STATE OF MICHIGAN

COURT OF APPEALS

MARK GILMAN, through his Next Friend, LONNIE LEWIS GILMAN,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
October 25, 1996

No. 173667
LC No. 89-005158-CK

Before: Saad, P.J., and Marilyn Kelly and M.J. Matuzak,* JJ.

PER CURIAM.

Defendant State Farm Mutual Automobile Insurance Company appeals as of right from an October 11, 1993, order of the circuit court effectuating a September 10, 1993, jury verdict in favor of plaintiff Mark Gilman. We affirm.

In May 1985, plaintiff sustained permanent injuries in an automobile accident which rendered him a quadriplegic and unable to care for himself. It is undisputed that defendant did not receive notification of the accident until the present action was filed in April 1989.

In his complaint, plaintiff alleged that defendant had issued an automobile insurance policy to plaintiff's father and that plaintiff was a resident of his father's home for purposes of coverage under the no-fault act. Plaintiff also alleged that the one-year statute of limitations did not bar his claim because his mental and physical condition prevented him from comprehending his rights.[1] Plaintiff sought compensation for his medical costs and lost wages.

In its answer to the complaint, defendant denied coverage, alleging that the action was barred by the statute of limitations and that plaintiff had not been domiciled in the home of the insured at the time of the accident.

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* Circuit judge, sitting on the Court of Appeals by assignment.

At trial, evidence was presented that plaintiff required 24-hour assistance with his daily needs due to his physical condition. The parties presented conflicting evidence concerning plaintiff's cognitive and psychological condition following the accident. Plaintiff testified that he had been staying with his parents at the time of the accident as his wife had recently filed for divorce.

The jury found that plaintiff had sustained his burden of proof that he was insane so as to toll the statute of limitations. The jury also found that plaintiff was domiciled in his parents' household for purposes of the no-fault act. Accordingly, the jury awarded plaintiff damages for his expenses and lost wages. The circuit court entered judgment for plaintiff for approximately $1.2 million after reducing the verdict by a social security setoff and increasing it due to interim interest.

I

Defendant argues that the trial court's instruction to the jury regarding the determination of insanity was erroneous. In particular, defendant argues that the trial court erred when it instructed the jury that there are differing degrees of insanity. We find no error.

Plaintiff attempted to demonstrate at trial that his cognitive and psychological condition following the accident rendered him insane so as to toll the one-year statute of limitations. MCL 600.5851; MSA 27A.5851. The trial court gave an instruction to the jury which stated that a person could be found insane if a "mental derangement" prevented the party from comprehending his rights. The instruction further indicated that "[t]he mental condition of a person suffering from the kind of derangement contemplated by the statute might be such that while somewhat aware, he is not fully aware of the circumstances entitling him to maintain an action." We find that the instruction was permissible because it accurately stated the law and was understandable, concise, conversational, and nonargumentative. *Bordeaux v Celotex Corp*, 203 Mich App 158, 169; 511 NW2d 899 (1993); *Valisano v Chicago & NW R Co*, 247 Mich 301, 304; 225 NW2d 607 (1992); *Davidson v Baker-Vander Veen Co*, 35 Mich App 293, 307-308; 192 NW2d 312 (1971).

II

Defendant argues that the jury instruction regarding plaintiff's domicile was erroneous. Defendant contends that the jury should have been instructed that there was a presumption that plaintiff was domiciled with his wife. We find no merit to this argument because the instruction given accurately stated the law. *Bordeaux*, *supra* at 169; *Workman v DAIIE*, 404 Mich 477, 496; 274 NW2d 373 (1979); *Williams v State Farm Mutual Automobile Ins Co*, 202 Mich App 491, 494; 509 NW2d 821 (1993). If defendant were domiciled with his wife, the jury could have so found based upon the factors included in the court's instruction. In particular, one of the factors to be weighed by the jury was "the presence of an alternate place of residence." Cf. *Workman*, *supra*. Accordingly, this issue lacks merit.

III

Defendant argues that the trial court erred when it permitted plaintiff to read a portion of the deposition of psychologist James Blase during rebuttal argument. Defendant contends that the use of the deposition was erroneous because it was taken for discovery purposes only, and it had not been filed or made an exhibit at trial. We find no abuse of discretion in the trial court's decision to admit the evidence. *Clearly v Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1994). The expert deposition was admissible under MRE 803(18) to rebut the testimony of defendant's expert. Contrary to defendant's argument, we are not convinced that the deposition of Dr. Blase was taken for discovery purposes only because there is no indication on the record that defendant obtained a protective order restricting the use of the deposition. MCR 2.302(C)(7). The deposition was properly used during rebuttal, and filed with the trial court for purposes of this appeal.

IV

Defendant argues that the jury was precluded from considering an award of penalty interest because plaintiff failed to provide defendant with reasonable proof of the loss. While defendant did not receive notice of the loss prior to the filing of plaintiff's complaint, the complaint itself and subsequent discovery ample proof of plaintiff's loss. Accordingly, the jury was permitted to consider an award of penalty interest. MCL 500.3142; MSA 24.13142.

V

Defendant argues that plaintiff failed to present sufficient evidence of his home health care expenses. We disagree. A plaintiff may recover for health care services without presenting formal documentation of expenses incurred. *Fortier v Aetna Casualty & Surety Co*, 131 Mich App 784, 790; 346 NW2d 874 (1984). In addition, the no-fault act allows for compensation of family members who have provided care at home to an injured person in need of care. *Reed v Citizens Ins Co of America*, 198 Mich App 443, 451; 499 NW2d 22 (1993). Here, plaintiff provided evidence of the health care services provided by plaintiff's family, and the market value of those services. It was within the province of the jury to determine the value of those services. *Botsford General Hospital v Citizens Ins Co*, 195 Mich App 127, 142-143; 489 NW2d 137 (1992).

Affirmed.

/s/ Henry William Saad
/s/ Marilyn Kelly
/s/ Michael J. Matuzak

[1] Due to plaintiff's mental and physical limitations, his brother was appointed next friend for purposes of this action.