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NO. A08-1045

State of Minnesota
In Court of Appeals

John Frelix,

Appellant,

v.

State Farm Mutual Automobile Insurance Company,

Respondent.

APPELLANT JOHN FRELIX'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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I. STATEMENT OF LEGAL ISSUES

1. On May 25, 2007, Mr. John Frelix mailed his petition for no-fault arbitration, along with the applicable filing fee. At the time of that filing, he had a total claim of $2,541.10. Mr. Frelix then had surgery on his cervical spine on May 29, 2007. Can Mr. Frelix continue to have his claim concerning the no-fault benefits denied in the AAA arbitration setting?

The trial court answered: "No "

Apposite cases: *Karels v. State Farm Ins. Co.*, 617 N.W.2d 432 (Minn. Ct. App. 2000); *Charboneau v. American Family Ins. Co.*, 481 N.W.2d 19 (Minn. 1992).

2. If filing was found to be at the time of AAA's stamping of the petition for no-fault arbitration, are the bills incurred when they are billed out?

The trial court answered: "No."

Apposite cases: *Karels v. State Farm Ins. Co.*, 617 N.W.2d 432 (Minn. Ct. App. 2000);

II. STATEMENT OF THE CASE

On September 7, 2001, Appellant John Frelix (hereinafter "Frelix") was traveling southbound on Grotto Street in St. Paul, Minnesota, when another vehicle collided with him. *See* App. A. 1-2.[1] As a result of the collision, Mr. Frelix suffered injuries to his neck, right shoulder, arm and low back. *See* App. A. 3. Mr. Frelix sought treatment for injuries from Dr. Butterman at Midwest Spine Institute. As part of his care, he received multiple nerve block injections and eventually an anterior dissectomy and fusion of his cervical spine at C4-5 and C5-6 with decompression at both of these levels on May 29, 2007. *See* App. A. 3-4. As a result of his injuries, Mr. Frelix made a claim upon State Farm Insurance Company for no-fault benefits.

On March 3, 2003, State Farm Insurance Company requested that Mr. Frelix attend a medical examination with Dr. Gilbert Westreich. Mr. Frelix attended this examination, and as a result, State Farm Insurance Company retroactively denied Mr. Frelix's no-fault benefits with a letter dated March 24, 2003. *See* App. A. 6-7.

On May 25, 2007, Mr. Frelix mailed his petition for no-fault arbitration, along with the applicable filing fee to the American Arbitration Association (hereinafter "AAA"). *See* App. A. 8). An arbitrator was appointed and an arbitration was scheduled.

On March 3, 2008, State Farm Insurance Company moved the Ramsey County District Court for an order staying the no-fault arbitration, and required Mr. Frelix to litigate his claim in district court. *See* App. A. 9-10.

[1] References to "App. A." herein are to Appellant's Appendix.

On April 3, 2008, the Honorable Joanne M. Smith issued an order staying the mandatory arbitration and requiring that the AAA dismiss the petition. *See* App. A. 11-15. Mr. Frelix now appeals.

III. STATEMENT OF FACTS

State Farm Insurance Company issued a no-fault policy of insurance to Mr. John Frelix. The policy provided Mr. Frelix with Personal Injury Protection benefits.

On September 7, 2001, Mr. Frelix was injured in an automobile accident. As a result of those injuries, he made a claim for his no-fault medical benefits.

On March 3, 2003, State Farm Insurance Company requested that Mr. Frelix attend a medical examination with Dr. Gilbert Westreich. Mr. Frelix attended this examination, and as a result, State Farm Insurance Company retroactively denied Mr. Frelix's no-fault benefits with a letter dated March 24, 2003.

On May 25, 2007, Mr. Frelix mailed his petition for no-fault arbitration, along with the applicable filing fee. At the time of filing his petition, Mr. Frelix claimed total medical of $2,541.10. On May 29, 2007, the petition was stamped received by AAA.

On May 29, 2007, Mr. Frelix had surgery on his cervical spine.

IV. LEGAL ARGUMENT

A. Standard of Review

John Frelix challenges the district court's stay of the AAA no-fault arbitration. On appeal from this motion, the reviewing court must ask (1) whether or not proper jurisdiction lay with AAA no-fault arbitration, and (2) whether the lower court erred in

staying that arbitration. The appellate court should review the lower court's judgment de novo, applying the same standard as the lower court. Because the facts in this matter are undisputed, this case concerns only issues of statutory interpretation, which are questions of law subject to de novo review. *See Garrick v. Northland Ins. Co.*, 469 N.W.2d 709, 711 (Minn. 1991).

B. Legal Issues in this Case

The legal question presented to the district court below and presented in this appeal involves interpretations of the Minnesota No-Fault Automobile Act, Minn. Stat. § 65B.525 and Rule 5(a) of the Minnesota No-Fault Arbitration Rules for mandatory arbitration of claims totaling $10,000 or less at the commencement of the arbitration. Rule 5(c) states "[A] arbitration is commenced by the filing of the signed, executed form, together with the required filing fee with the arbitration organization." The question in this case is when the petition is considered filed.

A secondary issue is when the medical bills are incurred.

1. *Filing of the Petition*

Rule 5(c) of the Minnesota No-Fault Arbitration Rules provides that an arbitration is commenced by the filing of the signed petition, together with the required filing fee. The Minnesota No-Fault Arbitration Rules do not provide any guidance on the time that a petition is considered filed. Under the mailbox rule, the filing of pleadings or other documents is deemed to have occurred on the day the document is mailed. Black's Law Dictionary 433 (2nd Pocket ed. 2001).

Case law does not provide any guidance on this particular issue. The Court could look at the common practice of the Minnesota District Courts for some guidance on the issue. Typically, the courts do not consider the document filed until it is received

It is Appellant's position that even if the date of the stamp "received" is used, Mr. Frelix is still within AAA jurisdiction.

2. *The Rules Require that the Bill be Incurred in Order to be Considered at the Time of the Petition.*

According to the St John's Hospital surgery records, Mr. Frelix began receiving anesthesia at 7:33 a.m. and his surgery commenced at 8:02 a.m. The surgery records also indicate that Mr. Frelix's surgery ended at 9:58 a.m. and that he continued to receive the anesthesia until 10:36 a.m. All of this happened on the exact same day Mr. Frelix's petition was stamped as received by an employee of AAA. It is doubtful that any billing for this procedure was done until all of the procedures had been performed. It is Mr. Frelix's position that the medical expenses were incurred at the time the bills were processed which was likely later in the day.

In *Karels v. State Farm Insurance Company,* the Court looked at the time frame that the Respondent, State Farm, had in which to prepare to meet Claimant's increased claim amount. *Karels v. State Farm Ins. Co.*, 617 N.W.2d 432 (Minn. Ct. App. 2000). In that case, Ms. Karels filed the petition for no-fault arbitration with $2,582.01 outstanding in medical expenses. *Id.* at 433. Similar to the case at hand, Ms. Karels had surgery after filing the petition, and thus, her claim increased substantially. *Id.* at 434. Ms. Karels notified State Farm of the increased claim one day before the

arbitration. The Court ruled that State Farm had reasonable notice and adequate opportunity to meet the increased claim because the arbitrator granted State Farm a continuance to dispute Ms Carels' bills. *Id* at 436 State Farm went as far as objecting to the arbitration on the grounds that Ms. Carels "timed the filing of her petition so as to avoid the jurisdictional limits imposed by the no-fault statute." *Id.* at 433.

In comparison, this case is quite similar to Karels. In ruling in favor of Ms. Karels, the Court noted that "the only expense in existence at the time Ms Karels filed her petition was the medical expense of $2,582.01. The additional medical charges and the wage loss did not accrue until after she had filed the petition." *Id.* at 436 (citing Minn. Stat. § 65B.54, subd. 1 (1989)).

It is submitted that at the time of the filing, whether it be by the mailbox rule or stamped by AAA as received, Mr. Frelix had not incurred these bills as of yet, and that the only bills in existence at that time were the ones requested in the petition.

3. *In Ruling on the Issues, the District Court Seems to Deviate From All the Relevant Case Law and No-Fault Rules.*

In providing the reasoning for the removal from District Court, it is stated that "The Court finds at the time of this issue of filing, the instance is not determined one way or the other. To rule on this basis would not be appropriate." At the time that the Court was looking at the claim, it was no longer a "small claim" and thus should be outside AAA arbitration. It is submitted that the case law does give guidance, and that the only true issues in the case are whether the petition was filed in a timely manner and if the bills were incurred at the time of the actual surgery. In answering each of

these questions, it is submitted that this case should be returned to AAA where proper jurisdiction lies.

V. CONCLUSION

Based upon the foregoing reasons, Minnesota case law dictates that AAA should have jurisdiction over this claim. Therefore, the order of the district court should be reversed and this matter should be returned back to AAA.

Dated this 11 day of August, 2008.

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