

RENDERED: JANUARY 29, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000219-MR

MARQUITA HAMLET

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 12-CI-01165

ALLSTATE INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, NICKELL, AND TAYLOR, JUDGES.

NICKELL, JUDGE: Marquita Hamlet has appealed from the January 29, 2014, order of the Jefferson Circuit Court denying her motion for interest and attorney's fees she claimed were due from Allstate Insurance Company based on its alleged improper denial of payment of basic reparations benefits (BRB) due her.

Following a careful review, we affirm.

At age seventeen, Hamlet sustained bodily injury in a motor vehicle collision in a parking lot in Louisville, Kentucky, on April 4, 2011. The vehicle in which she was a passenger was being operated by her mother at the time of the collision. The vehicle was uninsured. It was undisputed the driver of the other vehicle was at fault in the collision. On September 20, 2011, Hamlet settled her claims against the at-fault driver for an undisclosed sum. That same day, she filed an Application for No-Fault Benefits with the Kentucky Assigned Claims Plan (“KACP”)¹ seeking payment for medical treatment and lost wages incurred due to the accident.

Upon making a preliminary determination of eligibility, the KACP randomly assigned the claim to Allstate on October 3, 2011, pursuant to the terms of KRS 304.39-170. As required by the statutory scheme of the KACP, Allstate began its investigation into Hamlet’s eligibility for payment of BRB and requested certain information from her to further the investigation, including a statement from Hamlet, confirmation the vehicle was uninsured, rejection of no-fault status and a copy of the police report. None of the information was forthcoming.

Allstate subsequently received a request for payment of Hamlet’s medical expenses directly from the provider. The request recited a different address for Hamlet than that provided on her initial claim form filed with the

¹ The KACP was created as part of Kentucky’s Motor Vehicle Reparations Act (“MVRA”), codified in Kentucky Revised Statutes (KRS) Chapter 304. Specific statutes covering the Plan are located at KRS 304.39-160 *et seq.*

KACP, and also listed Sharon Hamlet as an insured party. Based on the inconsistencies and the possible existence of additional insurance coverage, coupled with Hamlet's failure to provide the information Allstate had previously requested, coverage for the medical expenses was denied pending a final determination of Hamlet's eligibility for benefits under the KACP. In a series of letters, Hamlet's attorney received an explanation of the denial of payment and of Allstate's continuing need of the previously requested information to complete its eligibility investigation.

Rather than providing the requested documentation, Hamlet filed the instant suit on February 29, 2012, alleging she was entitled to no-fault benefits which had been wrongfully withheld by Allstate. Hamlet also claimed entitlement to interest, attorney's fees, and costs of the action. On March 29, 2012, Hamlet moved for summary judgment. In challenging the motion, Allstate averred Hamlet had not yet provided sufficient information to confirm her eligibility for benefits, arguing she had not identified the owner of the vehicle in which she had been a passenger, had provided conflicting addresses, and had not provided details regarding insurance policies held by her parents under which she may have been entitled to coverage. Following a period of discovery, the trial court conducted a hearing on Hamlet's motion wherein Allstate indicated it had not yet completed its determination regarding Hamlet's eligibility for benefits. By order entered on September 25, 2012, the trial court concluded genuine issues of material fact

existed making a grant of summary judgment improper, but ordered Allstate to complete its investigation and make an eligibility determination within forty-five days.

On October 11, 2012, Allstate informed Hamlet the investigation had been completed and offered to pay the full amount of the claimed medical benefits and tendered a check for that sum. Allstate indicated its belief that no attorney's fees or interest was owed to Hamlet and did not include those amounts in the tendered check. Hamlet's counsel maintained such sums were due and owing to Hamlet and refused, for a time, to accept the tendered check.

As to Hamlet's claim for lost wages, Allstate requested additional information from Hamlet's employer as Hamlet had not previously provided her rate of pay or number of hours worked. Upon receipt of this information directly from the employer, Allstate promptly issued a check for wage loss benefits. Hamlet subsequently renewed her motion for summary judgment, claiming she was entitled to attorney's fees and 18% interest from the date her claim was first submitted to Allstate. In denying the motion, the trial court concluded Allstate had timely paid Hamlet's benefits after determining her eligibility and any delay was reasonable. Hamlet appealed to this Court but the appeal was dismissed because the order appealed from was deemed interlocutory. On January 29, 2014, the trial court entered an opinion and order concluding all issues related to payment of

interest and attorney's fees had been resolved and included finality language in the order. This appeal followed.

Hamlet contends Allstate is liable for 18% interest under KRS 304.39-210(2) because its delay in paying medical bills was "without reasonable foundation." She argues a thirteen-month delay is unreasonable as a matter of law and any delay longer than thirty days violates the letter and spirit of the MVRA. Hamlet further alleges Allstate's violations entitle her to payment of a reasonable fee for her attorney. Allstate asserts it had a "reasonable foundation" for delaying payment and the trial court correctly denied the requested relief. Allstate argues Hamlet failed to timely provide "reasonable proof of the fact and amount of loss" as required by subsection (1) of KRS 304.39-210. Upon receiving proof, Allstate claims it determined Hamlet's eligibility and tendered payment within the thirty days allotted under the KACP, thus negating Hamlet's entitlement to interest or legal fees. We agree with Allstate.

Hamlet presents this Court with compelling legal and policy arguments supportive of her position that payment of interest and attorney's fees are proper remedies for the unreasonable denial of BRB payments. In fact, there appears to be no dispute as to the correctness of her legal position. We are convinced her basic statements of law are indeed correct and warrant no further discussion. Nevertheless, however correct the law she cites, Hamlet's claims must fail based upon the facts underlying this matter.

Hamlet's contention that Allstate acted unreasonably is premised upon four flawed assumptions: 1) she was legally entitled to no-fault benefits; 2) her eligibility was confirmed by the KACP prior to assignment of her claim to Allstate; 3) no good faith basis for denying her eligibility existed; and, 4) she completely cooperated with Allstate and complied with the statutory mandates. Unfortunately for Hamlet, the record does not bear out her assumptions.

Contrary to Hamlet's contention, under the statutory scheme and the KACP Plan of Operation, upon receipt of an application for benefits, the KACP does not determine eligibility and then direct the assigned obligor to provide no-fault benefits. In fact, the Plan of Operation specifically requires the servicing insurer—in this case, Allstate—to “determine the eligibility of benefits claimed.” Such a determination is required to be made in a prompt manner upon receipt of an application for benefits. It is elementary that pertinent facts and information must be provided to facilitate such a determination. Indeed, the Plan of Operation requires an applicant for benefits to provide certain information upon request of the servicing insurer, including:

- (a) Full information regarding the accident in which the person was injured.
- (b) Full information relevant to the eligibility of the person to claim benefits under the Plan.
- (c) Full information establishing the necessity and reasonableness of medical expenses incurred and for which claim is made.

(d) Full information establishing the necessity and reasonableness of earnings lost.

(e) Full information which would establish the identity and, except for immunity granted by KRS Chapter 304, Subtitle 39, probable legal liability of any person or persons alleged to have been the proximate cause of the accident in which the applicant was injured.

KACP Plan of Operation, 1-2006, p. 5. These provisions clearly contemplate the “give-and-take” of information necessary to conduct a thorough eligibility determination prior to any benefits being paid. The fact that the KACP makes a preliminary determination does not obviate the need for further investigation. Hamlet’s contention to the contrary is without merit.

Under the express terms of KRS 304.39-210(1), benefits become “overdue if not paid within thirty (30) days after the reparation obligor receives reasonable proof of the fact and amount of loss realized” Hamlet cites this statute in support of her allegation that any delay in payment beyond thirty days is *per se* unreasonable. However, we believe Hamlet’s argument misses the mark and overlooks a simple but key phrase. The plain language of the statute indicates the thirty-day period does not begin running on the date an application is referred to a KACP member for servicing, but rather is tolled until “reasonable proof” of the loss is received by the servicing insurer. We decline Hamlet’s invitation to define a bright-line rule that any delay in excess of thirty days is *per se* unreasonable. To do so would likely invite unscrupulous litigants to

manipulate the system to create delays in pursuit of financial gain. We cannot countenance such a result.

Here, Allstate requested information from Hamlet pursuant to the Plan of Operation. Her failure to respond fully to those requests caused a substantial portion of the delay. Although Hamlet insists she fully cooperated with Allstate, no such proof exists in the record before us. While there may be documentation somewhere supporting her claims, because they were not made part of the record they cannot be considered on appeal. It is axiomatic that the burden of creating a complete record falls squarely upon the party challenging an action of a lower court. “Prejudice will not be presumed from a silent record.” *Baze v. Commonwealth*, 965 S.W.2d 817, 824 (Ky. 1997) (citing *Walker v. Commonwealth*, 476 S.W.2d 630, 631 (Ky. 1972)).

What is clear from the record on appeal is that Allstate’s requests for information were not unreasonable, unduly burdensome, or outside the bounds of the KACP or MVRA. Rather, they appear to have been tailored to gather only the information necessary upon which to properly base an eligibility determination. Once all of this information was finally produced, Allstate promptly completed its eligibility determination and tendered the appropriate amount of benefits due. Hamlet cannot say she has clean hands when the record reveals the lack of cooperation in the investigation phase which created the delay of which she now complains. The delay was reasonable under the circumstances as the trial court

correctly concluded. Thus, Hamlet was not entitled to the statutory remedies of 18% interest on any overdue payments or attorney's fees, as soundly found by the trial court. There was no error.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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