

STATE OF MICHIGAN
COURT OF APPEALS

FRANCES YOKUM,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED

February 7, 1997

No. 179921

LC No. 93-453250-NI

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals as of right from the order granting summary disposition in favor of defendant pursuant to MCR 2.116(I)(2). We affirm.

We review a trial court's grant of summary disposition de novo in order to determine from an examination of the record whether the prevailing party was entitled to judgment as a matter of law. *G&A, Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). The dispositive question before us is whether the trial court erred in determining that plaintiff lacked standing to bring a contract claim against defendant because Medicare paid the medical expenses she sought to recover from defendant under her no-fault automobile insurance policy. The facts under which Medicare made payments for medical expenses on plaintiff's behalf are not in dispute. Medicare paid the medical expenses because it did not know the source of plaintiff's injury. Because the source of the plaintiff's injury was a motor vehicle accident, defendant, as the no-fault insurer, is the primary insurer for the medical expenses. Plaintiff's theory was that she has a right to sue defendant for these medical expenses under the no-fault policy and then use her recovery to reimburse Medicare.

Standing is a legal term used to denote the existence of a party's interest in the outcome of the litigation and that will assure sincere and vigorous advocacy. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 655; 517 NW2d 864 (1994). Generally, a plaintiff shows a personal stake in the lawsuit by demonstrating injury to the plaintiff or the plaintiff's property. *Id.* at 656.

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

On appeal, plaintiff claims that Medicare's unsubstantiated assertion of a lien against the proceeds of a third-party recovery that will prevent disbursement of those proceeds until this case is resolved constitutes an injury. However, the injury claimed by plaintiff on appeal differs from the injury claimed at the October 5, 1994, hearing on the motion for summary disposition.¹ Moreover, plaintiff cites no factual support in the record or legal support for her position that a lien was imposed against her third-party recovery. This Court limits its review to the record provided on appeal and will not consider any alleged evidence that is not supported by the record presented to the Court for review. *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992). In view thereof, and given the cursory treatment given by plaintiff to this issue, we could decline to consider plaintiff's argument. *Community Nat'l Bank v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 520-521; 407 NW2d 31 (1987).

Nevertheless, even if a lien was imposed on the third-party recovery which requires, as a condition of the lien, that payment will be delayed until this case is resolved, it does not give plaintiff standing to sue defendant for breach of contract. We presume from plaintiff's brief that the third-party recovery in question is an alleged settlement on Count I of her complaint, wherein she sought damages from the driver and owner of the other motor vehicle which allegedly struck the motor vehicle occupied by her at the time of the accident. The record before us reflects that this count was dismissed by stipulation on March 24, 1994. Assuming for purposes of this issue that a condition of the lien was that payment to plaintiff of the alleged settlement would be delayed until after the case against defendant is resolved, a resolution of the claim against defendant by dismissal due to a lack of standing will have the same result as deciding the case on the merits. At best, the delay is a tangential consequence of the fact that plaintiff filed a breach of contract claim against defendant. To have standing, there must be more than incidental injury. *Health Central v Ins Comm'r*, 152 Mich App 336, 347-348; 393 NW2d 625 (1986).

Moreover, we believe that plaintiff's lien theory of injury is based on a misunderstanding of what constitutes a lien. A lien is not exerted against an individual. A lien is merely a right or claim against some interest in property. *Cheff v Haan*, 269 Mich 593, 598; 257 NW 894 (1934). It is a charge or security upon property. *Aetna Casualty & Surety Co v Starkey*, 116 Mich App 640, 645; 323 NW2d 325 (1982). A lien is created in contract or by rule of law. *Wiltse v Schaeffer*, 327 Mich 272; 42 NW2d 91 (1950). Statutory liens may also be created. See e.g. *Nickell v Lambrecht*, 29 Mich App 191; 185 NW2d 155 (1970).

The statute relied upon by plaintiff creates no Medicare lien against property interests. 42 USC 1395y(b)(2) creates certain causes of action for the United States. Further, 42 USC 1395y(b)(3) creates certain private causes of action, but only if there are "damages." The statute does not authorize an individual or entity to step into the shoes of the United States in order to sue a primary insurer to recover payments, and does not create a "lien" against property interests.

The mere fact that a breach of contract is being asserted does not establish standing. See *Wheeler v Travelers Ins Co*, 22 F3d 534 (CA 3, 1994) (discussing a Medicare beneficiary's standing in a diversity action under federal principles). Moreover, a plaintiff cannot rest a claim to relief on the rights or interests of a third-party. *Fieger v Ins Comm'r*, 174 Mich App 467, 471; 437 NW2d 271

(1988). If, in fact, Medicare has a legal claim against the third-party recovery, then Medicare has a right to enforce that claim. However, plaintiff may not use Medicare's alleged rights with respect to a third-party recovery to establish standing to sue another defendant in the lawsuit. Hence, having considered the lower court record and the lien theory relied upon by plaintiff to show injury, we hold that the trial court correctly granted summary disposition in favor of defendant on the breach of contract claim. Plaintiff was not, as a matter of law, injured by defendant's alleged breach of contract.

Affirmed.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

¹ Although a "lien" theory of injury was presented at that hearing, the particular injury claimed was that "Medicare has asserted a lien against the Plaintiff and against the Defendant as it relates to this case."