

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

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TBCI, P.C.,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED  
December 23, 2008

No. 279965  
Oakland Circuit Court  
LC No. 2006-075634-CK

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TBCI, P.C.,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellee.

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No. 279996  
Oakland Circuit Court  
LC No. 2006-075635-CK

Before: Wilder, P.J., and Jansen and Owens, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals by right the circuit court's order granting summary disposition in favor of defendant. We reverse and remand for further proceedings consistent with this opinion.

I

Plaintiff TBCI, P.C. (TBCI) provided psychological and other professional services to five individual patients who had been injured in automobile accidents. TBCI then billed

defendant, seeking reimbursement for the services provided to the patients. When defendant refused to pay, TBCI sued.

In 2006, TBCI filed separate complaints in the Oakland Circuit Court seeking reimbursement from defendant for the services provided to the five patients.<sup>1</sup> Of particular relevance here, TBCI sought reimbursement in the amount of \$31,540.41 for services provided to patient Harold Thomas, and sought reimbursement in the amount of \$48,370.16 for services provided to patient Angelina Pepaj. Attached to the individual complaints, TBCI submitted billing statements for the psychological and other professional services provided to patients Thomas and Pepaj. TBCI also submitted the affidavits of its employee Josephine Stork. Stork averred that she had personal knowledge that the billing statements were complete and accurate.

Defendant sought summary disposition on the ground that the psychological services provided to the five patients had not been “lawfully rendered”. Specifically, defendant argued that the services provided had been unlawful because limited licensed psychologists Lisa Weiss, M.A., and Mary Cassady, Ph.D., had not been properly supervised as required by the applicable statutes and Board of Psychology rules. Defendant relied on the deposition testimony of TBCI’s owner, Thomas Park, M.D., which was given in similar cases before the Macomb and Wayne Circuit Courts. In those cases, Park testified that the limited licensed psychologists on staff at TBCI “[p]robably” had not been properly supervised from 2002 through 2004.

TBCI responded to the motion for summary disposition by arguing (1) that limited licensed psychologists Lisa Weiss, M.A., and Mary Cassady, Ph.D., had been properly supervised during 2005 and early 2006—the time period at issue here, (2) that pursuant to the doctrine of “primary jurisdiction”, the question whether the limited licensed psychologists had been properly supervised was for the Board of Psychology rather than the circuit court, and (3) that even if the limited licensed psychologists had not been properly supervised, and the psychological services were accordingly not “lawfully rendered”, only partial summary disposition would be appropriate because not all of the services provided to the patients had been psychological in nature. Attached to its response, TBCI submitted the affidavits of Lisa Weiss, M.A., and Mary Cassady, Ph.D., in which Weiss and Cassady averred that they were properly licensed as limited licensed psychologists. TBCI also submitted photocopies of Weiss’s license and Cassady’s license.

At oral argument on the motion for summary disposition, defendant again argued that the psychological services provided to TBCI’s patients had not been “lawfully rendered”. Defendant also raised the new argument that TBCI had submitted “block bills”, making it impossible to

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<sup>1</sup> The circuit court granted summary disposition in favor of defendant in all five cases. See Oakland Circuit Court Case Nos. 2006-074263-CK; 2006-074487-CK; 2006-075634-CK; 2006-075635-CK; and 2006-075636-CK. Plaintiff has filed a claim of appeal pertaining to only two of the cases—2006-075634-CK and 2006-075635-CK—and has not claimed an appeal of right or sought leave to appeal with respect to the remaining three cases. This Court therefore lacks jurisdiction to consider these remaining three cases. See *Eriksen v Fisher*, 166 Mich App 439, 450-451; 421 NW2d 193 (1988).

differentiate between the psychological services rendered by Weiss and Cassady, and the non-psychological professional services provided by other TBCI employees. Defendant argued that because the psychological services were not “lawfully rendered”, and because it was impossible to differentiate between the psychological and non-psychological services, it was not required to provide reimbursement for *any* of the billed services. The circuit court agreed with defendant, ruling:

The [c]ourt, in granting summary disposition, is not making a finding that the [limited licensed psychologists] were not licensed. Rather, the finding is simply based upon the evidence presented. The [limited licensed psychologists] were not subject to the proper supervision so as to render the treatment rendered payable under the No Fault Act. The motion’s granted.

The circuit court clarified that it was granting summary disposition with respect to “[a]ll” of the services provided to TBCI’s patients—both the psychological and non-psychological services alike. Plaintiff moved for reconsideration, but the motion was denied.

## II

Defendant brought its motion for summary disposition pursuant to both MCR 2.116(C)(8) and (C)(10). But because the motion required the circuit court to consider facts outside the pleadings, we consider it as having been granted under MCR 2.116(C)(10). *Mitchell Corp v Dep’t of Consumer & Industry Services*, 263 Mich App 270, 275; 687 NW2d 875 (2004). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997). We review de novo the grant of summary disposition pursuant to MCR 2.116(C)(10). *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 712; 737 NW2d 179 (2007). In reviewing a motion for summary disposition brought pursuant to subrule (C)(10), the pleadings, affidavits, depositions, admissions, and other admissible evidence must be considered in a light most favorable to the nonmoving party. *Id.* Our review is limited to the evidence that was presented below at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). Summary disposition is properly granted under subrule (C)(10) when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Kennedy, supra* at 712. We review questions of law de novo. *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006).

## III

TBCI argues that under the doctrine of “primary jurisdiction”, it was for the Board of Psychology—and not the circuit court—to determine whether the limited licensed psychologists were properly supervised and whether the services they provided were therefore “lawful”. This argument is without merit. This Court recently rejected the very same argument in *Psychosocial Services v State Farm*, 279 Mich App 334, 336-337; \_\_\_ NW2d \_\_\_ (2008). The circuit court had jurisdiction to consider whether the limited licensed psychologists were properly supervised and whether the services they provided were consequently “lawfully rendered”. *Id.* at 337.

#### IV

TBCI next argues that there remained a genuine issue of material fact concerning whether the limited licensed psychologists were properly supervised. We agree. We fully recognize that Thomas Park, M.D., the owner of TBCI, testified in two other cases involving the same parties and similar issues that Lisa Weiss, M.A., and Mary Cassady, Ph.D., likely were not properly supervised between 2002 and 2004. We further acknowledge that Park's deposition testimony in these two other cases constituted a party admission, and was consequently admissible as evidence against TBCI in the present matter. See MRE 801(d)(2). However, we simply cannot agree with defendant's assertion that Park's testimony in the Macomb and Wayne Circuit Court cases established the absence of any factual dispute with respect to whether Weiss and Cassady were properly supervised. Indeed, TBCI submitted affidavits in which both Weiss and Cassady averred that they were properly licensed. TBCI also submitted photocopies of Weiss's and Cassady's duly issued licenses. This evidence was sufficient to raise a rebuttable presumption that Weiss and Cassady complied with the applicable licensing laws, including the applicable supervision requirement. See *Sims v Milwaukee Land Co*, 20 Idaho 513, 523; 119 P 37 (1911) (stating that "where it is shown, as in this case, that a . . . license has been issued to an applicant upon the order of the [proper agency,] in the absence of evidence showing the contrary, the court will presume that the applicant and the [agency] followed the law and pursued the method required by law to authorize the issuing of such license"); see also 29 Am Jur 2d, Evidence, § 280, p 297 (observing that in the absence of evidence to the contrary, there is generally a rebuttable presumption that individuals act honestly, fairly, legally, and in good faith). Moreover, whereas Park's testimony in the Macomb and Wayne Circuit Court cases dealt with supervision of TBCI's limited licensed psychologists between 2002 and 2004, the services at issue in the present matter were provided to patients Thomas and Pepaj in 2005 and early 2006.

In bringing a motion for summary disposition under MCR 2.116(C)(10), the moving party must specifically identify the issues as to which no genuine factual dispute exists, MCR 2.116(G)(4), *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and must support its position with affidavits, depositions, admissions, or other documentary evidence, MCR 2.116(G)(3)(b); *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). When the moving party fails to satisfy its initial burden under (C)(10), the nonmoving party has no duty to respond and summary disposition should not be granted. *Meyer v Center Line*, 242 Mich App 560, 575; 619 NW2d 182 (2000).

The scant evidence available to the circuit court in this matter simply did not demonstrate whether or not TBCI's limited licensed psychologists were properly supervised in 2005 and early 2006. Defendant failed to satisfy its initial burden of establishing the absence of a genuine issue of material fact with respect to whether TBCI's limited licensed psychologists were properly supervised during the treatment of patients Thomas and Pepaj. Because further factual development of this issue was necessary, the circuit court erred by granting summary disposition in favor of defendant on this ground.<sup>2</sup>

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<sup>2</sup> It is true that only "lawfully rendered" treatment is subject to payment as a no-fault benefit.  
(continued...)

TBCI also argues that it did not submit “block billing” to defendant and that its bills were sufficiently detailed to allow defendant to differentiate between the different types of services that were rendered. We have reviewed the bills, which were submitted to the circuit court as attachments to the individual complaints. The billing statements are not greatly detailed, but do contain the name of the individual patients, the cost of each service, and the date each service was rendered. The billing entries also contain brief descriptions of the services rendered, such as “functional activities”, “group therapy”, “group session”, “language therapy”, “medicine management”, and other similar descriptions. TBCI has continuously asserted that only a small percentage of the services provided were actually psychological in nature, maintaining that many of the services described on the billing statements were provided by occupational therapists and by other non-psychologist professionals. Moreover, in light of the fact that defendant belatedly first raised its “block billing” argument at the hearing on the motion for summary disposition, we cannot fault TBCI for failing to provide additional details concerning the nature of its billing statements earlier in the proceedings. If it is determined on remand that the limited licensed psychologists were not properly supervised during the time period at issue in this matter, and that the psychological services were therefore not “lawfully rendered”, the circuit court shall nonetheless afford TBCI an opportunity to provide additional evidence concerning whether each individual service provided to Thomas and Pepaj was psychological or non-psychological in nature. Even if the psychological services were not “lawfully rendered”, the non-psychological services might still be payable by defendant as no-fault benefits.<sup>3</sup>

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder  
 /s/ Kathleen Jansen  
 /s/ Donald S. Owens

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(...continued)

*Psychosocial Services*, *supra* at 338. Psychological treatment is not “lawfully rendered” by a limited licensed psychologist if that limited licensed psychologist is not properly supervised. *Id.* at 340. Therefore, if TBCI employees Lisa Weiss, M.A., and Mary Cassady, Ph.D., were not properly supervised, the psychological services that they rendered are necessarily not payable by defendant as a no-fault benefit. See *id.* However, because there remains a genuine issue of material fact with respect to whether Weiss and Cassady were properly supervised, we do not reach the substance of this issue.

<sup>3</sup> We do not mean to imply that that all non-psychological services will, in fact, be payable by defendant as no-fault benefits. We merely wish to make clear that the psychological components and non-psychological components of TBCI’s billing statements must be viewed separately, and that defendant might still be responsible for the non-psychological services even if it is determined that the limited licensed psychologists were not properly supervised. Of course, this issue may well become the subject of additional litigation on remand.