# STATE OF MICHIGAN

# COURT OF APPEALS

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| BARBARA ROSS,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>March 9, 2004 |
| v | No. 245165<br>Wayne Circuit Court |
| ALLSTATE INSURANCE COMPANY,<br><br>Defendant-Appellee. | LC No. 01-142450-NF |

Before: Neff, P.J. and Wilder and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition in this first-party automobile negligence case. We affirm.

## I. Basic Facts and Procedural History

On or about May 10, 1992, plaintiff was injured in an automobile accident. At that time, she carried no-fault insurance provided by defendant. In April 1993, plaintiff initiated an action in the trial court for personal protection insurance benefits under defendant's policy. On March 9, 1994, the parties settled the case for $6,500.

In December 2001, plaintiff initiated the present action alleging that she suffered injuries and work loss related to the 1992 accident. Although not specifically stated in the complaint, plaintiff sought benefits related to a closed-head injury that she attributed to the accident.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court granted defendant's motion stating:

> Defendant moves for summary disposition on two grounds. First, defendant argues that plaintiff's claim for work loss benefits is barred by the "one-year-back rule" contained in MCL 500.3145(1). In her brief in response to defendant's motion and at the hearing held on defendant's motion, counsel for plaintiff conceded that there is no claim for work loss benefits at issue. Therefore, defendant's initial argument is moot.

> Defendant also contends that the purported traumatic brain injury is unrelated to the accident. In support of its contention, defendant relies on the report of Dr. W. John Baker, a neuropsychologist, who conducted an independent neuropsychological evaluation on plaintiff on July 31, 2001. In the report, Dr. Baker indicates that there is no evidence of a traumatic brain injury. In response, plaintiff simply asserts that there is a question of fact as to whether the alleged traumatic brain injury is related to the accident. . . . Here, plaintiff has not met her burden insofar as she has not come forward with any evidence to support her claim that she suffered a traumatic brain injury as a result of the accident and thus, has failed to raise a material question of fact. Under the circumstances, the Court is constrained to grant defendant the relief which is seeks. Defendant's motion for summary disposition is accordingly granted.

Plaintiff moved for reconsideration submitting evidence which she contended created a question of fact on whether the closed-head injury arose from the 1992 accident. The trial court denied plaintiff's motion in a written opinion. The trial court determined that defendant's motion for summary disposition encompassed failure to show a genuine issue of whether plaintiff's closed-head injury was related to the 1992 accident, but acknowledged that the evidence plaintiff submitted with its motion for reconsideration established a genuine issue of material fact. Nonetheless, the trial court determined that, under MCL 500.3145(1), when plaintiff timely filed her original action she did not seek personal protection benefits for a traumatic brain injury nor did she provide notice of such an injury. Thus, the trial court determined that the present action was filed after the expiration of the statutory limitation period and denied plaintiff's motion for reconsideration.

## II. Analysis

### A. Standard of Review

The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We review the trial court's decision regarding a motion for summary disposition de novo. *First Public Corp v Parfet,* 468 Mich 101, 104; 658 NW2d 477 (2003).

### B. Genuine Issue of Fact Regarding Closed-Head Injury

Plaintiff first argues that there is a genuine issue of material fact as to whether the alleged closed-head injury is related to the 1992 accident. We need not address this issue because the trial court held in plaintiff's favor that there was a genuine issue of whether the alleged injury was related to the 1992 accident. Moreover, defendant does not disagree with plaintiff's assertion on appeal that there was a genuine issue as to this material fact.

### C. Statutory Period of Limitation

Next, plaintiff argues that the trial court erred in denying her motion for reconsideration based on its determination that plaintiff's action was barred by the statutory period of limitation in the no-fault statute, MCL 500.3101 *et seq*. We disagree. Whether plaintiff's claim is statutorily time-barred is a question of law for this Court to decide de novo. *Regents of the University of Michigan v State Farm Mut Ins Co,* 250 Mich App 719, 731; 650 NW2d 129

(2002). This issue also requires interpretation of the no-fault statute, MCL 500.3101 *et seq.* which we also review de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc,* 468 Mich 29, 32; 658 NW2d 139 (2003).

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Regents of the University of Michigan, supra* at 732-733. The first step in that determination is to review the language of the statute itself. *Id.* If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible. *Id.* Should a statute be ambiguous on its face, however, so that reasonable minds could differ with respect to its meaning, judicial construction is appropriate to determine the meaning. *Id.*

The relevant portion of the no-fault statute, MCL 500.3145(1), 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 previous made a payment of the 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.

Plaintiff argues that MCL 500.3145 does not bar the present action for several reasons. First, plaintiff argues that she "timely gave notice of her claim for first-party No-Fault benefits to Defendant[]" which is evidenced by the fact that defendant paid benefits up to March 9, 1994. But it is not the "claim" which a plaintiff must give notice of, it is the injury. The plain language of the statute mandates that the nature of the injury must be indicated for the defendant to be properly notified. Michigan courts have consistently held that providing notice of *an* injury is insufficient to provide the insurer with a basis for evaluation of a claim. A claim for specific benefits must be submitted. *Welton v Carriers Ins Co,* 421 Mich 571, 579-580; 365 NW2d 170 (1984). Notice must be specific enough to inform the insurer of the nature of the loss. *Mousa v State Auto Ins Cos,* 185 Mich App 293, 295; 460 NW2d 310 (1990). Here, plaintiff's original claim and action did not include a closed-head injury or any head injury. Consequently, plaintiff did not notify defendant of the injury for which she seeks benefits by way of this action. Therefore, we conclude that plaintiff did not provide notice of the closed-head injury by way of her initial claim or action.

Second, plaintiff argues that she did specifically notify defendant of the closed-head injury before the 1994 settlement because she submitted the bills and records of Dr. Larry Berkower who determined that she "showed signs and symptoms of a closed head injury." Our

review of these records reveals that while Berkower did indeed indicate that plaintiff's symptoms included headaches, withdrawn behavior, a marked loss of energy and crying spells, the records do not state or indicate that these are "signs and symptoms" of a closed-head injury. Furthermore, plaintiff has failed to submit any evidence to show that these are, in fact, signs and symptoms of a closed-head injury. We also note that the records do not refer to any suspected closed-head or traumatic brain injury suffered by plaintiff.

Finally, plaintiff argues that she is entitled to submit her closed-head injury claim because medical expenses under no-fault law are a lifetime benefit as long as they are reasonable and necessary and related to the accident. Plaintiff has cited no authority for this other than MCL 500.3107 itself. Because the statute should be read as a whole, we do not read 500.3107 standing alone to mean that a plaintiff can submit a claim for injury at any time because "medical expenses under no-fault law are a lifetime benefit as long as they are reasonable and necessary and related to the accident." Provisions must be read in the context of the entire statute so as to produce a harmonious whole. *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). The statutory period of limitation in the no-fault act applies to bar actions that do not comply with its provisions. The fact that medical expenses are a lifetime benefit does not mean that the limitations period can be disregarded. The trial court did not err in granting summary disposition in defendant's favor.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly