STATE OF MICHIGAN

COURT OF APPEALS

BRENT HARRIS,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant/Third-Party Plaintiff-Appellee,

and

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Third-Party Defendant/Appellee.

UNPUBLISHED
December 27, 2011

No. 300256
Oakland Circuit Court
LC No. 2009-102219-NF

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

MURRAY, J. (*concurring in part/dissenting in part*).

I concur in the majority's decision to affirm the trial court's order denying plaintiff's motion for summary disposition, as well as the dismissal of Auto Club Insurance Association, but dissent from its conclusion that the order granting defendants Blue Cross Blue Shield of Michigan's motion for summary disposition should be reversed. In my view, the contract between BCBSM and plaintiff precluded plaintiff from receiving a double recovery.

In particular, the contract between plaintiff and BCBSM indicates that BCBSM will not pay for care and services "for which you legally do not have to pay or for which you would not have been charged if you did not have coverage under this certificate." In considering this language, we must be ever mindful that "[t]he fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement." *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007).

The clause "for which you legally do not have to pay" is written in the present tense. Thus, whether we look to the factual situation at the time the complaint was filed or when plaintiff submitted his demand upon BCBSM, we know that plaintiff did not legally have to pay anything. It is undisputed that AAA has paid the outstanding medical bills incurred for plaintiff's treatment, and

continues to do so. Most importantly, AAA was required to pay these bills because under the law it was first in priority. See *Farmer's Ins Exch v Farm Bureau Ins*, 272 Mich App 106, 112; 724 NW2d 485 (2006), citing MCL 500.3114(5)(a); *Leja v Health Alliance Plan*, 202 Mich App 582, 586; 509 NW2d 871 (1993). Consequently, the exclusionary clause applied because plaintiff and BCBSM contractually agreed that BCBSM would not pay for services which "you [plaintiff] legally do not have to pay." This clause is clear and unambiguous, and enforcement of the terms required the trial court to grant BCBSM's motion for summary disposition.

Shanafelt v Allstate Ins Co, 217 Mich App 625; 552 NW2d 671 (1996) does not alter this conclusion. As the majority opinion recognizes, *Shanafelt* addressed what "incurred" means under MCL 500.3107(1)(a), while this case requires interpretation of a contract phrase contained in a health insurance plan that does not contain the word "incurred" or "incur." See *Twichel v MIC Gen Ins Co*, 469 Mich 524, 534; 676 NW2d 616 (2004) (Court of Appeals erred in importing statutory definition of term used in a contract that is unrelated to the statute.). Hence, *Shanafelt* offered no insight into the meaning of the phrase "for which you legally do not have to pay" contained within a contract providing health care benefits. Indeed, the *Shanafelt* Court made clear that it was only addressing the meaning of a term "within the context of the [no-fault] statute." *Shanafelt*, 217 Mich App at 638.

And, even though *Bombalski v Auto Club Ins Ass'n*, 247 Mich App 536; 637 NW2d 251 (2001), also addressed a no-fault issue, it's understanding of the term "liable" (a term not used in the relevant portion of the no-fault act) supports this reading of the BCBSM provision. In that case plaintiff was injured when riding a motorcycle, and his health insurer, also BCBSM, paid the medical providers. However, defendant ACIA was also required to pay benefits because of state law and the policy held by the driver who hit plaintiff. *Bombalski*, 247 Mich App at 539. Plaintiff filed suit arguing that ACIA owed plaintiff the full amount of the cost of the medical services provided, since he had "incurred" those services when they were provided, citing *Shanafelt*. The trial court granted ACIA's motion for summary disposition, holding that plaintiff was limited to recovering the amount of costs that the medical providers subsequently accepted from BCBSM. *Id*. at 538. This Court affirmed, holding that because at the time plaintiff sought benefits from ACIA he was not legally obligated to pay for the costs of services beyond what BCBSM had already paid, he had not incurred those expenses:

> *Plaintiff submits that he likewise became liable for the amounts charged by his health care providers when he accepted their services and that consequently he incurred the full amounts charged*. Plaintiff's claim does not persuade us, however, because plaintiff overlooks the significance of 'liable,' which means '[r]esponsible or answerable in law; legally obligated.' Black's Law Dictionary, *supra* at 927. *The satisfaction of plaintiff's medical bills by BCBSM through payment of less than the amounts charged by the providers relieved plaintiff of any responsibility or legal obligation to pay the providers further amounts exceeding those proffered by BCBSM and accepted by plaintiff's health care providers.* Because plaintiff bears no liability for the full medical service amounts initially charged by his health care providers, he has not *incurred* these full charges. [*Bombalski*, 247 Mich App at 543 (Emphasis supplied.).]

Consequently, according to the *Bombalski* Court, what payments are made after the services are actually "incurred" is relevant in determining whether an individual is "legally obligated" to pay

some or all of the benefits paid on his behalf. Similarly, here plaintiff was not liable to pay for any services, as ACIA had already paid their full cost. Since plaintiff was not "legally obligated" to pay for these services, BCBSM was not required by contract to pay plaintiff the value of those services.

And, although ACIA argues that this interpretation results in unfair or absurd results, in my view it is an interpretation consistent with the plain language. In fact, this conclusion is consistent with both our rules of contract interpretation as well as the scheme established by the no-fault act. Coordination of benefits within no-fault policies is permitted by MCL 500.3109a. However, as the Supreme Court noted in *Smith v Physicians Health Plan*, 444 Mich 743, 749; 514 NW2d 150 (1994), the purpose of that coordination of benefits provision "was not to provide a guarantee of double recovery regardless of whatever provisions might be contained in other insurance contracts." This holds true because "[s]ection 3109a controls the treatment of the no-fault insurance, not the status of health insurance." *Id*. at 756. The legislative purpose of allowing coordination of benefits under the no-fault act was to allow consumers who have health insurance the choice to pay a reduced premium for coordinated no-fault coverage. *Id*. at 753. And, when both the no-fault policy and the health policy are uncoordinated, the injured person may recoup from both insurers. *Id*. at 752. But what is contained in the health insurance plan is purely a matter of contract, and it is those contract terms that control what obligations BCBSM has toward its insured. *Leja*, 202 Mich App at 584.

ACIA's argument that BCBSM unfairly benefits from the fact that ACIA paid the benefits first is without merit. First, as ACIA readily admits, the only reason it was primarily responsible was because *Michigan law required* that result when plaintiff was an injured motorcyclist hit by a motor vehicle operator who owned an uncoordinated policy. MCL 500.3114(5)(a). Second, even assuming this result provides a "windfall" to BCBSM, it is not unwarranted because it is merely the result of no-fault requirements and a plain reading of the contract agreed to by the parties. And, of course, not requiring a health insurer to pay benefits to an individual who has had them already paid reduces health insurance and medical costs. *Smith*, 444 Mich at 754-755. In essence, all parties received the benefits of their particular bargains. Plaintiff received the benefit of Michigan law regarding coverage for motorcycle injuries caused by motor vehicles when all of his medical bills were paid by ACIA. ACIA performed as it was contractually required when it paid as first in priority as a result of receiving from the motor vehicle driver higher premiums for the uncoordinated provision. Finally, between BCBSM and plaintiff, both received the benefit of the bargain since plaintiff presumably paid a reduced premium for a coordinated benefit policy (though not coordinated with no-fault), and BCBSM did not have to pay for benefits that were required to be paid by ACIA. See *Smith*, 444 Mich at 760. I would affirm.

/s/ Christopher M. Murray