STATE OF MICHIGAN

COURT OF APPEALS

In re LARRY JEROME LEBOEUF, LIP.

WILLIAM I. MCDONALD, Conservator for LARRY JEROME LEBOEUF, a Legally Incapacitated Person,

Petitioner-Appellee,

v

AUTO OWNERS INSURANCE COMPANY,

Respondent-Appellant.

UNPUBLISHED
October 27, 2009

No. 286499
Marquette Probate Court
LC No. 96-028300-CY

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right the probate court's order approving compensation for petitioner's conservator fees in the amount of $9,840. Respondent also challenges an earlier order of the court denying application of the one-year-back rule, MCL 500.3145, of Michigan's no-fault act, MCL 500.3101 *et seq.*, to petitioner's fees. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

We first turn to respondent's challenge to the trial court's refusal to apply the one-year-back rule to this case. The trial court concluded that, even though petitioner performed his services more than one year before filing his petition, the fees for his services had not been "incurred" by the estate under MCL 500.3145 until the court approved them. Therefore, the one-year-back rule was held not to be applicable to this case. We review de novo a trial court's decision on a motion for summary disposition.[1] *Holmes v Michigan Capital Medical Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000). Likewise, we review de novo questions of law,

[1] While the probate court did not frame it as such, the parties agree that its ruling on the one-year-back rule was a denial of respondent's motion for partial summary disposition under MCR 2.116(C)(7).

including statutory interpretation and application. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).

The "one-year back rule" of the no-fault act, MCL 500.3145(1), provides, in pertinent part, as follows:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

Thus, the one-year back rule limits recovery "to those losses incurred within the one year preceding the filing of the action." *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005).

Again, the probate court concluded that conservator fees are not incurred for purposes of MCL 500.3145 until the probate court approves them. However, our Supreme Court has defined incurred as follows:

> "Incurred" means' "'[t]o become liable or subject to, [especially] because of one's own actions.'" *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 484; 673 NW2d 739 (2003), quoting *Webster's II New College Dictionary* (2001). "Liable" is defined as " legally responsible[.]" *Random House Webster's College Dictionary* (1991). Generally, one becomes liable for the payment of services once those services have been rendered. . . . [*Community Resource Consultants, Inc v Progressive Michigan Ins Co*, 480 Mich 1097, 1098; 745 NW2d 123 (2008) (dealing with medical expenses).]

See also *Henry Ford Health System v Titan Ins Co*, 275 Mich App 643, 647; 741 NW2d 393 (2007) (concluding that the plaintiff's claim for payment of medical services was barred by the one-year-back rule because it was filed more than one year after the services were rendered).

Applying the "general rule" to this case, petitioner's conservator fees were incurred when the services were rendered, not when the probate court approved them. Therefore, the probate court erred in refusing to apply the one-year-back rule to this case.

The probate court relied on *Proudfoot*, *supra*, to support its decision. It reasoned that the *Proudfoot* standard for incurred, i.e., that incurred means that services have been rendered and payment has been made by the insured, "seemed most appropriate" for this case. However, in *Proudfoot*, the plaintiff had neither begun modifying her home, nor had she paid for or contracted for the planned modifications. *Proudfoot*, *supra* at 484. Thus, because the plaintiff was claiming reimbursement for a future expense, the expense had not yet been incurred. *Id*.

Here, at the time the services were rendered by petitioner, the estate had become liable to him for some amount. The probate court's approval of the fees only served to determine the amount of the estate's liability.

Further, the probate court's interpretation of "incurred" contravenes the purpose of the one-year-back rule, which is to "compel action within a reasonable time so the opposing party has a fair opportunity to defend" and to protect defendants against stale claims and from the fear of protracted litigation. *Walden v Auto-Owners Ins Co*, 105 Mich App 528, 533; 307 NW2d 367 (1981). Therefore, we reverse the trial court's order denying application of the one-year-back rule to this case.

Next, respondent argues that the probate court erred in awarding conservator fees because petitioner failed to present reasonable proof of the services he rendered as required by MCL 500.3107 and MCL 500.3142. More specifically, respondent argues that, because petitioner failed to provide a detailed invoice for his services, respondent was unable to assess its liability under MCL 500.3107. We disagree. Again, we review questions of statutory interpretation and application de novo. *Ford Motor Co, supra* at 438.

The no-fault act dictates the scope of PIP benefits. *In re Shields Estate*, 254 Mich App 367, 369; 656 NW2d 853 (2002). MCL 500.3107(1)(a) provides, in pertinent part, as follows:

> (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.

Accordingly, there are three requirements that must be met in order for an item to be considered an "allowable expense": (1) the expense must have been incurred; (2) the expense must have been for a product, service, or accommodation reasonably necessary for the injured person's care, recovery, or rehabilitation; and (3) the amount of the expense must have been reasonable. *Nassar v Auto Club Ins Ass'n*, 435 Mich 33, 49-50; 457 NW2d 637 (1990), quoting *Manley v DAIIE*, 425 Mich 140, 169; 388 NW2d 216 (1998) (Boyle, J, concurring in part). The burden of proving that an expense is reasonably necessary lies with the plaintiff. *Manley, supra*; *Hoffman v Auto Club Ins Ass'n*, 211 Mich App 55, 94; 535 NW2d 529 (1995).

At issue here are the second and third requirements established in *Nassar*, *supra*. As to the second, this Court has held that the fees associated with a guardian or conservator being appointed as a result of an incapacity arising out of injuries sustained in an automobile accident are allowable expenses under MCL 500.3104(1)(a). *Heinz v Auto Club Ins Ass'n*, 214 Mich App 195, 197-198; 543 NW2d 4 (1995). In *Heinz*, the plaintiff's decedent was injured in an automobile accident and, as a result, required the services of a guardian for two years before his death. *Id*. at 196. The defendant refused to pay the guardian's fees, arguing that the plain meaning of MCL 500.3107(1)(a) provided only for medical care. *Id*. at 197. This Court rejected the defendant's argument, concluding that the no-fault act was not limited strictly to the payment of medical expenses and that guardianship and conservator fees were allowable expenses under MCL 500.3107(1)(a). *Id*. at 197-198. Relying on *Heinz*, the trial court concluded that if it is

deemed necessary to appoint a guardian or conservator for the injured person, then the services performed by the guardian or conservator are by definition "reasonably necessary." We agree.

With respect to the third requirement, we conclude that the trial court did not err in awarding conservator fees despite petitioner's failure to present detailed evidence in support of his claim. While the claim was not as detailed as respondent would have liked, the memorandum of services provided by petitioner did outline the types of services he rendered to the estate during the period in question, as well as estimate the time he spent each month rendering these services. All of this appeared to be consistent with the day-to-day duties generally rendered by a conservator. We do not conclude that the trial court erred in considering this to be sufficient evidence to support the fees requested.

We affirm in part, reverse in part, and remand for application of the one-year-back rule to the trial court's award of petitioner's conservator fees. We do not retain jurisdiction. No taxable costs should be imposed pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto