

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA WAITERS,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 28, 2013

No. 307856
Oakland Circuit Court
LC No. 2011-117466-NF

Before: RIORDAN, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals by leave granted a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(10) in this action for first-party no-fault benefits. Because we conclude that the parties' settlement and release agreement bars plaintiff's claim, we reverse.

The sole issue presented is whether plaintiff's claim against her no-fault insurer for installation of a wheelchair lift on her van is barred by her 2004 release of "all claims for no-fault benefits that have been incurred or that may be incurred in the future, with the exception of any claims under MCL 500.3107(a) for reasonable charges for reasonably necessary healthcare medical services[.]"

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Interpretation of a written contract is also reviewed de novo. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009).

"An agreement to settle a pending lawsuit is a contract, governed by the legal rules applicable to the construction and interpretation of other contracts." *Id.* at 663-664. This Court enforces contracts according to their terms. *Id.* at 664. Words in the contract are given their plain and ordinary meaning. *Id.* "An unambiguous contractual provision reflects the parties intent as a matter of law, and '[i]f the language of the contract is unambiguous, we construe and enforce the contract as written.'" *Id.* at 664-665, quoting *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). "[I]f contractual language is

unambiguous and no reasonable person could differ concerning the application of the term or phrase to undisputed material facts, summary disposition should be awarded to the proper party.” *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 612; 792 NW2d 344 (2010).

The 2004 settlement agreement divides claims for no-fault benefits into two basic categories: (1) those incurred through December 2, 2004, and (2) those incurred after that date. With respect to the latter, the release bars all claims with a specific exception. The exception is limited to “any claims under MCL 500.3107(a) for reasonable charges for reasonably necessary healthcare medical services rendered to [plaintiff] after December 2, 2004 with regard to the injuries she sustained [in the 1977 and 2000 accidents].”

The question on appeal is not whether a wheelchair lift may qualify as an allowable no-fault expense, see *Davis v Citizens Ins Co*, 195 Mich App 323; 489 NW2d 214 (1992), but rather whether a wheelchair lift is within the scope of the exception for future claims in the parties’ settlement agreement and release. The release unambiguously limits future claims to charges for “healthcare medical services.” Neither the wheelchair lift itself nor its installation is a “healthcare medical service.” Accordingly, it is not within the scope of the exception in the parties’ release. Therefore, because we conclude that the language of the release is unambiguous and no reasonable person could differ concerning its application, defendant was entitled to summary disposition in its favor.¹

Reversed.

/s/ Michael J. Riordan
/s/ Joel P. Hoekstra
/s/ Peter D. O’Connell

¹ Moreover, even if the language of the release was ambiguous, at the settlement and release hearing, defendant’s attorney stated the claims that plaintiff agreed to release on the record, and he specifically mentioned modifications to “vans.” Plaintiff agreed to the settlement and release on the record, and did not raise any objections to the stated terms.