plaintiff's motion to compel disclosure of defendant's wage loss computations. We review a trial court's decision to grant discovery for an abuse of discretion. *SCD Chem Distrib, Inc v Medly*, 203 Mich App 374, 382; 512 NW2d 86 (1994). In this case, the motion to compel was filed after the close of discovery *and* after defendant had already been granted summary disposition. Moreover, plaintiff has indentified no legal right to the information sought. Accordingly, we find no abuse of discretion in the trial court's decision to deny the motion.

Affirmed.

Defendant may tax costs, having prevailed in full. MCR 7.219(A).

/s/ William B. Murphy

/s/ Michael J. Talbot

/s/ Christopher M. Murray