

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

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MEISNER LAW GROUP, P.C., f/k/a MEISNER  
& ASSOCIATES, P.C.,

UNPUBLISHED  
May 27, 2014

Plaintiff-Appellant,

v

DONALD A. KRISPIN, ISLAND LAKE NORTH  
BAY ASSOCIATION, and THE PHOENIX  
INSURANCE COMPANY, a/k/a TRAVELERS  
INSURANCE,

No. 313935  
Oakland Circuit Court  
LC No. 2012-128799-CZ

Defendants-Appellees.

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Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

In this insurance coverage dispute, Meisner Law Group, P.C. appeals by right the trial court's order dismissing its complaint for declaratory relief involving a policy issued by the Phoenix Insurance Company, which is also known as Travelers Insurance (Travelers), to Island Lake North Bay Association (North Bay). On appeal, the sole question is whether the trial court properly determined that Meisner lacked standing to challenge Travelers' decision to provide a defense for Donald A. Krispin and North Bay in a separate lawsuit. Because we conclude that there were no errors warranting relief, we affirm.

**I. BASIC FACTS**

North Bay is an association of condominium owners and Krispin was one of North Bay's officers and directors.

In May 2007, North Bay retained Meisner to serve as its general legal counsel. In April 2008, North Bay contracted with Meisner to represent it in a construction defect dispute with the developer of the condominium project.

In September 2009, North Bay purchased a commercial general liability policy from Travelers. The policy remained in force from September 2009 through September 2010 and included an endorsement that provided coverage for its directors and officers.

North Bay fired Meisner as its legal counsel in April 2010. North Bay also informed Meisner that it had retained new counsel to pursue its litigation against the developer. North Bay's new lawyer later resolved the construction dispute. By December 2011, the developer had made cash payments or made repairs amounting to more than \$1 million in total compensation.

Meisner sued North Bay and Krispin in January 2011. In that complaint, Meisner alleged various claims against North Bay arising from North Bay's decision to end its attorney-client relationship with Meisner. It also alleged claims against Krispin; in relevant part, Meisner alleged that Krispin interfered with its business relationship with North Bay by defaming it and encouraging North Bay to fire Meisner.<sup>1</sup>

In a letter dated March 2011, Travelers elected to provide North Bay and Krispin with a defense pursuant to the terms of its commercial general liability policy, but did so under a reservation of rights.

In August 2012, Meisner filed this suit. It sued Krispin and North Bay along with their insurer, Travelers. Meisner alleged that Travelers "is defending Krispin under the officers and directors liability coverage provisions of the Policy, notwithstanding the fact that the allegations against Krispin are expressly excluded from coverage." It similarly alleged that Travelers "is defending [North Bay] pursuant to the general liability coverage provisions of the Policy, notwithstanding the fact that the allegations against [North Bay] are expressly excluded from coverage." Meisner further alleged its belief that North Bay and Krispin would assert that Travelers had an obligation to defend them under the policy's terms, but Meisner disagreed that Travelers' commercial general liability policy obligated it to provide a defense to Krispin and North Bay "because the claims made against Krispin and [North Bay] are expressly excluded from coverage." For this reason, Meisner asked the trial court to "declare that Travelers has no obligation to defend and indemnify [North Bay] and Krispin in the 2011 Lawsuit . . . ."

In September 2012, Travelers moved for summary disposition of Meisner's second suit under MCR 2.116(C)(4), (8), and (10). Travelers argued that Meisner could not sue for a declaration that Travelers had no obligation to provide coverage under the policy that it issued to North Bay and Krispin because such a claim did not involve an actual case or controversy. Instead, it amounted to an improper attempt to interfere with the relationship between an insurer and its insured. Indeed, Travelers argued that Meisner's second suit was motivated by an improper purpose:

Meisner's declaratory complaint does not even attempt to preserve Meisner's future legal rights—the well-established purpose of a declaratory action—but is instead a stratagem to extract further retribution for firing Meisner as [North Bay's] general counsel, by attempting to ensure that Krispin and [North Bay] will

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<sup>1</sup> This is not the first time that Meisner has sued an officer for defamation after the officer recommended terminating Meisner's services. See *Meisner & Assoc, PC v Stamper & Co*, unpublished opinion per curiam of the Court of Appeals, issued January 29, 2009 (Docket No. 280190).

be punished by having to pay their own defense costs and any judgment rendered against them in the underlying action *out of their own pockets*.

Because Meisner's complaint—on its face—did not purport to seek a declaration to preserve its legal rights, but actually sought a declaration to its own detriment, Travelers maintained that the complaint did not state an actual controversy. Travelers further contended Meisner lacked standing to bring the action and failed to state a claim for declaratory relief. Travelers also argued that, given the underlying facts, the trial court should exercise its discretion to decline to entertain the declaratory action. Accordingly, Travelers asked the trial court to dismiss Meisner's complaint under MCR 2.116(C)(4), (8), and (10). Finally, Travelers asked the trial court to sanction Meisner for filing a frivolous complaint under MCR 2.114(F).

Krispin and North Bay also moved for summary disposition in that same month. They too argued that Meisner failed to state an actual controversy that warranted declaratory relief and asked the trial court to dismiss Meisner's complaint under MCR 2.116(C)(4) and (8), or, in the alternative, to exercise its discretion and withhold the grant of declaratory relief. Krispin and North Bay also argued that Meisner sued for vindictive reasons and asked the trial court to sanction Meisner under MCR 2.114(F) and MCL 600.2591(1).

In response to these motions, Meisner denied that it filed the complaint for declaratory relief for any reason other than to determine whether Travelers had an obligation to defend and indemnify North Bay and Krispin. It further argued that it had standing to bring the action because Travelers might withdraw its defense and refuse to indemnify North Bay and Krispin at some later point. As such, it maintained, there was an actual controversy: "Meisner has the right to know if the potential judgments will be covered by the insurance policy." Finally, it analyzed the policy and reiterated its belief that Travelers had no obligation to defend or indemnify North Bay and Krispin. Accordingly, it asked the trial court to deny the motions by Travelers, North Bay, and Krispin, and instead "declare that Travelers has no obligation to defend and indemnify [North Bay] and Krispin in the 2011 fee dispute lawsuit pursuant to MCR 2.116(1)(2)[.]"

In November 2012, the trial court issued its opinion and order on the motions. The trial court determined that Meisner failed to allege an actual controversy. Accordingly, it dismissed Meisner's complaint under MCR 2.116(C)(4) and (C)(8). It also denied North Bay, Krispin, and Travelers' request for sanctions under MCR 2.114(F).

Meisner now appeals.

## II. SUMMARY DISPOSITION

### A. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo, as a question of law, whether the plaintiff has sufficiently alleged an actual controversy sufficient to invoke the trial court's jurisdiction to provide declaratory relief. *Kircher v City of Ypsilanti*, 269 Mich App 224, 226-227; 712 NW2d 738 (2005).

## B. DECLARATORY RELIEF AND ACTUAL CONTROVERSIES

The Legislature first provided Michigan courts with the authority to decide complaints for declaratory relief with 1919 PA 150. However, our Supreme Court held that 1919 PA 150 was unconstitutional because it permitted claims that did not involve actual controversies: “In short, it requires that the time of the court shall be taken, not in the determination of actual controversies where rights have been invaded and wrongs have been done, but in the giving of advice to all who may seek it.” *Anway v Grand Rapids Ry Co*, 211 Mich 592, 606; 179 NW 350 (1920). This, the court explained, violated our Constitution’s separation of powers. *Id.* at 624 (“The judicial power of the State is vested by the Constitution in the courts. The legislature can in no way limit such power when it is called into action nor extend it beyond that inherent in judicial tribunals.”).

After the decision in *Anway*, our Legislature enacted a new statute providing Michigan courts with the authority to hear declaratory actions. See 1929 PA 36. Our Supreme Court upheld that statute because, unlike its predecessor, it specifically limited the courts’ authority to grant declaratory relief to those cases involving an actual controversy. *Washington-Detroit Theatre Co v Moore*, 249 Mich 673, 676; 229 NW 618 (1930). The Court was no longer concerned that the statute violated the constitution by providing courts with power beyond the exercise of judicial power: “When an actual controversy exists between parties, it is submitted in formal proceedings to a court, the decision of the court is binding upon the parties and their privies and is *res adjudicata* of the issue in any other proceeding in court in which it may be involved, what else can the decision be but the exercise of judicial power?” *Id.* at 680-681. And since then Michigan courts have had jurisdiction to consider complaints for declaratory relief, but only in those cases where there is an actual controversy. See MCR 2.605(1); *Lansing Schools Educ Ass’n v Lansing Bd of Educ*, 487 Mich 349, 372 n 20; 792 NW2d 686 (2010) (noting that a plaintiff has standing to assert a claim for declaratory relief under MCR 2.605 when the plaintiff alleges an actual controversy); see also MCL 600.601(1)(c). Consequently, the “existence of an ‘actual controversy’ is a condition precedent to invocation of declaratory relief.” *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978).

In order to establish the right to seek declaratory relief, a plaintiff must allege and later be able to prove an actual justiciable controversy. *Id.* at 589. That is, the plaintiff must “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Id.*; see also *Detroit v Div 26 of the Amalgamated Assoc of Street, Elec Ry & Motor Coach Employees of America*, 332 Mich 237, 258; 51 NW2d 228 (1952). An actual controversy exists when the plaintiff establishes the need for a declaratory judgment to guide his or her “future conduct in order to preserve his legal rights.” *Shavers*, 402 Mich at 588. As our Supreme Court has explained, in order to establish the actual controversy requirement, a plaintiff must show that he or she has rights that may become vested at some future time and that he or she requires a declaration to protect those rights:

If uncertainties and controversies arise between interested parties as to what their respective rights will be when such rights accrue or become vested, and to avoid needless hazards or possible losses, it is necessary presently to have decision of such uncertain or controverted rights, then there is actual need of and justification for declaratory adjudication. Otherwise there is no actual present controversy in

the true sense, and no need of nor justification for litigation of this character. If the parties will not be subjected to loss nor their rights impaired by instituting proceedings after the alleged rights accrue rather than resorting to declaratory proceedings prior to the actual accrual of such rights, there is no justification for asking a declaratory judgment or decree. [*Flint v Consumers Power Co*, 290 Mich 305, 310; 287 NW 475 (1939).]

### C. APPLYING THE LAW

In order to determine whether Meisner properly asserted a claim for declaratory relief, we must examine its complaint to determine whether it alleged an actual controversy. See *Shavers*, 402 Mich at 589 (stating that the plaintiff must allege facts that establish a justiciable controversy); *School Dist No 1, Fractional v School Dist of Lansing*, 331 Mich 523, 533; 50 NW2d 150 (1951) (noting that the “averments of the bill of complaint” must show an “actual controversy” on a specific issue in order to establish grounds for declaratory relief). In its complaint, Meisner alleged that Travelers had agreed to provide a defense to North Bay and Krispin in the underlying litigation under the terms of the commercial general liability policy that it issued to North Bay. Meisner further alleged that, although North Bay and Krispin would take the position that Travelers had to defend them, Travelers’ policy did not in fact obligate Travelers to provide a defense to North Bay and Krispin. Therefore, it asked the trial court to declare that Travelers had no obligation to defend or indemnify North Bay and Krispin.

As is evident from a casual reading of the allegations, Meisner failed to identify an actual controversy that necessitated the trial court’s intervention. Meisner did allege that it had a disagreement with North Bay and Krispin—and potentially with Travelers—over whether Travelers had to defend and indemnify North Bay and Krispin under the terms of its policy, but that disagreement did not involve Meisner’s own rights. See *Shavers*, 402 Mich at 588 (stating that a plaintiff must demonstrate an actual controversy concerning his or her own rights); *Flint*, 290 Mich at 309-310 (explaining that the actual controversy must involve a dispute over the plaintiff’s rights which may result in hazard or loss to the plaintiff). To the extent that Meisner may have been injured by North Bay or Krispin’s tortious acts, Meisner might be able to establish a sufficient interest in the enforcement of the insurance policy at issue to warrant a declaration that Travelers had an obligation to pay according to the terms of the policy. See *Allstate Ins Co v Hayes*, 442 Mich 56, 62-63; 499 NW2d 743 (1993). But Meisner did not allege that it had a potential future right to seek payment under the policy that Travelers issued to North Bay and Krispin. Rather, it alleged that Travelers had *no obligation* to defend North Bay or Krispin and had *no obligation* to pay any judgment that Meisner might secure against them. Stated another way, although Meisner framed the matter as a disagreement about Travelers’ obligations under the policy, Meisner effectively pleaded that it had *no right* to seek enforcement of the policy. Once Meisner conceded that it has and will have no right to seek enforcement of the policy, it necessarily conceded that it had no standing to seek a declaration of rights concerning that policy.

On appeal, Meisner argues that its complaint for declaratory relief really involved the need for a declaration as to whether Travelers had the right to withdraw its coverage at some future point. However, that position is belied by the allegations in Meisner’s complaint. Meisner clearly alleged that Travelers had no obligation to defend or indemnify North Bay or

Krispin. It follows then that Meisner conceded that Travelers could withdraw its coverage at any time. And that position is directly contrary to Meisner's own interests—if any—in the enforcement of the policy.

In addition, even if the trial court granted the relief requested by Meisner, that declaration would not serve to guide Meisner's conduct or protect its interests. Given that Meisner's position is that Travelers has no obligation to defend or indemnify North Bay or Krispin, one can assume that the purported lack of coverage has not and will not alter Meisner's actions in prosecuting the underlying litigation. Similarly, although a declaration that Travelers has no obligation to defend or indemnify might encourage Travelers to cease defending North Bay and Krispin, the declaration would not obligate Travelers to do so; there is simply nothing to prevent Travelers from gratuitously providing North Bay and Krispin with a defense and coverage. Accordingly, one can only assume that Meisner has sought a declaration contrary to its own interests in order to cause Travelers—for whatever reason—to abandon its insured.

Consequently, even reading Meisner's complaint in the light most favorable to it, *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999), we conclude that Meisner failed to allege an actual controversy involving its own rights. Meisner asked the trial court to make a declaration that Travelers had no obligation to perform under the policy—that is, Meisner pleaded a claim which purported to assert Travelers' right not to perform. Even if Meisner had some vested interest in the policy at issue sufficient to seek a declaration to protect its own rights, *Hayes*, 442 Mich at 62-63, 74-75, it plainly does not have standing to assert Travelers' right not to perform under the policy. Moreover, it is evident that Meisner asked the trial court to enforce Travelers' right not to perform against the interests of North Bay and Krispin and, indeed, against its own interests. Because a suit for declaratory relief is intended to protect the plaintiff's future or contingent rights which might be impaired by an adverse party's acts, a plaintiff that requests a declaration contrary to its own rights or future interests fails to allege an actual controversy sufficient to establish a right to declaratory relief under MCR 2.605(1). This is so because the declaration is unnecessary to guide the plaintiff's future conduct and will not serve to protect the plaintiff's rights from hazard or loss. *Flint*, 290 Mich at 309-310.

### III. CONCLUSION

The trial court did not err when it determined that Meisner's complaint failed to allege an actual controversy sufficient to invoke the trial court's jurisdiction to grant declaratory relief. Therefore, the trial court properly dismissed Meisner's complaint under MCR 2.116(C)(4) and (C)(8).

Affirmed. As the prevailing parties, Travelers, North Bay, and Krispin may tax their costs. MCR 7.219(A).

/s/ Mark J. Cavanagh  
/s/ Donald S. Owens  
/s/ Michael J. Kelly