

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM G. BAIRD,

Plaintiff-Appellee,

and

NORTHLAND INSURANCE COMPANY and
SAFECO INSURANCE COMPANY OF
AMERICA,

Intervening Plaintiffs-Appellees,

v

AKA TRUCKING, INC.,

Defendant-Appellee,

and

TRAVELERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

March 17, 2015

No. 319396

Ingham Circuit Court

LC No. 13-001080-PS

Before: JANSEN, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Defendant Travelers Insurance Company (“Travelers”) appeals as of right from a judgment of the circuit court, entered pursuant to MCL 418.863, ordering it to reimburse intervening plaintiff Safeco Insurance Company (“Safeco”) for “any and all Worker’s Compensation benefits” set forth in orders of the Worker’s Compensation Appellate Commission (“WCAC”) with regard to plaintiff, William G. Baird. The order required Travelers to pay \$1,455,931.72 for medical payments and interest, to pay Safeco three years of work loss benefits at \$434.49 per week with interest, and to pay plaintiff’s attorney fees of \$436,779.52 with interest. We affirm in part and reverse in part.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff worked for defendant AKA Trucking, Inc. (“AKA”) as a truck driver from April through July 24, 2004, the day he was severely injured in a rollover accident. Travelers was AKA’s worker’s compensation carrier at the time of plaintiff’s injury. Safeco was plaintiff’s personal no-fault auto insurer, and intervening plaintiff Northland Insurance Company (“Northland”) was AKA’s no-fault insurer. Plaintiff initiated worker’s compensation proceedings because neither Travelers nor AKA paid him benefits. In the meantime, Safeco had covered plaintiff’s medical expenses and weekly work loss benefits under the no-fault act, MCL 500.3101 *et seq.*

The magistrate found that Travelers must pay for plaintiff’s reasonable and necessary medical treatment of his employment related injury. The magistrate also found that Safeco was entitled to full reimbursement from Travelers for any and all benefits paid or payable on behalf of plaintiff on the basis of equitable subrogation. The magistrate ordered payment of interest to Safeco on the reimbursement of the benefits pursuant to MCL 418.852(2) (providing for an interest rate of 12 percent). The magistrate also granted plaintiff weekly work loss benefits of \$434.49 from July 24, 2004 through May 31, 2007, and ordered that Travelers would be responsible for medical expenses pursuant to MCL 418.315 (furnishing medical care for work-related injury). The magistrate concluded that the maximum authorized attorney fee should not exceed 30 percent of the “compensation accrued” subject to MCL 418.858 and Mich Admin Code, R 408.44 (attorney fees). In addition, the magistrate found that plaintiff continued to be disabled, and that he was entitled to disability benefits in the future, with interest on future wage-loss benefits “owed in accordance with Section 801(6)^[1] from [the] date each payment was due until paid.”

The WCAC remanded the magistrate’s order for additional analysis of whether plaintiff was an employee of AKA at the time of his injury. On the issue of attorney fees on unpaid medical expenses, the WCAC deferred, indicating that it would address the issue after remand. As to “all other issues,” the WCAC affirmed the magistrate’s decision. On remand, the magistrate concluded that plaintiff had met his burden and established that he had sustained a work-related disability. The magistrate also found that the amount of Safeco’s lien was \$825,057.37. It appears that this amount encompassed medical expenses in the amount of \$736,587.13, wage loss benefits in the amount of \$67,780.44, and interest. The WCAC affirmed the magistrate’s original order of an open award of benefits. As to the award of attorney fees, the WCAC noted that the magistrate “ordered an attorney fee on the medical expenses” not paid by AKA or Travelers. It then noted that “Travelers’ appeal on this issue is very limited[,]” and that it only challenged whether the magistrate had authority to grant attorney’s fees. Finding that the

¹ At the time of the magistrate’s opinion and order, section 801(6), MCL 418.801(6) provided for an interest rate of 10%. The interest rate specified by the statute has since been amended by 2011 PA 266, which provides for interest to “be paid at a rate calculated in the same manner as interest on a money judgment in a civil action under section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.”

argument raised by Travelers had recently been rejected by our Supreme Court, the WCAC rejected Travelers' argument and affirmed the magistrate's decision, specifying as to attorney fees that "[t]he magistrate did not legally err by granting an attorney fee on medical expenses not paid by the defendant."

Travelers appealed to this Court by leave granted. *Baird v AKA Trucking Inc*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 2013 (Docket No. 299975). Travelers argued that a no-fault insurer, Safeco, was not entitled to reimbursement under a theory of equitable subrogation. This Court rejected the argument. *Id.* at 3. This Court also rejected an argument filed by Travelers in a supplemental brief regarding the interest rate on past due benefits under MCL 418.801(6), as amended by 2011 PA 266. This Court declined to address the issue raised in Travelers' supplemental brief, reasoning that the issue was not raised in its application for leave to appeal, and leave to appeal was only granted as to issues raised in Travelers' application for leave to appeal. *Id.* at 4. This Court affirmed the WCAC's order granting an open award of benefits. *Id.* The Supreme Court denied Travelers's application for leave to appeal because it was not persuaded that the question presented should be reviewed. *Baird v AKA Trucking Inc*, 495 Mich 854; 836 NW2d 156 (2013).

Thereafter plaintiff filed the present action in the circuit court, seeking enforcement of the WCAC's decision pursuant to MCL 418.863. The circuit court concluded that plaintiff must be awarded any and all worker's compensation benefits as set forth in the orders of the magistrate and the WCAC.

II. STANDARD OF REVIEW

The issues raised on appeal present questions of law, which we review de novo. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005); *Lincoln v Gen Motors Co*, 461 Mich 483, 489-490; 607 NW2d 73 (2000).

III. MEDICAL EXPENSES REIMBURSEMENT

Defendant Travelers contends that the circuit court erred in ordering \$1,455,931.72 for medical expenses reimbursement because that amount was not what the magistrate established. Travelers contends that Safeco is entitled to only \$825,057.37 because the magistrate found that was the amount of its lien. In the original opinion and order, the magistrate found in relevant part as follows:

I find that Safeco is entitled to full reimbursement from the defendants for any and all benefits paid or payable on behalf of the plaintiff. Pursuant to section 418.852(2) I also order the payment of interest to Safeco on the reimbursement of the no-fault benefits paid to or on behalf of the plaintiff.

MCL 418.852(2), referenced by the magistrate, allows payment of interest at a rate of 12 percent on an award of benefits. The magistrate's supplemental opinion on remand states that "[t]he

amount of the intervening plaintiff's lien is \$825,057.37.” Pertinent to this issue, the lien amount comprised medical expenses of \$736,587.13², wage loss benefits, and accrued interest as of the date of the magistrate's supplemental opinion. Thus, the magistrate's ruling in these opinions and orders, which was subsequently adopted by the WCAC, established that Safeco was entitled to a principal amount with regard to medical expenses of \$736,587.13, plus interest accruing at a rate of 12%. The amount of \$1,455,931.72 ordered by the circuit court represented the principal amount plus several years' interest.

MCL 418.863 provides as follows:

Any party may present a certified copy of an order of a worker's compensation magistrate, an arbitrator, the director, or the appellate commission in any compensation proceeding to the circuit court for the circuit in which the injury occurred, or to the circuit court for the county of Ingham if the injury was sustained outside this state. The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance with the order unless proof of payment is made. The judgment shall have the same effect as though rendered in an action tried and determined in the court and shall be entered and docketed with like effect.

The purpose of this statute is to permit an employee to enforce his or her award in circuit court. See *Bailey v Oakwood Hosp & Med Center*, 472 Mich 685, 702; 698 NW2d 374 (2005). The statute envisions a setting in which an order for benefits was entered by a magistrate or the WCAC, which has been finalized with all appeals exhausted, followed by a failure to pay the awarded benefits. The circuit court's jurisdiction under MCL 418.863 is only triggered when an order for worker's compensation benefits is deemed final and no appeals remain pending. See *Cook v The Hearthside, Inc*, 162 Mich App 236, 241-242; 412 NW2d 276 (1987). A circuit court generally has no discretion to modify the terms of the magistrate's award, see *Simm v City of Dearborn*, 54 Mich App 263, 265; 220 NW2d 768 (1974), and “shall render judgment in accordance with” a magistrate's order “unless proof of payment is made,” MCL 418.863 (emphasis added). See *Smitter v Thornapple Twp*, 494 Mich 121, 136; 833 NW2d 875 (2013) (“The Legislature's use of the word ‘shall’ generally indicates a mandatory directive, not a discretionary act.”).

Accordingly, the circuit court's finding that Travelers should reimburse Safeco in the amount of \$1,455,931.72 for medical expenses and interest was in accordance with the opinion of the magistrate and the WCAC. This amount represents the principal awarded by the WCAC for medical expenses—\$736,587.13—times the interest rate of 12 percent³ set forth by the WCAC, for the appropriate number of years. Travelers is mistaken in arguing that the pertinent

² In the circuit court, Travelers did not dispute the amount due for medical expenses, and in fact admitted to the amount in its answer to plaintiff's motion for entry of judgment.

³ As discussed in more detail *infra*, we reject Travelers' challenge to the interest rate imposed by the circuit court.

amount is \$825,057.37 for two reasons. First, this amount includes *both* medical expenses and wage loss benefits, and the only expenses of concern to this particular issue are medical expenses. It was undisputed that the amount of medical expenses was \$736,587.13. Second, Travelers fails to account for interest that subsequently accrued, pursuant to the magistrate's and WCAC's orders. Travelers fails to identify an error by the circuit court, which was without discretion to vary the terms of the WCAC's opinion and order. See *Simm*, 54 Mich App at 265.

IV. ATTORNEY FEES

Travelers asserts that the circuit court erred in granting attorney fees on medical expenses. The magistrate ordered that the maximum authorized attorney fee shall not exceed 30 percent of the compensation accrued subject to MCL 418.858 and Rule 408.44. The magistrate's opinion states that "plaintiff's attorney is entitled to an attorney fee on the recovered medical expenses paid by the intervening plaintiff, Safeco." (Emphasis added). The last line of Form WC-200 also provides, "IT IS FURTHER ORDERED that: See attached Opinion/Order." Accordingly, the magistrate's grant of attorney fees based on the reimbursed medical expenses is part of Form WC-200.

The WCAC affirmed the magistrate's award of attorney fees, stating that the magistrate did not legally err by granting an attorney fee on medical expenses not paid by Travelers. Travelers did not challenge this ruling in the prior proceeding, thereby precluding this Court's review of the matter. See *Simm*, 54 Mich App at 265 (finding that the failure to assert an issue in the prior proceeding before the WCAC waives the issue and precludes a party from raising it at the time enforcement of the order is sought). See also *Calovecchi v State*, 461 Mich 616, 626; 611 NW2d 300 (2000) ("Whatever the merit of these legal arguments, they were not raised before or addressed by the WCAC. Accordingly, we lack the statutory authority to consider them in this appeal."). We reject Travelers' challenge to the circuit court's award of attorney fees.

In addition, there is no merit to Travelers' assertion that the fee awarded by the circuit court was more than 30 percent of the medical expenses. Travelers argues that \$436,779.52 "is exactly one-third of \$1,455,931.72," which is the amount that the circuit court ordered was owed to Safeco for medical payments. This assertion misses the mark—and a decimal point. One-third of \$1,455,931.72 is \$485,310.57. \$436,779.52—the amount awarded by the circuit court—is only 30 percent of \$1,455,931.72; thus, the circuit court's calculations were correct.

V. INTEREST

Travelers challenges the interest rates awarded by the circuit court as to: (1) the principal amount of medical expenses; (2) the 12 percent interest awarded on reimbursement to Safeco for weekly payments, which the circuit court predicated on MCL 418.852(2); and (3) the 12 percent interest rate on attorney fees that the circuit court awarded pursuant to MCL 418.852(2). In particular, it argues that no interest should be awarded on the amount of medical expenses, that interest on the weekly benefits should only be 10 percent, rather than the 12 percent authorized by MCL 418.852(2), and that there should be no interest on the award of attorney fees.

Concerning interest on the amount of medical expenses, Travelers' argument is meritless. As noted, the order of the magistrate, as affirmed by the WCAC, expressly provides for interest on medical expenses, at the 12-percent rate established by MCL 418.852(2). Travelers never contested the interest award on medical expenses in the prior proceeding, thereby waiving any potential challenge to the interest rate awarded by the WCAC. See *Simm*, 54 Mich App at 265. We will not entertain this argument for the first time. See *Auto-Owners Ins Co v Amoco Production Co*, 468 Mich 53, 65; 658 NW2d 460 (2003); *Calovecchi*, 461 Mich at 626.

Travelers' argument with regard to reimbursement to Safeco for weekly benefits already paid is similarly meritless. The order of the magistrate, as affirmed by WCAC, expressly provided for "full reimbursement" to Safeco "for any and all benefits paid or payable on behalf of the plaintiff. Pursuant to Section 418.852(2) I also order the payment of interest to Safeco on the reimbursement of the no-fault benefits paid to or on behalf of the plaintiff." Thus, the magistrate's order, as affirmed by the WCAC, provided for an interest rate of 12 percent—pursuant to MCL 418.852(2)—on the amount Travelers was to reimburse Safeco for weekly benefits paid to plaintiff. Travelers never challenged that amount, and we will not entertain its argument for the first time. See *Simm*, 54 Mich App at 265. See also *Auto-Owners Ins Co*, 468 Mich at 65; *Calovecchi*, 461 Mich at 626.

Regarding the question of interest on attorney fees, the magistrate did not order interest on attorney fees in addition to "30 percent of the compensation accrued." The magistrate ordered that plaintiff's attorney "is entitled to an attorney fee on the recovered medical expenses paid by the intervening plaintiff, Safeco," but did not mention interest on attorney fees. The magistrate's supplemental opinion on remand and the WCAC's opinion after remand were likewise silent on the issue of interest on attorney fees. The circuit court, however, found that Travelers "shall pay attorney fees to [plaintiff Baird's attorney] in the amount of \$436,779.52 with interest continuing thereon pursuant to MCL 418.852(2) until paid." The circuit court awarded interest at a rate of 12 percent on the amount of attorney fees owed to plaintiff's attorney. The circuit court erred by doing so, as it did not have discretion to alter the terms of the WCAC's order.⁴ See *Simm*, 54 Mich App at 265.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Jane M. Beckering

⁴ However, this is not to suggest that Safeco is not entitled to post-judgment interest, including on the attorney fee award, until the amounts due and owing are fully paid by Travelers. In *Nat'l Union Fire Ins Co v Richman*, 205 Mich App 162, 166; 517 NW2d 278 (1994), we explained that, because MCL 418.863 provides that a judgment entered "*shall have the same effect as though rendered in an action tried and determined in the [circuit] court[,]*" and because "[i]nterest may be granted on judgments rendered in actions tried in the circuit courts" pursuant to MCL 600.6013, interest may be granted on a judgment entered pursuant to MCL 418.863.