

STATE OF MICHIGAN
COURT OF APPEALS

CLYDE EVERETT,

Plaintiff-Appellee,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

January 26, 2010

No. 287640

Lapeer Circuit Court

LC No. 06-037406-NF

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

GLEICHER, J. (*dissenting*)

I respectfully dissent because I cannot meaningfully distinguish this case from *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476; 673 NW2d 739 (2003). According to the Supreme Court's holding in *Proudfoot, id.* at 484-485, plaintiff did not "incur" expenses for his home modification until February 13, 2008, when he signed a contract with Recovery Construction Services. Given that no evidence suggests that defendant delayed payment after February 2008, no expenses qualified as "overdue" under MCL 500.3148(1). Consequently, I conclude that the circuit court committed legal error when it misapplied § 3148(1) as a basis for awarding plaintiff attorney fees. *Proudfoot*, 469 Mich at 482.

/s/ Elizabeth L. Gleicher