

STATE OF MICHIGAN
COURT OF APPEALS

MARY SCHILDGEN,
Plaintiff-Appellant,

UNPUBLISHED
November 19, 2013

v

ALLSTATE INSURANCE COMPANY,
Defendant-Appellee.

No. 311339
Wayne Circuit Court
LC No. 11-008628-NF

Before: SAWYER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition. On appeal, plaintiff argues that the trial court erred in determining that she failed to provide timely written notice to defendant as required by MCL 500.3145(1). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff alleged that on October 1, 2009, she sustained injuries resulting from a motor vehicle accident while she was operating a vehicle owned by her friend, Erik Wild. Plaintiff did not own a motor vehicle at the time of the accident. Wild's motor vehicle insurance policy was through defendant. On October 2, 2009, plaintiff, via telephone, contacted defendant, at which time a no-fault claim was opened under Wild's policy. Plaintiff asserted that she received a letter from Disney, dated November 14, 2009, acknowledging her claim with defendant. The purported letter was read into the record at the summary disposition hearing:

Dear -- It's addressed to Miss Schildgen, it's got the insured as Erik Wild, it's got a claim number, and it says: I'm the claim representative assigned to handle your claim for medical benefits. Please direct all medical bills to my address at the address on this letter. All auto and liability issues will continue to be handled by Susan Bruno. Please contact me at your earliest convenience so I may discuss your medical benefits with you directly. Should you wish to discuss this matter, please call me at the number below and refer to our claim number. Sincerely,
Jennifer Disney.

Plaintiff also maintained that she completed forms and submitted them to defendant, but no such forms were produced by either party.

Jennifer Disney, a claims adjuster for defendant, averred that plaintiff stopped returning Disney's telephone calls after their initial conversation on October 2, 2009. According to Disney, plaintiff had no contact with defendant until January 22, 2010, when defendant received a medical bill for ambulatory services. This bill was never paid. On February 22, 2010, plaintiff informed Disney that her son, Kevin Schildgen (Kevin), was living with her on the date of the accident. Plaintiff believed that Kevin owned a motor vehicle that was insured with Progressive and stated that she would contact Progressive to open a claim. Disney closed plaintiff's claim with defendant because, based on this conversation, Kevin's policy with Progressive was the highest in priority.

Disney maintained that she did not receive any additional information from plaintiff until plaintiff's attorney contacted Disney on April 26, 2011. Disney informed plaintiff's attorney of her conversation with plaintiff regarding Kevin's insurance with Progressive. On June 3, 2011, plaintiff provided written notice of injury to defendant because Kevin's insurance policy was actually through defendant at the time of the accident. Kevin's policy with Progressive had expired before the accident occurred. A new claim for plaintiff was opened under Kevin's policy.

Defendant refused to pay the claim and plaintiff brought suit against defendant for breach of contract. Defendant moved for summary disposition and argued that plaintiff failed to provide timely written notice of injury pursuant to MCL 500.3145. The trial court agreed and granted defendant's motion for summary disposition.

II. ANALYSIS

Plaintiff contends that the trial court erred in determining that she failed to provide sufficient notice to defendant pursuant to MCL 500.3145(1). We disagree.

We review de novo a trial court's determination on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). This issue concerns the interpretation and application of a statute, which is likewise reviewed de novo. *Macomb County v AFSCME Council 25, Locals 411 & 893*, 494 Mich 65, 77; 833 NW2d 225 (2013). In *In re Harper*, __ Mich App __; __ NW2d __ (Docket No. 309478, decided August 29, 2013), slip op at 3, this Court recently provided the foundation for reviewing questions of statutory interpretation:

The "primary goal" of statutory interpretation "is to discern the intent of the Legislature by first examining the plain language of the statute." *Driver v Naini*, 490 Mich 239, 246–247; 802 NW2d 311 (2011). A statutory provision must be read in the context of the entire act, and "every word or phrase of a statute should be accorded its plain and ordinary meaning." *Krohn v Home–Owners Ins Co*, 490 Mich. 145, 156; 802 NW2d 281 (2011). When the language is clear and unambiguous, "no further judicial construction is required or permitted, and the statute must be enforced as written." *Pohutski v City of Allen Park*, 465 Mich. 675, 683; 641 NW2d 219 (2002) (internal citations and quotations omitted). Only when the statutory language is ambiguous may a court consider evidence outside the words of the statute to determine the Legislature's intent. *Sun Valley Foods*

Co v Ward, 460 Mich 230, 236; 596 NW2d 119 (1999). However, “[a]n ambiguity of statutory language does not exist merely because a reviewing court questions whether the Legislature intended the consequences of the language under review. An ambiguity can be found only where the language of a statute, as used in its particular context, has more than one common and accepted meaning.” *Papas [v. Michigan Gaming Control Bd]*, 257 Mich App 647, 658; 669 NW2d 326 (2003)].

On appeal, plaintiff argues that she substantially complied with the notice mandate 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.]

MCL 500.3145(1) is unambiguous: plaintiff’s action for recovery of personal protection benefits is barred unless she provides *written* notice of injury within one year after the accident. Here, there is no dispute that plaintiff failed to provide written notice of the accident to defendant, and mere oral notice is insufficient under the statute. See *Kelly v Losinski*, 92 Mich App 468, 471-473; 285 NW2d 334 (1979). Plaintiff relies on *Walden v Auto Owners Ins Co*, 105 Mich App 528; 307 NW2d 367 (1981) and *Dozier v State Farm Mutual Automobile Ins Co*, 95 Mich App 121; 290 NW2d 408 (1980) in support of her position that oral notice is sufficient to satisfy the notice requirement of MCL 500.3145(1). However, *Walden* and *Dozier* are distinguishable, as each case involved *some* form of writing. Here, there is a complete lack of *any* writing. Plaintiff’s oral notice was insufficient to create a question of material fact regarding whether plaintiff complied with the written notice of the accident within the one year requirement of the statute.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly