

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000295-MR

JOHN AYERS; MICHAEL BOHNERT
AND OHIO CASUALTY INSURANCE COMPANY APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 06-CI-000733

MELVIN DUCKWORTH APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, KELLER, AND MOORE, JUDGES.

MOORE, JUDGE: Appellant, Ohio Casualty Insurance Company, seeks review of the Jefferson Circuit Court's grant of summary judgment in favor of appellee, Melvin Duckworth. Duckworth's action was brought under the Kentucky Motor Vehicle Reparatons Act, specifically the assigned claims plan provision under the Act.

In its appeal, Ohio Casualty argues that summary judgment was premature because the time for discovery was inadequate. Ohio Casualty contends that because there was insufficient time for discovery, it was unable to secure the information necessary to calculate the net loss owed to Duckworth. Declining to adopt Ohio Casualty's interpretation of the law on assigned claims, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 4, 2005, Duckworth was injured in an automobile accident. He claimed that John Ayers and Michael Bohnert negligently operated their automobiles and caused the accident.¹ The vehicle Duckworth was driving was uninsured. Duckworth did not own the automobile; on January 10, 2006, he applied for benefits under KRS² 304.39-160, the assigned claims plan provision. Ohio Casualty was designated as the reparation obligor responsible for Duckworth's claim under the assigned claims plan pursuant to KRS 304.39-160. In his application for benefits, Duckworth denied that he was covered by any private health insurance.

After Ohio Casualty was assigned to Duckworth's claim pursuant to the assigned claims plan, he submitted copies of his medical bills to the insurance company.³ Duckworth later filed a civil action against Ayers and Bohnert as a

¹ Ayers and Bohnert are not parties to the present appeal.

² Kentucky Revised Statute.

³ According to Duckworth, Ohio Casualty never paid any of the medical expenses that he submitted.

result of the accident. Duckworth amended his complaint to add Ohio Casualty as an additional defendant.

During the course of discovery,⁴ Ohio Casualty learned that Duckworth had health insurance coverage provided by Anthem Blue Cross and Blue Shield at the time of the accident.⁵ Duckworth submitted his medical bills directly to Ohio Casualty shortly after he had applied for benefits under the assigned claims plan. When Ohio Casualty learned about Duckworth's health insurance coverage, it determined that it was only responsible for paying Duckworth's co-pays regarding his medical expenses related to the accident. Ohio Casualty offered to pay Duckworth's co-pays if he dismissed his claim against it and provided adequate documentation of his medical expenses.

Shortly after receiving Ohio Casualty's answer to his amended complaint, Duckworth moved for summary judgment. Ohio Casualty filed its response to the motion for summary judgment. The Jefferson Circuit Court then granted judgment in Duckworth's favor.

II. STANDARD OF REVIEW

“The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.”

⁴ Ohio Casualty states that this written discovery came in after the motion for summary judgment was filed.

⁵ In the trial court's opinion and order granting summary judgment, it determined that Duckworth had general health insurance coverage at the time of the accident. In his brief, Duckworth denies this coverage. However, he did not file a cross-appeal addressing this issue, thus, waiving it.

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996). Issues of law are reviewed *de novo*. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

“The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr.*, 807 S.W.2d 476, 480 (Ky. 1991).

“Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact.” *Id.* Further, “the movant must convince the court, by the evidence of record, of the nonexistence of an issue of material fact.” *Id.* at 482.

III. ANALYSIS

Under KRS 304.39-160(3), “if a person receives basic reparation benefits through the assigned claims plan, all benefits or advantages he receives or is entitled to receive as a result of the injury . . . are subtracted in calculating net loss.” Ohio Casualty argues that summary judgment is premature in this case without discovery as to how much Duckworth’s private health insurance paid toward his medical expenses in connection with this accident. According to Ohio Casualty, if it does not know the amount paid by Anthem, then it cannot calculate its net loss with respect to the claim. Ohio Casualty believes this lack of information formed a reasonable foundation for its delay in paying Duckworth’s medical expenses.

The assigned claims plan falls within the Kentucky Motor Vehicle Repairs Act, which includes both KRS 304.39-160 and KRS 304.39-210.

While KRS 304.39-160(3) entitles a reparation obligor to subtract other benefits or advantages received by a claimant in order to calculate net loss, KRS 304.39.210(1), the more specific and, thus, controlling statute, provides that the reparation obligor must pay benefits monthly as the claimant's loss *accrues*. Loss accrues when medical expenses are incurred. These payments are considered overdue if not paid within thirty days of the insurer's receipt of reasonable proof of the amount of loss. In addition, KRS 304.39-210(3) provides that

[a] claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payment or from the claimant who actually receives the payments.

Noting that basic reparation benefits must be paid monthly and citing this statute, the Court of Appeals theorized in *State Automobile Mutual Insurance Co. v. Outlaw*, 575 S.W.2d 489 (Ky. App. 1978), that

[a]ssuming that Outlaw [the claimant] had filed a claim for benefits soon after the accident and that the assigned claims bureau had promptly assigned her claim to State Auto [the reparation obligor], State Auto would not have had any right to make any deduction for any future medical assistance payments.

Id. at 494. Clarifying this proposition, the Court of Appeals held, eight years later, that “KRS 304.39-210(3) directs the reparations obligor to pay [basic reparation benefits] without deducting [the claimant's other benefits as set forth in KRS 304.39-160(3)] if the benefits have not been paid to the claimant before [the basic

reparation benefits] are paid.” *Morrison v. Kentucky Cent. Ins. Co.*, 731 S.W.2d 822, 825 (Ky. App. 1987). This is because the assigned reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who received the benefits. KRS 304.39-210(3).

Against this backdrop of law, the questions before us are: 1) whether Duckworth fulfilled his obligation to provide Ohio Casualty with reasonable proof of his realized losses; and 2) if he did, whether Ohio Casualty had a reasonable foundation for delaying payment of the claims.

The record illustrates that the accident took place on December 4, 2005. After the accident, Duckworth applied for benefits with the Kentucky Assigned Claims Plan on January 10, 2006, a little over a month from the date of the accident when his injuries occurred. Some two weeks later, on January 23, 2006, Duckworth submitted copies of his medical bills to Ohio Casualty. According to KRS 304.39-020(5)(a), it is presumed that any medical bill submitted is reasonable. *See also Outlaw*, 575 S.W.2d at 493. Further, the submission of actual medical bills in connection with an accident is enough to satisfy the statutory requirement of reasonable proof of the fact and amount of the loss realized. *Id.*

Duckworth’s timely filing of his application for benefits along with his submission of actual medical bills to Ohio Casualty was enough to satisfy his burden to provide reasonable proof of his loss. Ohio Casualty does not dispute it was in receipt of the medical bills from Duckworth, and nothing in the record

contradicts this. According to statute, these bills were to be paid within thirty days, and Ohio Casualty neglected to do so; therefore, the payments were overdue.

Ohio Casualty is correct in stating that it is entitled to be reimbursed for other benefits that Duckworth received. However, where Ohio Casualty's argument falls short is in its assumption that it was not obligated to pay benefits due to Duckworth until after discovery was conducted to secure the amount of net loss. This proposition is directly contradicted by KRS 304.39-210(3) which unequivocally mandates that the reparation obligor, in this case Ohio Casualty, *must* timely pay the claimant as his loss accrues. But, despite this statutory obligation, the reparation obligor is entitled to *reimbursement* from that claimant in the amount of any other benefits or advantages received. *See also* KRS 304.39-160(1).

Nonetheless, if Ohio Casualty could show that it had a reasonable foundation for delaying the payment of the claim, then it may avoid the penalties of interest and attorney's fees. *Automobile Club Insurance Co. v. Lainhart*, 609 S.W.2d 692, 694 (Ky. App. 1980). A reasonable foundation for delay is defined as either the "assertion of a legitimate and bona fide defense by the reparation obligor" or, as relevant to this case, failure of the claimant to supply the obligor with reasonable proof of loss in a timely fashion. *Id.* at 695; *see also Kentucky Farm Bureau Mutual Insurance Company v. Roberts*, 603 S.W.2d 498, 499 (Ky. App. 1980); *Outlaw*, 575 S.W.2d at 494-495.

In this instance, Ohio Casualty does not assert that it had a bona fide defense for delaying payment to Duckworth. Ohio Casualty instead argues that it delayed payment because it did not have the opportunity to discover how much of Duckworth's medical expenses the coverage provided by Anthem has paid.⁶ This does not constitute a reasonable foundation to delay payment. Ohio Casualty was in receipt of Duckworth's medical bills shortly after the accident and was aware of its assignment to his claim. While Ohio Casualty may not have known that Duckworth had private health insurance benefits at the time of the accident, it was not permitted to delay payment of timely submitted claims in an effort to calculate net loss. Once Ohio Casualty received reasonable proof of loss, it was their obligation to pay these claims within thirty days. Ohio Casualty is entitled to seek reimbursement for any other benefits, such as those provided by health insurance, related to this accident later received by Duckworth.

Accordingly, once Duckworth furnished Ohio Casualty with the reasonable proof of loss, Ohio Casualty was then under a statutory obligation to pay those claims within thirty days. The grant of summary judgment by the circuit court is, therefore, affirmed.

ALL CONCUR.

⁶ We believe Ohio Casualty's discovery issue would have been more appropriately addressed in a subrogation claim by Ohio Casualty against Duckworth, Anthem or the tortfeasors.

BRIEF FOR APPELLANT:

Jeffrey A. Taylor
Lexington, Kentucky

Douglas L. Hoots
Lexington, Kentucky

BRIEF FOR APPELLEE:

Grover S. Cox
Louisville, Kentucky