STATE OF MICHIGAN

COURT OF APPEALS

TONIE GAGNON, as Personal Representative of the Estate of TONYA T. AROLD, and as Guardian of ANTHONY VANKIRK GAGNON, a Minor, and TODD LEE PHILLIPS,

Plaintiffs-Appellees/Cross-Appellants/Cross-Appellees,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellant/Cross-Appellee,

and

TITAN INSURANCE COMPANY,

Defendant-Appellee/Cross-Appellant,

and

ASSIGNED CLAIMS FACILITY,

Defendant.

UNPUBLISHED
January 29, 2013

No. 301188
Wayne Circuit Court
LC No. 08-127035-NF

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

In this action to recover no-fault personal protection insurance (PIP) benefits, including survivor's loss benefits, defendant Citizens Insurance Company (Citizens) appeals as of right, and both defendant Titan Insurance Company (Titan) and plaintiffs cross-appeal, from the trial court's order resolving their cross-motions for summary disposition and requiring Citizens to pay $59,925.23 to the "Estate of Tonie Gagnon." We affirm in part, reverse in part, and remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

The decedent, Tonya Arold, was killed in a car accident on October 30, 2007, while operating her 1992 Chevrolet Cavalier. There is no dispute that Arold was the sole owner and registrant of the Cavalier at the time of the accident. Even though she was the Cavalier's only owner, the vehicle was insured through a policy with Citizens issued to its policy holder Kent Hinson. Hinson was the father of Arold's boyfriend. For purposes of the underlying motions, it does not appear that there was any genuine dispute that Hinson added the Cavalier to his own policy in an effort to help his son and Arold, who were struggling financially. Hinson was not related to Arold and they did not reside in the same household. Arold was never identified as the owner or principal driver when the Cavalier was added to Hinson's policy, but again for purposes of the underlying motions, there does not appear to be a claim that Hinson intentionally misled Citizens regarding the policy.

Arold was survived by her sons, Todd Lee Phillips and Anthony Gagnon. Arold's sister, Tonie, was designated personal representative of Arold's estate. Tonie made a claim on the children's behalf for no-fault survivor's PIP benefits. Citizens initially denied the claim based on the fact that there was no insurance on the Cavalier at the time of the accident. It originally claimed that the policy had been cancelled two days prior to the accident. Citizens later revised its position. It admitted that the insurance policy was in effect at the time of the accident, but that Arold was not a named insured. Because she was an owner of the vehicle, but failed to carry the requisite insurance mandated under MCL 500.3101(1)[1], Citizens argued that Arold was excluded from eligibility for PIP benefits by operation of MCL 500.3113(b).[2] In denying coverage, Citizens suggested that plaintiffs' claims would have to be through the Michigan Assigned Claims Facility (MACF).

On October 22, 2008, Tonie filed this action against Citizens. The complaint was amended on August 12, 2009, to add the MACF as a defendant.[3] Plaintiffs alleged that either Citizens or the MACF was liable for no-fault PIP benefits, and that Citizens was claiming that

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[1] In relevant part, MCL 500.3101(1) provides: "The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway."

[2] MCL 500.3113 provides: "A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed: . . .(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect."

[3] The complaint was also amended after Arold's older son Todd attained the age of 18 years and could therefore proceed with his own claim, without a guardian.

the MACF was first in priority for paying no-fault benefits. The MACF assigned the claim to Titan and on November 5, 2009, the trial court entered a stipulated order substituting Titan as a defendant in place of the MACF.

Titan thereafter moved for summary disposition on the ground that plaintiffs' claims were time-barred because they failed to provide timely notice of the claims to the MACF. The trial court denied the motion, agreeing with plaintiffs that the action was not time-barred because the death and minority tolling provisions in the Revised Judicature Act, MCL 600.5851 and MCL 600.5852, applied to their claims under the no-fault act.

Plaintiffs moved for summary disposition under MCR 2.116(C)(10) and requested an order directing Titan to immediately pay PIP benefits, with interest and attorney fees. Citizens also filed a motion for summary disposition under MCR 2.116(C)(10) with respect to its obligation to pay PIP benefits. The following exchange took place at the motion hearing:

> MS. KENNEDY: [attorney for Titan]. This is an entitlement dispute for benefits. Now, Citizens has not said that the vehicle is not insured. The vehicle was scheduled. However, MCL 500.3101 is personal. It says an owner or registrant of a motor vehicle required to be registered in the State shall maintain security for payment of benefits under personal protection insurance.
>
> It's a – it says the owner or the registrant of the vehicle shall maintain security for payment of benefits under PIP. She didn't maintain that. Okay.
>
> ***
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> MR. BLAMER: [plaintiffs' attorney]. Well, first of all, well, your Honor, I want to go back to the actual statute that mandates or excludes the coverage. And that says, a person not – is not entitled to personal injury protection benefits if the person was the owner of – or the registrant of a motor vehicle involved in the accident to which security required by 3101 or 3103 was not in effect.
>
> THE COURT: Right –
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> MR. BLAMER: It was in –
>
> THE COURT: (Interposing) It was in effect.
>
> MR. BLAMER: It was in effect.
>
> THE COURT: All right.
>
> MR. BLAMER: Therefore, she's eligible for benefits.
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> THE COURT: So I'm going to rule that there was insurance. That this was an insured vehicle.
>
> MR. BLAMER: Then the question becomes priority.

THE COURT: Right.

After ordering additional briefing, the trial court determined that Citizens was primarily responsible for paying PIP benefits because Arold was covered under a provision of the policy applicable to occupants of the motor vehicle. The trial court denied plaintiffs' motion for summary disposition against Titan. The parties now appeal and cross-appeal from the trial court's orders.

II. STANDARDS OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Copus v MEEMIC Ins Co*, 291 Mich App 593, 596; 805 NW2d 623 (2011). A motion under MCR 2.116(C)(10) tests the factual support for a claim based on substantively admissible evidence. MCR 2.116(G)(6); *Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 55-56; 744 NW2d 174 (2007). In reviewing the motion, a court considers the pleadings, depositions, affidavits, admissions, and other documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(5); *Healing Place at North Oakland Med Ctr*, 277 Mich App at 56. A court should grant the motion if the evidence, viewed in a light most favorable to the nonmoving party, fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 424-425; 751 NW2d 8 (2008).

The construction and interpretation of an insurance contract, and whether the contract language is ambiguous, are also questions of law that we review de novo. *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 80; 730 NW2d 682 (2007); *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Summary disposition under MCR 2.116(C)(10) is appropriate in a case involving a contract dispute where the terms of the insurance policy are unambiguous. *Henderson*, 460 Mich at 353. A contractual provision is ambiguous if it irreconcilably conflicts with another provision or it is equally susceptible to more than one meaning. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005).

Issues of statutory construction are also reviewed de novo. *Copus*, 291 Mich App at 596.

III. *IQBAL V BRISTOL WEST INS GROUP*

Both Citizens and Titan argue that plaintiffs may not collect PIP benefits because Arold failed to keep the security required under the no-fault act. The trial court, citing *Iqbal v Bristol West Ins Group*, 278 Mich App 31; 748 NW2d 574 (2008), found that Arold's failure to obtain and pay for the requisite insurance was of no consequence. Hinson maintained insurance on the Cavalier and, therefore, the trial court concluded that, at the time of the accident, Cavalier was not being operated without the security required by MCL 500.3101(1). We conclude that, in keeping with *Iqbal*, the Cavalier had the statutorily required coverage at the time of the accident.

The no-fault act provides that the "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance[.]" MCL 500.3101(1). Pursuant to MCL 500.3113(b): "A person is not entitled to be paid personal

protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed: . . .(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 . . .was not in effect."[4] While PIP coverage itself applies to the injured person, and not the motor vehicle, *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 254-255; 819 NW2d 68 (2012); *Amerisure Ins Co v Auto-Owners Ins Co,* 262 Mich App 10, 17; 684 NW2d 391 (2004), this Court has construed the security or insurance requirement in the no-fault statute as being linked to the vehicle. *Iqbal*, 278 Mich App at 39.

In *Iqbal*, the plaintiff was injured while driving a BMW that his brother owned and had insured through Auto Club. Although the brother maintained the insurance on the car, the plaintiff had regular use of it, as well as other vehicles owned by other family members. The plaintiff did not hold title to any other vehicle and lived with his sister, who had household no-fault insurance with Bristol. Citizens was the insurer assigned to the matter by the MACF. Citizens argued that Bristol had priority to pay the claim because of the plaintiff's status as a member of his sister's household. For its part, Bristol argued that the plaintiff was excluded from receiving PIP benefits because, as constructive "owner" of the vehicle, the plaintiff was required to maintain insurance and security under the no-fault statute and failed to do so. *Iqbal*, 278 Mich App at 33-35. The trial court concluded that Bristol was required to pay the plaintiff's PIP benefits and that his ownership status was irrelevant where his brother clearly maintained security on the BMW as required by MCL 500.3101. *Id.* at 35-36.

In affirming the trial court's order, this Court agreed that the plaintiff's status as an owner was irrelevant. *Id.* at 38-39. Even assuming the plaintiff was an owner:

> the phrase "with respect to which the security required by section 3101 ... was not in effect," § 3113(b), when read in proper grammatical context, defines or modifies the preceding reference to the motor vehicle involved in the accident, here the BMW, and not the person standing in the shoes of an owner or registrant. *The statutory language links the required security or insurance solely to the vehicle.* Thus, the question becomes whether the BMW, and not plaintiff, had the coverage or security required by MCL 500.3101. . . .While plaintiff did not obtain this coverage, there is no dispute that the BMW had the coverage, and that is the only requirement under MCL 500.3113(b), making it irrelevant whether it was plaintiff's brother who procured the vehicle's coverage or plaintiff. Stated differently, the security required by MCL 500. 3101(1) was in effect for purposes of MCL 500.3113(b) as it related to the BMW. [*Id.* at 39-40 (emphasis added).]

This Court concluded that to hold otherwise would be problematic. One could see that if the statute required that *every* owner maintain the requisite insurance, an absurd result could follow, such as when there is more than one registered owner and not all owners obtain the requisite insurance. It would follow that the individual owner that *did* procure insurance would

[4] Survivor's loss benefits are derivative of a deceased injured person's entitlement to benefits. *Belcher v Aetna Cas & Surety Co,* 409 Mich 231, 255; 293 NW2d 594 (1980).

nevertheless be excluded from coverage because "that would be an owner of a vehicle with respect to which the insurance required by MCL 500.3101 was not in effect, as *all* the owners had not procured coverage for the vehicle." *Id.* at 40 n 2 (emphasis in original).

The *Iqbal* Court looked to the section of the no-fault statute making it a misdemeanor for failing to carry the requisite security on a vehicle. MCL 500. 3102(2) provides: "An owner or registrant of a motor vehicle . . .with respect to which security is required, who operates the motor vehicle . . .or permits it to be operated upon a public highway in this state, without having in full force and effect security complying with this section or section 3101 . . .is guilty of a misdemeanor." The language of § 3102(2) does not require that each and every owner or registrant carry a separate policy covering the vehicle; only that there be *a* policy covering the vehicle. *Iqbal*, 278 Mich App at 44, citing *State Farm Mut Auto Ins Co v Sentry Ins*, 91 Mich App 109, 115; 283 NW2d 661 (1979). The *Iqbal* Court held:

> Just as this Court in State Farm interpreted MCL 500.3102 (2) to mean that a misdemeanor is not committed if there is a no-fault policy covering the particular vehicle, regardless of a failure by one "owner" to procure a policy in his or her own name, we hold that MCL 500.3113(b) does not preclude an award of PIP benefits to an "owner" of a vehicle if the vehicle is covered by a no-fault policy, which is the case here. [*Iqbal*, 278 Mich App at 45.]

Titan argues that *Iqbal* applies only when there are multiple owners of a vehicle and, because there is no dispute that Arold was the sole owner or registrant of the Cavalier, *Iqbal* has no application to the case at bar. However, while we acknowledge that the facts of *Iqbal* and the facts of the case at bar are distinguishable, *Iqbal* nevertheless provides the legal framework that informs our analysis. *Iqbal* does not limit its application to those instances in which there are multiple owners of a vehicle. On the contrary, *Iqbal* concluded that ownership was entirely irrelevant in a determination as to whether a vehicle has the requisite no-fault security. The language from the case is broad: "*The statutory language links the required security or insurance solely to the vehicle.* Thus, the question becomes whether the BMW, and not plaintiff, had the coverage or security required by MCL 500.3101." *Id.* at 39-40 (emphasis added). In concluding that there was security on the vehicle, the *Iqbal* Court reiterated that:

> Because the language in MCL 500.3113(b) precluding recovery of PIP benefits *links the security or insurance requirement to the vehicle only and not the person,* the trial court correctly ruled that plaintiff was entitled to PIP benefits because the vehicle was in fact insured, regardless of whether plaintiff was the "owner" of the vehicle. [*Id.* at 46 (emphasis added).]

Therefore, we conclude that, although there was only one clear owner in this case and the factual underpinnings are dissimilar from *Iqbal*, the trial court properly determined that the Cavalier had security at the time of the accident because the security requirement in the no-fault statute is linked to the vehicle and not the individual.

IV. INSURABLE INTEREST AND THE INNOCENT THIRD PARTY RULE

Titan argues that Hinson had no "insurable interest" in the Cavalier and, therefore, the policy of insurance with Citizens was void. Titan maintains that, because the policy was void Arold was operating the Cavalier without the requisite security and is excluded from receiving PIP benefits under MCL 500.3113. We disagree.

"[U]nder Michigan law, an insured must have an 'insurable interest' to support the existence of a valid automobile liability insurance policy." *Smith v Allstate Ins Co*, 230 Mich App 434, 439; 584 NW2d 355 (1998). The insurable interest must be that of a "named insured." *Id*. "An insurable interest in property is broadly defined as being present when the person has an interest in property, as to the existence of which the person will gain benefits, or as to the destruction of which the person will suffer loss." *Madar v League Gen Ins Co*, 152 Mich App 734, 738; 394 NW2d 90 (1986), citing *Crossman v American Ins Co*, 198 Mich 304, 308–309; 164 N.W. 428 (1917). *Madar* held:

> there is no requirement that there be an insurable interest in a specific automobile since an insurer is liable for personal protection benefits to its insured regardless of whether or not the vehicle named in the policy is involved in the accident. A person obviously has an insurable interest in his own health and well-being. This is the insurable interest which entitles persons to personal protection benefits regardless of whether a covered vehicle is involved. [*Madar*, 152 Mich App at 739.]

Even if we were to conclude that Hinson had no insurable interest in the Cavalier, the "innocent third party" rule prohibits Citizens from rescinding the policy. An insurer may not rescind a policy of insurance because of a material misrepresentation made in an application for no-fault insurance where there is a claim involving an innocent third party. *Katinsky v. Auto Club Ins. Ass'n*, 201 Mich App 167, 170; 505 N.W.2d 895 (1993), citing *Darnell v Auto-Owners Ins Co*, 142 Mich App. 1, 9; 369 NW2d 243 (1985).

> It is the well-settled law of this state that where an insured makes a material misrepresentation in the application for insurance, including no-fault insurance, the insurer is entitled to rescind the policy and declare it void ab initio. Rescission is justified without regard to the intentional nature of the misrepresentation, as long as it is relied upon by the insurer. Reliance may exist when the misrepresentation relates to the insurer's guidelines for determining eligibility for coverage.
>
> Nevertheless, there is an exception to this general rule. Once an innocent third party is injured in an accident in which coverage was in effect with respect to the relevant vehicle, the insurer is estopped from asserting fraud to rescind the insurance contract. MCL 257.520(f)(1). [*Lake States Ins Co v Wilson*, 231 Mich App 327, 331; 586 NW2d 113 (1998) (citations and footnote omitted.]

In fact, in pleadings in the lower court, Citizens cites MCL 257.520(f)(1) when acknowledging that it did *not* have the ability to rescind the insurance policy.[5] The statute provides:

> (f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:
>
> (1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy, and except as hereinafter provided, no fraud, misrepresentation, assumption of liability or other act of the insured in obtaining or retaining such policy, or in adjusting a claim under such policy, and no failure of the insured to give any notice, forward any paper or otherwise cooperate with the insurance carrier, shall constitute a defense as against such judgment creditor.[6]

The Michigan Supreme Court recently concluded that § 257.520(f)(1), which limits the ability of an insurer to avoid liability on the ground of fraud in obtaining a motor vehicle liability policy with respect to insurance required by the financial responsibility act, does not apply to a motor vehicle liability insurance policy unless there has been certification of proof of financial responsibility. *Titan Ins Co v Hyten*, 491 Mich 547, 559-560; 817 NW2d 562 (2012). Additionally, "an insurer is not precluded from availing itself of traditional legal and equitable

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[5] Again, the issue of insurable interest has been put forth by Titan, as assignee of the MACF, not Citizens, who was Hinson's actual insurer.

[6] Additionally, the no-fault statute provides limited grounds for cancelling a policy:

> Subject to the following provisions no insurer licensed to write automobile liability coverage, after a policy has been in effect 55 days or if the policy is a renewal, effective immediately, shall cancel a policy of automobile liability insurance except for any 1 or more of the following reasons:
>
> (a) That during the 55 days following the date of original issue thereof the risk is unacceptable to the insurer.
>
> (b) That the named insured or any other operator, either resident of the same household or who customarily operates an automobile insured under the policy has had his operator's license suspended during the policy period and the revocation or suspension has become final. [MCL 500.3220.]

remedies to avoid liability under an insurance policy on the ground of fraud in the application for insurance, even when the fraud was easily ascertainable and the claimant is a third party." *Id.* 571. However, the insurer in *Titan* sought to reform an insurance policy by reducing the excess liability coverage limits available to innocent accident victims to the statutory minimum; it did not seek to completely avoid liability under the policy. *Id.* at 552 n 2.

The record is void of any evidence that Hinson engaged in fraudulent behavior in procuring the insurance policy and no facts exist that would warrant allowing Citizens to void the policy. Accordingly, there is no reason to rescind the insurance policy for lack of insurable interest.

V. PRIORITY

A. CITIZENS

Having concluded that the Cavalier was listed on a valid policy of insurance, the issue becomes one of priority, requiring us to look, not only to the provisions of the no-fault statute, but to the policy of insurance itself.

The no-fault act is intended to broadly provide coverage to individuals injured in a motor vehicle accident without regard to fault. *Iqbal*, 278 Mich App at 37. An insurer who elects to provide automobile insurance must pay no-fault benefits subject to provisions of the no-fault act. *Corwin*, 296 Mich App at 254; see also MCL 500.3105(1). MCL 500.3114(1) provides that, except in situations not applicable to this case, "a personal protection insurance policy described in § 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." Arold did not have a policy of insurance with any company. She was not named as an insured on Hinson's policy. Nor was she a relative of Hinson or a member of Hinson's household. Under the circumstances, Arold must be considered an "occupant" of the Cavalier, which requires an examination of MCL 500.3114(4):

> Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied.

Here, Arold was both the owner/registrant of the Cavalier, as well as its operator. She had no policy of insurance. Therefore, the only way Citizens can be liable to pay PIP benefits is if Arold was an insured under Hinson's policy. "[W]hile the term 'occupant' in the no-fault act has a primary and generally understood meaning apart from any insurance contract, the same is not true of the statutory term 'insurer' . . .Rather, whether an insurance company is an 'insurer' of the operator of the vehicle necessarily depends on the language of the relevant insurance policy." *Amerisure Ins Co v Coleman*, 274 Mich App 432, 435-436; 733 NW2d 93 (2007)

In construing that insurance policy, we must read it as a whole, including the declaration page, to determine its meaning. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005). A contractual provision is ambiguous if it irreconcilably conflicts with another provision or it is equally susceptible to more than one meaning. *Id.* Unambiguous contractual provisions are applied as written. *Id.* Insurance contracts are also subject to statutory regulations. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 417-418; 668 NW2d 199 (2003). To the extent that the no-fault act mandates an insurance requirement, it must be read into the insurance contract. *Corwin*, 296 Mich App at 260. To the extent that an insurance provision conflicts with statutory requirements, it is contrary to public policy and is, therefore, invalid. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 600-601; 648 NW2d 591 (2002).

Here, the declarations page of the policy lists the 1992 Chevrolet Cavalier as one of two covered vehicles. It identifies Kent Hinson as the "named insured." The general "definitions" section of the personal auto policy defines "you" and "your" as the "named insured" in the declarations and a spouse residing in the same household. "Family member" is defined as "a person related to you by blood, marriage or adoption who is a resident of your household." The word "occupying" means "in, getting in, on, out or off."

Section 3, Part I, of the policy provides for PIP coverage. The "insuring agreement" provides, in pertinent part, that "[w]e will pay personal injury protection benefits to or for an 'insured' who sustains 'bodily injury'." The definitions section for the PIP coverage provides:

> The Definitions section is amended as follows:
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> A. The definition of "your covered auto" is replaced by the following: "Your covered auto" means an "auto":
>
> 1. For which you are required to maintain security under the Michigan Insurance Code; and
>
> 2. To which the bodily injury liability coverage of this policy applies.
>
> * * *
>
> C. "Insured" as used in this section means:
>
> 1. You or any "family member" injured in an "auto accident";
>
> 2. Anyone else injured in an "auto accident":
>
> a. While "occupying" "your covered auto"; or
>
> b. If the accident involves any other "auto":
>
> (1) Which is operated by you or any "family member"; and
>
> (2) To which Section 2 of this policy applies.

c. While not "occupying" any "auto" if the accident involves "your covered auto."

Plaintiffs concede that Arold was the sole owner and registrant of the 1992 Chevrolet Cavalier. The insurance policy, in clear and unambiguous terms, does not entitle Arold, as an occupant of the vehicle, to PIP benefits. Because Arold is not a family member as defined in the policy, Arold would qualify as an "insured" only if she was injured while occupying "your covered auto."

We find no support for plaintiffs' argument that Citizens admitted that the 1992 Chevrolet Cavalier falls with this definition of "your covered auto." MCL 500.3101(1) only requires that the owner or registrant provide security for the payment of PIP benefits. Neither Hinson nor his spouse was the owner or registrant of the Cavalier. It follows that they were not required by law to maintain security under the no-fault statute. Accordingly, Arold does not qualify as an "insured" under the insuring agreement for PIP benefits. "[T]here is simply no authority for the proposition that the insurer of a vehicle involved in an accident must pay PIP benefits under the circumstances present in the instant case, when no named insureds were involved in the accident." *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 16; 684 NW2d 391 (2004); see also *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 534; 740 NW2d 503 (2007).

We are not persuaded by plaintiffs' argument that this result would render the insurance policy illusory. As discussed above, a named insured in an automobile insurance policy must have an insurable interest. *Corwin,* 296 Mich App at 257. Such an interest with respect to PIP benefits arises from a person's insurable interest in his or her own health. *Id.* at 258. But even if we were to assume that the named insured in this case did not have an insurable interest, the result would be to reform the insurance policy issued to him by Citizens. *Id.* at 257. It would not assist plaintiffs in establishing that Arold was entitled to PIP benefits from Citizens.

B. TITAN

"When an individual is uninsured, the MACF is an insurer of last priority." *Bronson Methodist Hosp v Allstate Ins Co,* 286 Mich App 219, 225; 779 NW2d 304 (2009). MCL 500.3172(1) sets forth the situations where a person entitled to a claim of accidental bodily injury may obtain PIP benefits from the MACF:

> A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In that case, unpaid benefits due

> or coming due may be collected under the assigned claims plan and the insurer to which the claim is assigned is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

As discussed above, the Cavalier was being operated with the security required by MCL 500.3101(1) at the time of the accident; therefore, Arold was not excluded from receiving PIP benefits under MCL 500.3113. In addition, we have concluded that Citizen's policy of insurance with Hinson did not provide coverage for Arold. As such, Titan was obligated to pay PIP benefits as a matter of law.

Titan argues that plaintiffs' action was barred by the one-year notice provisions in MCL 500.3145 and MCL 500.3174, because the accident occurred on October 30, 2007, and plaintiffs did not file a notice of the claim with the MACF until October 13, 2009.[7] A motion under MCR 2.116(C)(7) (claim barred by statute of limitations) is appropriate when a claim is barred because the plaintiff failed to comply with the time requirements for bringing a claim against the MACF. See *Bronson Methodist Hosp*, 286 Mich App at 222.

> Under MCR 2.116(C)(7) . . . , this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [*RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008) (citations omitted).]

At the time of the accident in this case, MCL 500.3174 provided[8]:

> A person claiming through an assigned claims plan shall notify the facility of his claim *within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect*. The facility shall promptly assign the claim in

[7] Titan argues that the death-tolling provision in MCL 600.5852 does not apply to a survivor's loss claim. However, because Titan cites nothing in the record to substantiate its belief that *only* survivor's loss benefits are at issue in this case, and Titan has not addressed any error arising from the application of MCL 600.5852 to the claim brought by Tonie as personal representative of decedent Arold's estate, this Court need not consider this argument further. An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis of the claim. *McIntosh v McIntosh*, 282 Mich App 471, 484-485; 768 NW2d 325 (2009).

[8] As amended by 2012 PA 204, effective June 27, 2012, the statute now requires that notice be given to the "Michigan automobile insurance placement facility."

> accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned, or of the facility if the claim is assigned to it. An action by the claimant shall not be commenced more than 30 days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later. [Emphasis added.]

The time period for filing an action for PIP benefits, where identifiable coverage is in effect, is set forth in MCL 500.3145(1), which provides:

> *An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury*. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury. [Emphasis added.]

"[T]his statutory provision contains separate and distinct limitations periods that relate both to the timing in which an action may be brought and the damages that may be recovered." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 207; 815 NW2d 412 (2012).

Plaintiffs alleged in their amended complaint that the accident occurred on October 30, 2007. The evidence established that the MACF received notice of the injury, at the earliest, after plaintiffs filed an amended complaint against it on August 12, 2009. A formal notice of claim, using the MACF's "application for bodily injury benefits" form, is dated October 13, 2009. Because the one-year period for providing notice to the MACF elapsed in 2008, long before any form of notice was given to the MACF in 2009, the dispositive question is whether some tolling or saving provision existed that would allow plaintiffs to proceed against the MACF.

Plaintiffs presented evidence that Tonie's letters of authority as personal representative of Arold's estate were issued on October 17, 2008. MCL 600.5852 provides:

> If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless

> the personal representative commences it within 3 years after the period of limitations has run. [MCL 600.5852.]

This provision has been construed as a savings statute. *Waltz v Wyse,* 469 Mich 642, 651; 677 NW2d 813 (2004). By its own terms, the provision operates within the context of the separate limitations period that would otherwise apply to the action. *Id.* This Court has found the provision applicable to the one-year period for bringing an action against an insurer for payment of PIP benefits under MCL 500.3145(1). *Attorney General v State Farm Mut Auto Ins Co,* 160 Mich App 57; 408 NW2d 103 (1987).[9]

MCL 600.5851(1) provides:

> Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5852.

Section 600.5851(1) concerns when a minor or person suffering from insanity may "make the entry or bring the action," and not the amount of damages recoverable in the action. *Joseph,* 491 Mich at 209. Because it is not a damages-limiting provision, § 600.5851(1) is inapplicable to the one-year-back rule in MCL 500.3145(1), which limits how much the plaintiff may recover after the action is commenced. *Id.* at 222.

Considering the distinction made in *Joseph* between when an action may be brought by a plaintiff and the damages that may be recovered in the action, we conclude that the trial court did not err in determining that the action in this case was timely, as it pertains to any damages sought for decedent Arold's estate. As a matter of law, the requisite notice of injury was timely because the death savings provision in MCL 600.5852 would be applicable to toll the one-year period for Tonie, as personal representative of the estate, to give notice of the injury to the MACF under MCL 500.3145(1) and MCL 500.3174.

Whether estate damages should be limited is a separate issue that was beyond the scope of Titan's motion, but apparently was decided by the trial court when ordering that the estate may claim damages from Titan, beginning with the "date of accident to the third anniversary of the accident." Claims against the MACF are subject to the one-year-back rule for damages in MCL 500.3145(1). *Bronson Methodist Hosp,* 286 Mich App at 228. Because MCL 600.5852 has not been construed as being applicable to damages, but rather to save an action in a manner similar to the minority and insanity tolling provision in MCL 600.5851(1), the rationale in *Joseph* should also apply to any limitations on damages to be awarded to the estate.

[9] The rationale for this decision is based on the same rationale used to apply the minority and insanity tolling provisions of MCL 600.5851(1) to MCL 500.3145(1). See *Taulbee v Mosley,* 127 Mich App 45, 48-49; 338 NW2d 547 (1983).

Nonetheless, the trial court did not have the benefit of our Supreme Court's decision in *Joseph* when deciding this issue.

C. CONCLUSION

Because the insurance policy is unambiguous with respect to Arold's failure to qualify as an "insured," Citizens was entitled to summary disposition under MCR 2.116(C)(10). Instead, Titan, as assignee of the MACF, is liable for PIP benefits where the present action was not time-barred and the MACF received timely notice of the claim. Therefore, we reverse the trial court's denial of Citizens's motion for summary disposition, vacate the trial court's order directing Citizens to pay $59,925.23, and remand for entry of an order of summary disposition in favor of Citizens. We also instruct the trial court on remand to determine the amount of the estate's damages against Titan consistent with *Joseph*.

VI. IMMEDIATE PAYMENT OF PIP BENEFITS/INTEREST AND ATTORNEYS FEES

Plaintiffs argue that the trial court erred in denying their motion for summary disposition with respect to their claim that Titan had a duty to immediately pay PIP benefits, with interest and attorney fees. We agree.

In its July 23, 2010, motion for summary disposition, plaintiffs argued that although Citizens was ultimately responsible for paying PIP benefits, Titan should be ordered to pay PIP benefits to plaintiffs immediately, with penalty interest and attorney fees, because the case involved only a priority dispute between two insurers. In denying plaintiffs' motion, the trial court determined that while Titan was timely added to plaintiffs' case on August 13, 2009, and may have liability for the period from "the date of accident until the third anniversary of the accident," Citizens was first in priority for paying PIP benefits.

The procedure in MCL 500.3172(3) applies when the MACF is brought in to provide PIP benefits because two or more identified insurers dispute their respective obligations to provide coverage. *Spectrum Health v Grahl*, 270 Mich App 248, 255-256; 715 NW2d 357 (2006). The statute provides:

> (3) If the obligation to provide personal protection insurance benefits cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, and if a method of voluntary payment of benefits cannot be agreed upon among or between the disputing insurers, all of the following apply:
>
> (a) The insurers who are parties to the dispute shall, or the claimant may, immediately notify the Michigan automobile insurance placement facility of their inability to determine their statutory obligations.
>
> (b) The claim shall be assigned by the Michigan automobile insurance placement facility to an insurer and the insurer shall immediately provide personal protection insurance benefits to the claimant or claimants entitled to benefits.

> (c) An action shall be immediately commenced on behalf of the Michigan automobile insurance placement facility by the insurer to whom the claim is assigned in circuit court to declare the rights and duties of any interested party.
>
> (d) The insurer to whom the claim is assigned shall join as parties defendant to the action commenced under subdivision (c) each insurer disputing either the obligation to provide personal protection insurance benefits or the equitable distribution of the loss among the insurers. [MCL 500.3172(3).]

MCL 500.3175(1) then provides:

> The assignment of claims under the assigned claims plan shall be made according to procedures established in the assigned claims plan that assure fair allocation of the burden of assigned claims among insurers doing business in this state on a basis reasonably related to the volume of automobile liability and personal protection insurance they write on motor vehicles or the number of self-insured motor vehicles. *An insurer to whom claims have been assigned shall make prompt payment of loss in accordance with this act.* [(Emphasis added).]

Titan seeks to avoid its statutory obligation by arguing that this was a "entitlement case" as opposed to a "priority case." We disagree. Plaintiffs filed their amended complaint naming the MACF on August 12, 2009. The complaint was filed well after *Iqbal* was decided on February 14, 2008. Because *Iqbal* clearly provides that the no-fault statute language links the required security or insurance to the vehicle and not the individual, the present case was one of priority. Titan had no right to withhold immediate payment of benefits.

Accordingly, we also find statutory authority for plaintiffs to be awarded interest and attorney fees. MCL 500.3148(1) provides:

> An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

MCL 500.3142(2) provides that "[p]ersonal protection insurance 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." Thus, an overdue payment is an essential requirement for interest and attorney fees. "[A]ttorney fees are payable only on overdue benefits for which the insurer has unreasonably refused to pay or unreasonably delayed in paying." *Moore v Secura Ins*, 482 Mich 507, 517; 759 NW2d 833 (2008), quoting *Proudfoot v. State Farm Mut.* Ins. Co., 469 Mich. 476, 485, 673 N.W.2d 739 (2003) (emphasis omitted). As previously discussed, Titan was liable to make prompt payment of loss for PIP benefits pursuant to MCL 500.3175(1). Therefore, the trial court erred in denying plaintiff's motion for summary disposition.

VII. CONCLUSION

In conclusion, the trial court did not err in finding that plaintiffs were entitled to be paid personal protection insurance benefits. Pursuant to *Iqbal*, the vehicle Arold was operating at the time of her accident had the security required under MCL 500.3101 and she was not excluded from receiving PIP benefits under MCL 500.3113. The issue in this case was purely a priority issue, and not a coverage issue. Though the vehicle was included under a policy of insurance, Arold was not an insured under the policy because it was not a "covered vehicle." The trial court erred, therefore, in finding that Citizens was obligated to pay PIP benefits under plain language of Hinson's policy. As such, Titan, the assignee of the MACF, was required to immediately pay PIP benefits. It failed to do so and is now liable to pay attorney fees and penalties. Under the death-savings provision in MCL 600.5852 and the minority tolling provision in MCL 600.5851, plaintiffs' claims against Titan were not time-barred. We note, however, that the issue of damages remains. On remand, we instruct the trial court to determine the amount of the estate's damages, if any, consistent with *Joseph*, 491 Mich at 200.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering