STATE OF MICHIGAN

COURT OF APPEALS

SHELLEY KEQUAM, as conservator of JESSICA MACKLAM,

Plaintiff-Appellant,

v

LAKES STATES INSURANCE CO,

Defendant-Appellee.

UNPUBLISHED
April 11, 1997

No. 189433
Kent Circuit Court
LC No. 94-4641-NI

SHELLEY KEQUAM, as conservator of JESSICA MACKLAM,

Plaintiff-Appellee/Cross-Appellant,

v

LAKES STATES INSURANCE CO,

Defendant-Appellant/Cross-Appellee.

No. 190373
Kent Circuit Court
LC No. 94-4641-NI

Before: Reilly, P.J. and MacKenzie, and B.K. Zahra*, JJ.

PER CURIAM.

Following arbitration, plaintiff brought this action to confirm the arbitration award rendered against defendant, her no-fault insurer. The court entered judgment confirming the award, and reserved ruling on other motions filed by the parties. The court's subsequent rulings on those motions are challenged on appeal. In Docket No. 189433, plaintiff appeals as of right the court's order denying the motion for offer of judgment sanctions. We affirm. In Docket No.190373, defendant appeals as of right the court's orders denying defendant's motion for attorney fees as a sanction for a frivolous

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

pleading and its motion for no-fault sanctions. Plaintiff cross-appeals the court's denial of her motion for additional interest. We affirm in part, reverse in part and remand.

Docket No. 189433

The trial court did not err in denying plaintiff's motion for offer of judgment sanctions under MCR 2.405(D). The judgment entered by the court confirming the arbitration award was not a "verdict" as that term is defined by MCR 2.405(A)(4). The arbitration award was not "rendered by a jury or by the court sitting without a jury . . . ." MCR 2.405(A)(4). The arbitration award was rendered by the arbitration panel. Because there was no verdict, MCR 2.505 is inapplicable, and the court properly denied plaintiff's motion for sanctions under that court rule.

Docket No. 190373

Defendant argues that the court erroneously addressed defendant's request for sanctions under MCL 600.2591; MSA 27A.2591 and MCR 2.114(F) only in terms of whether plaintiff acted in bad faith. According to defendant's argument, MCL 600.2591(3)(a)(iii); MSA 27A.2591(3)(a)(iii) indicates that an action or defense can be frivolous without regard to bad faith if the party's "legal position was devoid of arguable legal merit." Defendant also argues that the court erred in failing to award defendant sanctions under MCL 500.3148(2); MSA 24.13148. We agree with defendant that the court's findings with respect to the issue of sanctions were inadequate. Without adequate findings, this Court is unable to review the court's decision using the appropriate deferential standard of review. See *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995); *Beach v State Farm Mutual Auto Ins Co*, 216 Mich App 612, 627; 550 NW2d 580 (1996). Accordingly, we remand the case to the circuit court for further findings with respect to propriety of sanctions under MCL 600.2591; MSA 27A.2591 and MCR 2.114(F) and MCL 500.3148(2); MSA 24.13148(2).

On cross-appeal, plaintiff argues that the trial court erred in denying her motion for additional interest. We agree in part.

Plaintiff was not entitled to twelve percent interest on the attorney fees included in the award. The award refers to "AN AWARD OF NO FAULT INTEREST: 12% From 8/12/92 til Paid; AN AWARD OF POST-JUDGMENT INTEREST : no." No-fault interest of twelve percent is available on overdue personal protection insurance payments, not on attorney fees. MCL 500.3142; MSA 24.13142. *Liddell v DAIIE*, 102 Mich App 636, 652-653; 302 NW2d 260 (1981).

Plaintiff was also not entitled to pre-judgment interest on the attorney fee portion of the award under MCL 600.6013(5); MSA 27A.6013(5). Because preaward damage claims are considered to have been submitted to arbitration, the arbitration award's silence regarding interest on the attorney fee portion of the award is deemed to be a decision not to award interest. *Holloway Construction Co v Bd of County Rd Commissioners*, 450 Mich 608, 617; 543 NW2d 923 (1996).

However, we agree with plaintiff that defendant's admitted failure to pay the entire amount owing when it paid plaintiff on September 22, 1994 resulted in additional interest accruing on the unpaid amount. The arbitration award provided for $9000 in overdue benefits, $3000 in attorney fees and no-fault interest of twelve percent until paid. It is undisputed that as of September 22, 1994, $2281.32 in interest was owed, the total debt being $14,281.32. Defendant admits that it miscalculated the amount of interest that was owing when it paid plaintiff $13,198.40 on September 22, 1994, resulting in a deficit of $1082.92.

Defendant contends that the partial payment left $1082.92 of interest unpaid and that interest cannot be charged on overdue interest. We disagree with the premise of defendant's argument. "A partial payment is applied first to interest then due; if the payment exceeds the interest, the surplus goes toward discharging the principal, and the subsequent interest is to be computed on the balance of the principal remaining due." *Niggeling v Dep't of Transportation*, 195 Mich App 163, 167; 488 NW2d 791 (1992). Accordingly, the $13,198.40 was applied first to the $2281.32 in interest owed as of that date. The remainder of the payment, $10,917.08, was then available to cover the unpaid principal and attorney fees, leaving a deficit of $1082.92.

We recognize that if the partial payment was applied first to interest, then to the $9000 in overdue benefits, and the deficit was considered to be unpaid attorneys fees, interest would not accrue on that amount. However, because this state recognizes a common-law attorney's lien on a judgment or fund resulting from the attorney's services, *Doxtader v Sivertsen*, 183 Mich App 812, 815; 455 NW2d 437 (1990), we conclude this position would be untenable. We need not decide whether the payment must be applied to attorneys fees and then interest or vice versa because in either case, the $1082.92 deficit must be considered unpaid principal. Pursuant to the arbitration award, interest of twelve percent was due on that amount until paid.

Defendant's subsequent check to plaintiff for $1082.92, which was enclosed with a letter dated October 17, 1994, was also a partial payment because it did not include the twelve percent interest that accrued on the unpaid principal of $1082.92 from September 22, 1994 until October 17, 1994.[1] This partial payment was applied first to the $8.90 interest owing, then to principal, leaving unpaid principal in the amount of approximately $8.90. Thus, even after the October 17, 1994 payment, defendant had failed to fully pay the principal, and, in accordance with the arbitration award, interest at the rate of twelve percent continues to accrue on the unpaid amount.[2] The trial court erred by denying plaintiff's request for additional interest attributable to this unpaid amount. The portion of the court's order dated September 29, 1995, granting defendant's motion for entry of satisfaction of judgment and denying plaintiff's motion for additional interest is reversed.

Affirmed in part, reversed in part and remanded. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Maureen Pulte Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra

[1] $1082.92 x 12% x (25 days ÷ 365 days) = $8.90

[2] We recognize the maxim, "De minimis non curat lex," e.g. the law is not concerned with trifles. *Bowman v Preferred Risk Mutual Ins Co*, 348 Mich 531, 544-545; 83 NW2d 434 (1957). Nevertheless, we have resolved the issue because the principle is important, even though the amount of money involved is insignificant.