

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT MAHLE,

Plaintiff-Appellee,

v

TITAN INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

May 13, 2008

No. 277326

Wayne Circuit Court

LC No. 05-532803-NO

Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant Titan Insurance Company appeals by leave granted¹ an order denying its motion for summary disposition of plaintiff Robert Mahle's claim for room and board expenses under the no-fault act, MCL 500.3101 *et seq.* We reverse.

I. Facts and Procedural History

Plaintiff suffered a closed head injury and other internal injuries when he was involved in an automobile accident on November 30, 1996. At the time of the accident, plaintiff was covered under an automobile insurance policy issued by defendant. Because of the injuries he sustained in the accident, plaintiff lived with his mother. Defendant's payment of benefits to plaintiff included monthly payments for plaintiff's room and board expenses in the amount of approximately \$1,025. Defendant paid this amount pursuant to an arbitration award in plaintiff's favor. At the time, such expenses constituted an "allowable expense" under MCL 500.3107(1)(a) based on this Court's holding in *Reed v Citizens Ins Co of America*, 198 Mich App 443, 450-453; 499 NW2d 22 (1993), rev'd sub nom in *Griffith v State Farm Mutual Auto Ins Co*, 472 Mich 521; 697 NW3d 895 (2005), in which this Court held that a person receiving at-home care is entitled to room and board costs under MCL 500.3107(1)(a) to the extent that such costs would constitute an allowable expense if the injured person received the same care in an institutional setting.

¹ *Mahle v Titan Ins Co*, unpublished order of the Court of Appeals, entered August 27, 2007 (Docket No. 277326).

On April 28, 2005, defendant advised plaintiff in a letter that “there is currently a decision being reviewed by the Michigan Court of Appeals regarding room and board issue. Should it be determined that an insurer does not owe for this we will no longer afford payment for this expense.” Shortly thereafter, on June 14, 2005, the Supreme Court decided *Griffith*. In *Griffith*, the Supreme Court ruled that a person receiving at-home care is not entitled to food costs under MCL 500.3105(1) and MCL 500.3107(1)(a). In addition, *Griffith* specifically overruled *Reed*. On July 21, 2005, defendant wrote plaintiff a letter stating that the Supreme Court had recently decided that “items which are just as necessary for an injured person as they are for an uninjured person are not compensable under the No-Fault Act. Necessities such as food, shelter and utilities will no longer be covered by Titan Insurance.” The letter further advised plaintiff that effective August 31, 2005, defendant would no longer pay for plaintiff’s room and board expenses.

Plaintiff filed suit against defendant. In his complaint, plaintiff alleged that as a result of the injuries he sustained in the accident, he was forced to reside with his mother. He further alleged that if his mother was unwilling or unable to care for him, he would be forced to reside with someone who could monitor him 24 hours a day, seven days a week, or placed in a residential care facility. Plaintiff also alleged that defendant’s claims specialist intentionally misrepresented *Griffith* in the July 21, 2005, letter she had written to plaintiff, because *Griffith* only addressed whether food expenses in an at-home setting, not expenses for room and board, were compensable under the no-fault act. According to plaintiff, this misrepresentation constituted “an intentional tort separate and independent of the breach of the contract as a material misrepresentation of the existing law.”² Plaintiff sought to recover no-fault benefits for his room and board, as well as exemplary damages, mental distress damages, and attorney fees.

Defendant moved for summary disposition under MCR 2.116(C)(8) and (10). According to defendant, plaintiff’s room and board claim should be dismissed because under *Griffith*, goods and services that are just as necessary for an injured person as they are for an uninjured person are not “allowable expenses” under MCL 500.3107(1)(a). Defendant also argued that plaintiff’s intentional misrepresentation claim should be dismissed because three federal cases confirmed that defendant’s denial of plaintiff’s room and board expenses was proper under *Griffith*. Plaintiff argued that defendant misinterpreted *Griffith* to avoid its obligation to compensate plaintiff for room and board. According to plaintiff, the holding in *Griffith* is inapplicable to the instant case because because *Griffith* was limited to food and this case involves benefits for room and board. Plaintiff further contended that any language in *Griffith* regarding room and board is dicta and not binding.

The trial court denied defendant’s motion for summary disposition of plaintiff’s room and board claim. In denying the motion, the trial court stated: “All right, look I am going to deny your motion because I think that *Griffith* arguably applies only to the issue of food.” The trial court did not rule on plaintiff’s intentional misrepresentation claim.

² Plaintiff’s complaint and first amended complaint also contained further allegations that are not relevant to this appeal.

II. Analysis

This case requires this Court to determine whether the no-fault act, specifically MCL 500.3105(1) and MCL 500.3107(1)(a), requires a no-fault insurer to reimburse a person receiving at-home care for room and board expenses. Issues of statutory construction are questions of law that this Court reviews de novo. *Jenkins v Patel*, 471 Mich 158, 162; 684 NW2d 346 (2004). This Court reviews de novo a trial court's grant or denial of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

MCL 500.3105(1) provides: "Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." MCL 500.3107 provides, in relevant part:

(1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:

(a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations *for an injured person's care, recovery, or rehabilitation*. [Emphasis added.]

MCL 500.3105(1) and MCL 500.3107(1)(a) establish two requirements for expenses for "care, recovery, or rehabilitation" to be compensable under the no-fault act:

First, such expenses must be "*for accidental bodily injury* arising out of the ownership, operation, maintenance or use of a motor vehicle . . ." MCL 500.3105(1) (emphasis added). Second, these expenses must be "reasonably necessary . . . for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). [*Griffith, supra* at 530.]

In *Reed*, this Court held that where a person injured in an automobile accident is unable to care for himself or herself and would be institutionalized if a family member were not willing to provide home care, a no-fault insurer is liable to pay the cost of maintenance or room and board in the family member's home. *Reed, supra* at 453. In *Griffith*, the Supreme Court reversed *Reed*, holding that under MCL 500.3105(1) and MCL 500.3107(1)(a), a no-fault insurer is not liable to pay the cost of *food* for a person injured in an automobile accident who resides in a family member's home because food expenses are not necessary "for accidental bodily injury" and are not related to the person's "care, recovery, or rehabilitation." *Griffith, supra* at 540. In rejecting the plaintiff's claim for reimbursement for food costs in an at-home setting, the *Griffith* Court stated:

Food costs in an institutional setting are "benefits for accidental bodily injury" and are "reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." That is, it is "reasonably necessary" for an insured to consume hospital food during in-patient treatment given the limited dining options available. Although an injured person would need to consume food regardless of his injuries, he would not need to eat *that particular food* or bear the cost associated with it. Thus, hospital food is

analogous to a type of special diet or select diet necessary for an injured person's recovery. Because an insured in an institutional setting is required to eat "hospital food," such food costs are necessary for an insured's "care, recovery, or rehabilitation" while in such a setting. Once an injured person leaves the institutional setting, however, he may resume eating a normal diet just as he would have had he not suffered any injury and is no longer required to bear the costs of hospital food, which are part of the unqualified unit cost of hospital treatment.

This reasoning can be taken a step further when considering the costs of items such as an injured person's clothing, toiletries, and even housing costs. Under plaintiff's reasoning, because a hospital provided Griffith with clothing while he was institutionalized, defendant should continue to pay for Griffith's clothing after he is released. The same can be said of Griffith's toiletry necessities and housing costs. While Griffith was institutionalized, defendant paid his housing costs. Should defendant therefore be obligated to pay Griffith's housing payment now that he has been released when Griffith's housing needs have not been affected by his injuries? [*Id.* at 537-539 (footnote omitted).]

Plaintiff argues that the holding in *Griffith* is limited to food and that any language in *Griffith* relating to room and board is merely dicta and not binding. When a court of last resort intentionally discusses and decides a question germane to, though not necessarily decisive of, the controversy, the decision is not dictum but is a judicial act of the court which is binding. *Carr v City of Lansing*, 259 Mich App 376, 384; 674 NW2d 168 (2003). "[A] 'decision of the Supreme Court is authoritative with regard to any point decided if the Court's opinion demonstrates 'application of the judicial mind to the precise question adjudged, regardless of whether it was necessary to decide the question to decide the case.'" *Id.*, quoting *People v Higuera*, 244 Mich App 429, 437; 625 NW2d 444 (2001). Even though it was not necessary for the Supreme Court to decide whether expenses for at-home room and board are compensable under the no-fault act, it specifically addressed the issue and explicitly overruled *Reed*. This court and all lower courts are bound by decisions of our Supreme Court. *People v Tierney*, 266 Mich App 687, 713; 703 NW2d 204 (2005). We have no choice but to follow *Griffith* and apply it to the facts of this case.³

Defendant also argues that plaintiff's claim of intentional misrepresentation must be dismissed. Although this issue was raised in defendant's application for leave to appeal, the trial court did not rule on this issue. At the hearing on defendant's motion for summary disposition, counsel for plaintiff asserted that the motion for summary disposition of the intentional misrepresentation claim was "a motion we can reserve for later on[.]" The trial court agreed, and

³ In one post-*Griffith* decision, the Supreme Court indicated that *Griffith* precludes the payment of a plaintiff's at-home room and board expenses under the no-fault act. In *Palarchio v Automobile Club Ins Ass'n*, 477 Mich 925; 722 NW2d 896 (2006), the Supreme Court remanded the case to the trial court for reconsideration of its order "granting the plaintiff's motion for summary disposition concerning room and board expenses, in light of . . . *Griffith*"

the order denying defendant's motion for summary disposition does not address the intentional misrepresentation claim. Furthermore, in plaintiff's response to defendant's application for leave, plaintiff asserted that he would not pursue the intentional misrepresentation claim below. We therefore decline to address this issue.

Reversed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Stephen L. Borrello