

STATE OF MICHIGAN
COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

HASTINGS MUTUAL INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 22, 2003

No. 236490

Wayne Circuit Court

LC No. 01-119212-NZ

Before: Gage, P.J., and Wilder and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

The present lawsuit between plaintiff and defendant is the third round of litigation involving the payment of Douglas Ling's medical expenses. Ling suffered a closed head injury as a result of a car accident in 1980. At the time of this accident in 1980, Ling was insured by defendant. Ling received psychotherapy for his injuries, for which defendant paid.

In January 1995, Ling was involved in another car accident. At this point, plaintiff was Ling's insurer. After the 1995 accident, Ling began another round of psychotherapy treatment. Plaintiff did not pay for Ling's treatment and Ling brought suit in Macomb Circuit Court against plaintiff. Defendant was also added as a party to the lawsuit. An arbitrator was appointed and required the parties to split payment for Ling's treatment, with each party paying half.

On April 6, 2000, Ling filed another lawsuit in Macomb Circuit Court against both plaintiff and defendant for non-payment of first-party benefits he claimed as a result of the 1980 and 1995 accidents. This lawsuit was ultimately dismissed voluntarily as the parties reached a settlement. Plaintiff and defendant agreed to pay for Ling's treatment, and plaintiff and defendant agreed between themselves that they would each continue to pay for half of the treatment.

On June 8, 2001, plaintiff filed a complaint against defendant in Wayne Circuit Court for declaratory relief, which action forms the basis of the present appeal. Plaintiff sought a declaratory judgment to determine the extent to which Ling's 1995 accident aggravated his previous injury from the 1980 accident in an effort to avoid paying for Ling's future medical

expenses. The trial court granted defendant's motion for summary disposition, finding that there was no current conflict between the parties to remedy.

On appeal, plaintiff argues that the trial court erred in finding that there was no "actual controversy" to be resolved between the parties, and therefore, summary disposition was not appropriate. This Court reviews a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra* at 337. A motion for summary disposition under MCR 2.116(C)(10) may be granted when, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

A declaratory action is appropriate where a judgment is needed to stabilize an uncertain or disputed legal relation, or where the judgment is needed to guide a party's future actions in order to preserve its legal rights. *Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993). A trial court is not precluded from reaching an issue before an actual injury has occurred; however, a trial court cannot decide a hypothetical issue. *Shavers v Attorney General*, 402 Mich 554, 588-589; 267 NW2d 72 (1978). Therefore, in determining whether to issue a declaratory judgment, a court must first be satisfied that an "actual controversy" has been presented. *Id.*; MCR 2.605.

Plaintiff argues that the trial court should have issued a declaratory judgment concerning the portion of Ling's medical expenses that each party will be required to pay in the future. While in appropriate circumstances a trial court is not precluded from issuing a declaratory judgment outlining the amount an insurer will be required to pay to an insured under the parties' insurance agreement, *Manley v DAIIE*, 425 Mich 140, 157; 388 NW2d 216 (1986), those circumstances are not present here.

Plaintiff did not provide a medical bill it had paid, or was going to pay, for Ling's injuries that could be subject to declaratory relief. In fact, it is uncertain whether Ling will ever seek medical treatment again. In other words, plaintiff asked the court to issue a declaratory judgment defining each parties' obligations for paying a medical expense that has not, and might never be, incurred by either party. Without Ling actually having received some form of medical treatment for which he made a claim, the trial court could not issue a declaratory judgment based on anything but speculation.¹

¹ In *Manley v DAIIE*, 425 Mich 140; 388 NW2d 216 (1986), on the other hand, the trial court was faced with an issue of future medical treatment that was much more certain than that in the present case. The plaintiff suffered severe closed head injuries and had the cognitive abilities of a one or two-year-old child. *Id.* at 145. He was confined to a bed or wheelchair and required constant care. *Id.* A dispute arose concerning what amount the defendant was obligated to pay for the plaintiff's at home medical care. *Id.* at 147. The trial court in *Manley* was not faced with a hypothetical question because evidence showed that the plaintiff would almost certainly never regain his faculties and that his care would most likely forever remain unchanged. *Id.* at 158.

Because we find that the trial court did not err in granting defendant's motion for summary disposition, we need not discuss defendant's arguments regarding alternative bases for affirming the trial court.

Affirmed.

/s/ Hilda R. Gage
/s/ Kurtis T. Wilder
/s/ Karen Fort Hood