

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

SHERI A. BANCROFT-BRENNER,

Defendant-Appellant.

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UNPUBLISHED

July 8, 1997

No. 196103

Newaygo Circuit Court

LC No. 95-015663-NF

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from a June 3, 1996, installment judgment. On appeal, defendant challenges a March 19, 1996, order granting plaintiff summary disposition pursuant to MCR 2.116(C)(10) and permitting plaintiff to recover an overpayment of no-fault insurance work loss benefits it paid to defendant. We affirm.

Defendant argues that plaintiff overpaid her because of a mistake of fact and that she relied on plaintiff's mistake to her detriment, thereby making repayment inequitable. Defendant was injured in a motor vehicle accident. Plaintiff paid defendant wage loss benefits under a policy of no-fault insurance. Seven months after the accident, defendant applied for social security disability benefits. Defendant began receiving disability benefits in May of 1994, including a lump sum of \$12,791 for back benefits. One-fourth of that amount was withheld and paid directly to defendant's attorney for attorney fees. Approximately five months later, defendant advised plaintiff that she was receiving social security disability benefits. Upon notification of the social security award, plaintiff stopped paying wage loss benefits and sought recovery of its overpayment of wage loss benefits for the period of time during which defendant also received disability benefits. Defendant advised plaintiff that she could not repay the overpayment because she had already spent the lump sum disability award. Defendant argues that summary disposition should not have been granted because an issue of fact existed regarding detrimental reliance. Based on *Adams v ACIA*, 154 Mich App 186; 397 NW2d 262 (1986), defendant claims that such detrimental reliance precludes plaintiff's recovery.

In *Adams*, an overpayment of wage loss benefits that resulted from a miscalculation was recoverable as a payment made under a mistake of fact absent a showing of detrimental reliance. A payment made under a mistake of fact was defined as a payment made that was not legally payable. *Id.*, 194. Here plaintiff was legally obligated to pay to defendant the wage loss benefits that she received under the terms of the policy of no-fault insurance up until the time defendant received her social security award. OAG, 1981-1982, No 6111, p 772 (December 13, 1982). Under these circumstances, defendant cannot show that the payments plaintiff made to defendant were not legally payable and thus, there was no mistake of fact prior to May of 1994.<sup>1</sup> Only the portion of benefits paid by plaintiff between May 1994 and October 1994 could be said to have been made under a mistake of fact. However, defendant provided the trial court with no evidentiary materials indicating that a genuine issue of material fact existed as to whether plaintiff misled defendant, which might give rise to a finding of detrimental reliance, and whether defendant's circumstances were such that requiring her to repay this money would be unjust. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994); *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991); *Soltis v First of American Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994). Under the circumstances, the trial court did not err in holding that *Adams* did not apply.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Harold Hood

/s/ William B. Murphy

<sup>1</sup> Based on *Adams, supra*, this result suggests that plaintiff may not have been entitled to recover these monies based on the mistake of fact doctrine. Whether plaintiff had another legal basis for recovery is not before us in this appeal.