STATE OF MICHIGAN

COURT OF APPEALS

ZCD TRANSPORTATION, INC.,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 27, 2012

No. 304719
Wayne Circuit Court
LC No. 10-011600-CZ

Before: JANSEN, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action to recover first-party no-fault benefits. We affirm in part, reverse in part, and remand for further proceedings.

Arnold Grinblatt was injured in an automobile accident in 2001. Before the accident, Grinblatt was unable to walk and got around using an Amigo personal mobility vehicle. He was able to drive using a van fitted with a lift and hand controls. After the accident, Grinblatt was too weak to move himself from the Amigo scooter to the driver's seat of the van and vice-versa. He therefore hired plaintiff to provide transportation services, both for medical appointments and for personal trips unrelated to medical treatment. Plaintiff's fee for the service consisted of three components: (1) a pick-up fee of $35 to come and get the client, (2) a wait-fee of $30 an hour, billed in 15 minute increments if the driver had to wait for the client, and (3) mileage. Plaintiff charged $3 a mile, but every client was charged a minimum of 10 miles for a one-way trip and 20 miles for a round trip, regardless of the number of miles actually driven. Plaintiff acknowledged that a majority of Grinblatt's trips involved distances less than the mileage minimum.

Defendant objected to paying for medical transportation costs to the extent plaintiff sought compensation for times when Grinblatt was not actually in the vehicle being transported and to paying for personal trips. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10).

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). A motion under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." *Spiek v Dep't of Transp*, 456 Mich

331, 337; 572 NW2d 201 (1998). Summary disposition is appropriate if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial." *Spiek*, 456 Mich at 337. The determination of what constitutes an allowable expense under the no-fault act is a question of law that is also reviewed de novo. *In re Geror*, 286 Mich App 132, 134; 779 NW2d 316 (2009).

Under the no-fault act, an insurance company is "required to provide first-party insurance benefits . . . for certain expenses and losses." *Johnson v Recca*, 492 Mich 169, 173; ___ NW2d ___ (2012). Specifically, an insurer must pay personal protection benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle[.]" MCL 500.3105(1). Those benefits include:

> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. . . .
>
> * * *
>
> (c) Expenses not exceeding $20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent. [MCL 500.3107(1)].

Because benefits are only payable for accidental injury arising out of the ownership, operation, maintenance, or use of a vehicle and benefits include allowable expenses, the allowable expenses must be "causally connected to the accidental bodily injury arising out of an automobile accident." *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 530-531; 697 NW2d 895 (2005). Therefore, the product, service, or accommodation claimed as an allowable expense must be related to the insured's injuries. *Id.* An expense is an "allowable expense" if (1) the expense is for an injured person's care, recovery, or rehabilitation, (2) the expense is reasonably necessary, (3) the expense is incurred, and (4) the charge is reasonable. *Douglas v Allstate Ins Co*, 492 Mich 241, 259; ___ NW2d ___ (2012).

The terms "care," "recovery," and "rehabilitation" are to be given their ordinary meanings. *Hamilton v AAA Mich*, 248 Mich App 535, 546; 639 NW2d 837 (2001). Both recover and rehabilitate "refer to restoring an injured person to the condition he was in before sustaining his injuries." *Griffith*, 472 Mich at 534-535. Thus, expenses for recovery and rehabilitation "are costs expended in order to bring an insured to a condition of health or ability sufficient to resume his preinjury life." *Id.* The scope of the term "care" is limited "to expenses for those products, services, or accommodations whose provision is necessitated by the injury sustained in the motor vehicle accident." *Id.* at 535. "Care" "may encompass expenses for products, services, and accommodations that are necessary because of the accident but that may not restore a person to his preinjury state." *Id.* The Supreme Court recently reaffirmed *Griffith's*

definition of "care," stating that "although services for an insured's care need not restore a person to his preinjury state, the services must be related to the insured's injuries to be considered allowable expenses." *Douglas*, 492 Mich at 260.

Allowable expenses and replacement expenses are two "separate and distinct categories" of benefits. *Johnson*, 492 Mich at 180. Accord *Douglas*, 492 Mich at 262. "Services that were required both before and after the injury, but after the injury can no longer be provided by the injured person himself or herself *because* of the injury, are 'replacement services,' not 'allowable expenses.'" *Johnson*, 492 Mich at 180 (emphasis in original). That is because while the services "might be necessitated by the injury if the injured person otherwise would have performed them himself, they are not *for* his care . . . ." *Douglas*, 492 Mich at 263 (emphasis in original).

An expense is "reasonably necessary" if (1) it is objectively reasonable and (2) it is necessary for the insured's care, recovery, or rehabilitation. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 163; 802 NW2d 281 (2011). An expense is incurred when the insured becomes liable to pay. *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 484; 673 NW2d 739 (2003). There must at least be evidence that the service provider expected compensation for its services. *Burris v Allstate Ins Co*, 480 Mich 1081; 745 NW2d 101 (2008). The insurer "is not obliged to pay any amount except upon submission of evidence that services were actually rendered and of the actual cost expended." *Moghis v Citizens Ins Co of America*, 187 Mich App 245, 247; 466 NW2d 290 (1991).

We agree with defendant that transportation expenses unrelated to medical treatment are not recoverable even if prescribed by a doctor as being "necessary for the patient's care, recovery, and rehabilitation."[1] Those transportation services, which were not directly related to Grinblatt's medical treatment but were solely to maintain his pre-injury quality of life, constituted replacement services, not allowable expenses, because Grinblatt did his own pleasure driving before the accident and, but for the injuries sustained in the accident, would have continued to do so. Further, plaintiff admitted that it provided the service to Grinblatt as a courtesy and did not expect him to pay for it.

On the other hand, it has long been recognized that the cost of transportation and mileage to and from medical appointments are allowable expenses. *Davis v Citizens Ins Co of America*, 195 Mich App 323, 328; 489 NW2d 214 (1992); *Neumann v State Farm Mut Auto Ins Co*, 180 Mich App 479, 486; 447 NW2d 786 (1989); *Swantek v Auto Club of Mich Ins Group*, 118 Mich App 807, 808-810; 325 NW2d 588 (1982). The expense was incurred to some extent because plaintiff provided the service to Grinblatt and apparently would have turned to him for payment

[1] The doctor wrote the prescription as dictated to him by Grinblatt "under the presumption that [it] would be submitted to the insurer and that would be the insurer's decision as to what was covered." While the doctor testified that rehabilitation includes participation in social or recreational activities and "community reintegration," the tenor of his testimony was that the social and community aspects of rehabilitation were necessary for a patient's complete recovery in that they were part of a normal lifestyle but it was up to the lawyers and insurance companies to determine what was compensable under the no-fault act.

if defendant were not liable. However, plaintiff's charges clearly included a fee for medical transportation even when Grinblatt was not in the vehicle and being transported. For example, the record shows that plaintiff billed for picking Grinblatt up from his home in order to transport him to a doctor's office and for either waiting for him to obtain his treatment or coming back to get him after his treatment so it could take him home. It stands to reason that plaintiff would have to charge for such services even though Grinblatt is not in the vehicle because it cannot transport him to and from medical appointments unless it first picks him up at home and then waits for him or comes back to get him to take him back home again. Because the pick-up and wait-time aspect of the service was actually rendered and the fees were incurred, the issue is whether those charges were reasonable. See *Manley v Detroit Auto Inter-Ins Exch*, 425 Mich 140, 388 NW2d 216 (1986) (where defendant paid providers for nursing services, expense was incurred and the dispute was whether expense was reasonably necessary and, if so, whether charge was reasonable). Neither party has addressed that issue or provided any evidence for gauging the reasonableness of the charges. Therefore, the reasonableness of the charges remains a question of fact to be determined.

The record also shows that plaintiff charged a separate mileage fee for actually transporting Grinblatt and often charged for more miles than he actually traveled. To that extent, plaintiff sought payment for transportation services not actually rendered. Therefore, the trial court properly concluded that defendant was entitled to judgment to the extent plaintiff sought payment for mileage beyond that actually traveled by Grinblatt.

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

/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan