STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN HEAD AND SPINE INSTITUTE, P.C.,

Plaintiff-Appellee,

v

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant-Appellee,

and

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
August 10, 2017

No. 331859
Oakland Circuit Court
LC No. 2015-144888-CK

Before: SHAPIRO, P.J., and GLEICHER and O'BRIEN, JJ.

PER CURIAM.

Bryan Croteau sustained a devastating spinal injury in a 2009 motorcycle accident. Michigan Head and Spine Institute, P.C. provided his surgical care and billed Blue Cross Blue Shield of Michigan for its services. BCBSM paid.

Three-and-a-half years later, BCBSM decided that Croteau's no-fault insurer, Auto-Owners Insurance Company, should have paid MHSI's charges. BCBSM sent Auto-Owners a demand letter. When Auto-Owners refused to pay, BCBSM clawed back its payments from MHSI. MHSI filed this lawsuit, contending that BCBSM waited too long to recoup its payments. An amended complaint added Auto-Owners as a defendant.

Invoking a third-party beneficiary theory, the circuit court ordered Auto-Owners to pay MHSI's bills. We reverse that ruling, and hold that summary disposition should have been granted in MHSI's favor solely against BCBSM. We therefore affirm in part.

I

MHSI billed BCBSM approximately $71,000 for the services it rendered to Croteau. MHSI accepted BCBSM's payments totaling $11,569.90; BCBSM's last payment to MHSI was made in January 2010. MHSI was apparently satisfied with the amount it received from BCBSM, as it made no complaint and took no legal action.

In September 2010, Croteau filed a first-party no-fault case against Auto-Owners. Croteau and Auto-Owners resolved some of their differences by entering into a release titled "Partial Release of Personal Injury Protection Claims." The partial release, dated January 11, 2012, addressed Croteau's claims for attendant care services, wage loss benefits, other allowable expenses, penalty interest, and attorney fees. Regarding payment of Croteau's medical bills, the partial release provided:

> IT IS UNDERSTOOD AND AGREED that as further consideration between the parties that the no-fault insurer, Auto-Owners Insurance Company, will pay medical providers for services rendered as well as defend, indemnify and hold harmless its insured, Bryan Croteau, individually as to any medical provider bills for medical care, treatment, products or services associated with the injuries sustained in the accident of October 7, 2009, rendered by any doctor, hospital or third-party (non-family) provider incurred prior to the execution of this Agreement.

Croteau's attorney provided BCBSM with a copy of the partial release in December 2012. Less than a week later, BCBSM's counsel demanded that Auto-Owners reimburse BCBSM for the $168,070.85 that BCBSM had paid on Croteau's behalf, including $11,569.90 paid to MHSI. Auto-Owners responded that "the majority of your claims are barred by the no-fault one-year back rule of MCL 500.3145." On January 7, 2015, BCBSM electronically repaid itself to the tune of $11,398.40 from amounts it otherwise owed to MHSI.

MHSI filed this lawsuit, alleging that BCBSM had breached the parties' participating provider contract. That contract limited BCBSM's right to reimbursement for improper payments to two years from the date of its payment, MHSI asserted, and the claw-back occurred three-and-a-half years out. BCBSM generally denied liability. The parties then stipulated that MHSI could add Auto-Owners as a party defendant. MHSI's amended complaint asserted that Auto-Owners was "a third-party beneficiary to the contract between Auto-Owners and Mr. Croteau." Auto-Owners denied liability and stated as an affirmative defense that MHSI's claim was time-barred under the one-year-back rule, MCL 500.3145.

MHSI filed motions for summary disposition against BCBSM and Auto-Owners. Auto-Owners filed its own motion for partial summary disposition against MHSI, contending (among other things) that MCL 500.3145 barred MHSI's claim. The circuit court adopted MHSI's argument that it was a third-party beneficiary of the partial release between Croteau and Auto-Owners and as such was entitled to payment of its roughly $71,000 in medical bills. The court further explained:

> This is a contract case. It is not a no-fault case, although the underlying case was a no-fault case. This case is a breach of contract case based on the release.
>
> The release was extremely broad. As I stated, the broadest I have seen. It specifically says Auto-Owners is responsible to pay all the claims. There are no defenses under the No-Fault Act preserved. I think that if they wanted them to be preserved, they should have been in that release because that release specifically says Auto-Owners is responsible to pay all the claims.

> So therefore, I'm granting plaintiff's motion. I'm denying defendant, Auto-Owners' SD motion, and I think plaintiff's motion against Blue Cross Blue Shield is now moot.

Auto-Owners now appeals. We review the parties' arguments regarding the three motions for summary disposition de novo, bearing in mind that summary disposition is appropriate if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

II

We begin with the simplest of the issues presented, and the least controversial. MHSI's motion for summary disposition against BCBSM averred that BCBSM breached its provider contract by reimbursing itself for payments made more than two years previously. Article IV, § 4.02 of the contract governing the relationship between MHSI and BCBSM provides, in relevant part:

> BCBSM shall have the right to recover amounts paid TRUST PROVIDER for services not meeting the applicable benefit or medical necessity criteria as determined by BCBSM, overpayments, services not verified through TRUST PROVlDER's records, any services not received by Enrollee; or for services furnished when TRUST PROVIDER's license was lapsed, restricted, revoked or suspended. *BCBSM shall have the right to initiate recovery of amounts paid for services up to two (2) years from the date of payment,* except in instances of fraud, as to which there will be no time limit on recoveries. [Emphasis added.]

BCBSM has not challenged that this portion of the contract applies to the facts presented, and it has not contended that it initiated recovery within the two-year period prescribed. Indeed, BCBSM raised no defense whatsoever to MHSI's contract-based cause of action. Accordingly, MHSI was entitled to summary disposition of its claim against BCBSM.

II

MHSI's additional motion for summary disposition asserted that as a third-party beneficiary of the partial release signed by Croteau and Auto-Owners, MHSI was entitled to payment by Auto-Owners for the full amount of its charges related to Croteau's care. Auto-Owners' summary disposition motion argued that MHSI was not a third-party beneficiary, that the one-year-back rule stated in MCL 500.3145 barred MHSI's claim, and that other no-fault defenses limited the amount that MHSI could recover.[1] MHSI responded that its case against

[1] In a Statement of Supplemental Authority, Auto-Owners has added in this Court that the Supreme Court's recent opinion in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, __ Mich __; 895 NW2d 490 (2017), also bars MHSI's claim.

Auto-Owners arose solely in contract rather under the No-Fault Act, and that the partial release unambiguously bound Auto-Owners to its promise to pay Croteau's medical bills.

We will assume without deciding that MHSI was an intended third-party beneficiary of the partial release. As such, MHSI "stands in the shoes" of Croteau, the original promisee, and has the same right to enforce the promises made to Croteau as Croteau would have against Auto-Owners. *Shay v Aldrich*, 487 Mich 648, 665-666; 790 NW2d 629 (2010). Further,

> The third-party-beneficiary statute expressly provides that the rights of the third-party beneficiary are "subject always to such express or implied conditions, limitations, or infirmities of the contract to which the rights of the promisee or the promise are subject." Thus, a person who qualifies under the third-party-beneficiary statute gains the right to sue to enforce the contract. But in doing so, that person stands in the shoes of the original promisee and only gains the same right that the original promisee would have had. Accordingly, a third-party beneficiary is not automatically entitled to the sought-after benefit merely by *qualifying* as a third-party beneficiary. While a third-party beneficiary has the right to seek enforcement of a promise, courts must still apply basic principles of contract interpretation when determining the extent of the third party's rights under the contract. [*Id*. at 666.]

Alternatively stated, the third-party beneficiary accepts the benefits of the contract and is bound by its burdens. *Chrysler Corp v Smith*, 297 Mich 438, 451; 298 NW 87 (1941), overruled in part on other ground by *Park v Appeal Bd of Mich Employment Security Comm*, 355 Mich 103 (1959).

MHSI contends that "this is a breach of contract case," not a no-fault case, and that the partial release "unambiguously provides for payment of any medical provider's claims incurred prior to the execution of the release[.]" We agree that this case involves a contract (the partial release) and that MHSI has recited the contractual language accurately. But these concessions do not yield the conclusion MHSI urges.

Suppose that earlier this year, Croteau received a bill for medical services that he believed were reasonable, necessary, arose out of his accident, and should have been paid by Auto-Owners. Croteau's lawsuit against Auto-Owners would invoke the partial release, of course. But we find nothing in the partial release that would eliminate Auto-Owners' ability to defend Croteau's claim by arguing that the one-year-back rule applied, or that the charges were unrelated, or unreasonable and unnecessary. By entering into the partial release, Auto-Owners did not agree to unquestioningly pay *all* of Croteau's medical expenses in perpetuity, including those unrelated to the accident. Moreover, the release specifically referred to Auto-Owners as "the no-fault insurer," and expressly states that it "only releases those claims for personal injury protection benefits specifically mentioned herein." The release does not signal that Auto-Owners agreed to waive all defenses that it might have to future claims.

As a third-party beneficiary, MHSI would be in no better position to enforce a medical benefit claim than would Croteau. Auto-Owners raised a defense to MHSI's claim that MHSI's 2015 request for payment for services rendered in 2010 comes too late. See MCL 500.3145(3)

(limiting recovery to losses incurred during the one year preceding commencement of the action). Other than arguing that the No-Fault Act does not apply, MHSI has offered no argument to the contrary. And we have found none.

We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Colleen A. O'Brien