STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1181

Pamela Sue Platz,
Appellant,

vs.

Progressive Direct Insurance,
Respondent.

Filed April 17, 2017
Reversed
Johnson, Judge

Hennepin County District Court
File No. 27-CV-16-1500

James S. Ballentine, Alicia N. Sieben, Schwebel, Goetz & Sieben, P.A., Minneapolis, Minnesota (for appellant)

Jamie A. Sonsteby, Fox Law Office, New Brighton, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Pamela Sue Platz was injured in an automobile accident. She received income-loss benefits under her no-fault auto insurance policy for approximately five months. Her insurer limited her income-loss benefits to $250 per week, which was the statutory maximum at the time of the accident. In no-fault arbitration, Platz sought income-loss

benefits of $500 per week, which is the statutory maximum that became effective eight days after the accident. Both an arbitrator and the district court rejected her argument. We conclude that Platz was entitled to the increased amount of income-loss benefit as of the effective date of the amendment and, therefore, reverse.

FACTS

On December 24, 2014, Pamela Sue Platz was injured in an automobile accident. She was insured by Progressive Direct Insurance. Her auto insurance policy had been issued on August 19, 2014, and was effective for six months. The policy was renewed on February 19, 2015. Because of her injuries, she was unable to work from the date of the accident until May 27, 2015. After the accident, Progressive provided Platz with income-loss benefits in the amount of $250 per week until May 23, 2015.

In June 2015, Platz petitioned for no-fault arbitration. The parties agreed that the arbitrator should decide questions of law, subject to *de novo* review by the district court. Platz argued to the arbitrator that she was entitled to income-loss benefits of $500 per week as of January 1, 2015, the effective date of an amendment to the no-fault act that increased the maximum weekly income-loss benefit from $250 to $500. The arbitrator rejected Platz's argument on the grounds that her entitlement to income-loss benefits is governed by the insurance policy in force at the time of the accident, that the insurance policy is governed by the law in effect when the policy was issued, and that the amendment to the no-fault act does not apply to claims arising from accidents that occurred before January 1, 2015. But the arbitrator found that Platz was entitled to $241 of income-loss benefits for additional working days because she unable to work until May 27, 2015.

In February 2016, Platz commenced an action in district court and moved to partially vacate or to modify the arbitrator's award. *See* Minn. Stat. § 572B.23(a)(4) (2016). Platz argued to the district court that the arbitrator erroneously interpreted the no-fault act by ruling that she was not entitled to $500 per week in income-loss benefits after January 1, 2015. She argued in the alternative that she was entitled to $500 per week in income-loss benefits after her insurance policy was renewed in February 2015. The district court, conducting a *de novo* review, agreed with the arbitrator that Platz was entitled to only $250 in weekly income-loss benefits throughout the period during which she was unable to work. The district court also rejected Platz's alternative argument on the ground that Platz did not preserve it by presenting it to the arbitrator. Accordingly, the district court denied Platz's motion. Platz appeals.

D E C I S I O N

Platz argues that the district court erred by denying her motion to partially vacate or to modify the arbitration award. Specifically, she argues that the arbitrator and the district court erred by ruling that she was entitled to only $250 per week, not $500 per week, in income-loss benefits after January 1, 2015.

One of the purposes of the Minnesota No-Fault Automobile Insurance Act is to "relieve the severe economic distress of uncompensated victims." Minn. Stat. § 65B.42(1) (2016). To accomplish this purpose, the no-fault act requires owners of vehicles to carry insurance policies that provide certain first-party benefits, including economic-loss benefits. Minn. Stat. §§ 65B.48, subd. 1, 65B.49, subd. 2 (2016). Basic economic-loss benefits, including income-loss benefits, are available to reimburse persons injured in

automobile accidents for "all loss suffered through injury arising out of the maintenance or use of a motor vehicle." Minn. Stat. § 65B.44, subd. 1(a) (2016). Income-loss benefits "shall provide compensation for 85 percent of the injured person's loss of present and future gross income from inability to work," subject to a maximum weekly amount. Minn. Stat. § 65B.44, subd. 3(a) (2016). In 2014, the legislature amended the no-fault act to increase the maximum weekly amount of income-loss benefits from $250 to $500. 2014 Minn. Laws ch. 310, § 3, at 2061 (codified at Minn. Stat. § 65B.44, subd. 3(a) (2014)). The increase in the weekly maximum became effective on January 1, 2015. *Id.*

Platz's argument raises an issue of statutory interpretation. Both parties rely principally on no-fault caselaw to inform their arguments about the proper interpretation of the statute.

In both her initial brief and her reply brief, Platz relies primarily on *Hoben v. City of Minneapolis*, 324 N.W.2d 161 (Minn. 1982). The question in *Hoben* was whether an amendment to the no-fault act applied to an injured person's claim for economic-loss benefits based on an accident that occurred before the effective date of the amendment. *Id.* at 161-62. The supreme court analyzed the issue by referring to a provision of the no-fault act that provided as follows: "'Basic economic loss benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as income loss . . . is incurred.'" *Id.* at 163 (quoting Minn. Stat. § 65B.54, subd. 1 (1980)). The supreme court reasoned, "Because of the clear language of § 65B.54, subd. 1, we hold that it was the intent of the legislature to deal prospectively with future payments of all basic economic loss benefits, regardless of when the accident or incident giving rise to the claim occurred." *Id.* Accordingly, the

supreme court reasoned that "economic loss benefits are payable as the *loss* occurs, not when the *injury* occurs." *Id.* The supreme court concluded, "The losses which [Hoben] suffered after [the effective date] are therefore governed by the law in effect from and after that date." *Id.*

In its responsive brief, Progressive does not dwell on the *Hoben* opinion but mentions that it was issued before another supreme court opinion, thereby hinting that *Hoben* has been overruled. The subsequent supreme court opinion on which Progressive relies is *AMCO Insurance Company v. Lang*, 420 N.W.2d 895 (Minn. 1988). Progressive cites *Lang* for the proposition that "benefits are based upon the policy in effect at the time of the accident." The question in *Lang* was whether an amendment to the no-fault act concerning the interaction between no-fault benefits and workers' compensation benefits applied to a claim for underinsured-motorist benefits based on an accident that occurred *after* the effective date of the amendment. *Id.* at 896-98. In that case, the session law specifically provided that the amendment would be "effective October 1, 1985, and apply to all insurance policies . . . that are executed, issued, issued for delivery, delivered, continued, or renewed . . . after September 30, 1985." *Id.* at 898. The supreme court reasoned that, given the particular language of the session law concerning the prospective application of the amendment, the claim for underinsured-motorist benefits was "governed by the law in effect at the time the policy [was] issued" and that the amendment to the no-fault act would apply only to insurance policies issued or renewed after the effective date. *Id.* Because the insurance policy in force at the time of the accident had been issued before

the effective date of the amendment, the supreme court concluded that the amendment to the no-fault act did not apply. *Id.* at 898-900.

We do not read *Lang* to have overruled *Hoben*. The *Lang* opinion does not expressly overrule *Hoben*. *See* 420 N.W.2d 895. The *Lang* opinion does not even discuss, let alone cite, *Hoben*. *See id.* Furthermore, there is no basis for interpreting *Lang* to have overruled *Hoben* by implication. The two opinions concern different issues. Of the two opinions, *Hoben* is more similar to the issue in this case. Both *Hoben* and this case concern income-loss benefits. The statute that was central to the analysis in *Hoben* still is in force, with identical language. *See* Minn. Stat. § 65B.54, subd. 1 (2016). Indeed, the supreme court has applied the plain language of section 65B.54, subdivision 1, in a manner similar to *Hoben* on at least three occasions in the intervening years. *See Stand Up Multipositional Advantage MRI, P.A., v. American Family Ins. Co.*, 889 N.W.2d 543, 550 (Minn. 2017); *State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 530-31 (Minn. 2015); *Stout v. AMCO Ins. Co.*, 645 N.W.2d 108, 112-13 (Minn. 2002). For these reasons, *Hoben* applies, and *Lang* does not apply.

Progressive also cites *American Family Insurance Company v. Metropolitan Transit Commission*, 424 N.W.2d 825 (Minn. App. 1988) (*MTC*), in support of its argument. The issue in *MTC* was whether one insurer was entitled to reimbursement from another insurer for no-fault benefits paid to a person injured while a passenger on a public-transit bus. *Id.* at 826-27 The parties' dispute centered on an amendment to the no-fault act that was intended to shift the indemnification duty from the public-transit authority's insurer to the passenger's no-fault insurer. *Id.* at 826-28 (citing 1986 Minn. Laws ch. 455, § 50, at 867).

After the amendment's effective date, the passenger made a claim for no-fault economic-loss benefits for an injury that occurred before the effective date. *Id.* at 826. This court resolved the issue by following the analysis in *Lang*, reasoning that the amendment did not apply because amendments to the no-fault act generally are "prospective in nature, fixing the date of loss and the rights and obligations of the parties as of the date of accident or injury." *Id.* at 828. This court discussed *Hoben* but stated that the two cases are "quite different" from each other. *Id.*

The *MTC* opinion does not apply to this case. As we recognized in *MTC*, that case is dissimilar to *Hoben*. *See id.* Accordingly, *MTC* is dissimilar to this case for some of the same reasons. In addition, the *MTC* opinion is concerned with which insurer is responsible for all types of no-fault benefits, while *Hoben* is focused on an insured's entitlement to income-loss benefits in particular. *Compare Hoben*, 324 N.W.2d at 161-63, *with MTC*, 424 N.W.2d at 826-28. Those benefits are governed by section 65B.54, subdivision 1, which was the focus of the analysis in *Hoben*. 324 N.W.2d at 161-63. Furthermore, to the extent that this court's opinion in *MTC* discussed section 65B.54, subdivision 1, the discussion may be in tension with subsequent supreme court opinions, which have reiterated that income-loss benefits are "payable monthly as loss accrues" and that "[l]oss accrues . . . as income loss . . . is incurred." *See* Minn. Stat. § 65B.54, subd. 1; *see also Stand Up*, 889 N.W.2d at 550; *Lennartson*, 872 N.W.2d at 530-31; *Stout*, 645 N.W.2d at 112-13.

Applying the *Hoben* analysis in this case leads to the conclusion that "[t]he losses which [Platz] suffered after [the effective date] are . . . governed by the law in effect from

and after that date." *See Hoben*, 324 N.W.2d at 163. Thus, the district court erred by ruling that Platz was not entitled to income-loss benefits of as much as $500 per week as of January 1, 2015, and thereafter. In light of that conclusion, we need not consider Platz's alternative argument.

In sum, the district court erred by denying Platz's motion to partially vacate or to modify the arbitrator's award.

Reversed.