IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

ALTAMONTE SPRINGS IMAGING, LC, d/b/a Mid Florida Imaging, as assignee of Cara Baldwin,

Appellant,

v.

CASE NO.: CVA1 09-26
Lower Court Case No.: 2008-SC-8019-O

USAA CASUALTY INSURANCE COMPANY,

Appellee.
_____/

Appeal from the County Court,
for Orange County,
Antoinette Plogstedt, Judge.

Thomas Andrew Player, Esquire,
for Appellant.

Douglas H. Stein, Esquire, and
Stephanie Martinez, Esquire,
for Appellee.

Before J. ADAMS, MCDONALD, and THORPE, J.J.

PER CURIAM.

FINAL ORDER AND OPINION REVERSING TRIAL COURT

Appellant Altamonte Springs Imaging, LC, d/b/a Mid Florida Imaging, as assignee of Cara Baldwin ("ASI"), timely appeals the trial court's "Final Summary Judgment for the Defendant," entered on April 23, 2009, in favor of the Appellee, USAA Casualty Insurance Company ("USAA"). This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument pursuant to Florida Rule of Appellate

Procedure 9.320.

Facts and Procedural History

ASI sued USAA for the payment of PIP benefits under an insurance policy issued to Cara Baldwin ("Baldwin"). ASI alleged that USAA failed to pay covered medical expenses resulting from a covered motor vehicle accident.

ASI alleges that it provided healthcare services to Baldwin on December 10, 2007, as a result of a covered motor vehicle accident. Furthermore, it alleges that Baldwin paid for her treatment by assigning her PIP benefits under the USAA insurance policy to ASI. Therefore, ASI submitted to USAA a CMS 1500 Health Insurance Claim Form, which was postmarked December 27, 2007.

In Box 31 of the CMS 1500 form, ASI listed Ronald Landau, MD, as the treating physician, but it failed to include his professional license number. Therefore, on January 15, 2008, USAA issued an Explanation of Reimbursement to ASI, stating that it was denying the claim because ASI failed to include the physician's professional license number. USAA's corporate representative testified that its sole reason for denying the claim was the missing professional license number, and but for the missing professional license number, the first CMS 1500 form was properly completed.

In response, ASI submitted another CMS 1500 form, this time including Dr. Landau's professional license number, as requested. The second CMS 1500 form was postmarked January 28, 2008. USAA's corporate representative testified that this second CMS 1500 form was properly completed. However, it denied the claim again, this time stating that it was untimely because it was not submitted within 35 days of the date of service.

ASI submitted a pre-suit demand for payment to USAA and subsequently filed suit.

During the pretrial phase, USAA filed a motion for final summary judgment, arguing that ASI failed to timely provide notice of a covered loss. The trial court entered final summary judgment in favor of USAA, and this appeal followed.

Discussion of Law

On appeal, ASI argues that its first CMS 1500 form substantially complied with statutory requirements, and therefore the trial court erred when it held that ASI failed to timely provide notice of a covered loss. ASI asserts in the alternative that, even if the first CMS 1500 form had not complied with statutory requirements, the second CMS 1500 form effectively cured its error. ASI further argues that the trial court incorrectly interpreted the PIP statute by failing to distinguish between a "statement of charges," which has a time limitation, and "notice of the fact of a covered loss," which has no time limitation. Finally, ASI argues that the trial court erred by failing to recognize that, at a minimum, ASI had provided proper notice of initiation of treatment pursuant to section 627.736(5)(c)(1), Florida Statutes, and thus the subsequent submission of the corrected bill was timely.

On the contrary, USAA argues that a CMS 1500 form cannot be properly completed unless the healthcare provider's professional license number is included in Box 31, and therefore ASI's first CMS 1500 form did not comply with statutory requirements. USAA also asserts that the second CMS 1500 form did not effectively cure ASI's error because a properly completed CMS 1500 form must be submitted within 35 days of the date of service. USAA further argues that ASI's distinction between a "statement of charges" and "notice of the fact of a covered loss" is irrelevant in the instant matter because notice of a covered loss can only be effectively provided by means of a properly completed statement of charges, and contrary to ASI's assertion, both requirements must be met within 35 days of the date of service. Finally, USAA

argues that ASI's attempt to characterize the first CMS 1500 form as a notice of initiation of treatment is without merit, and therefore the trial court did not err when it held that ASI failed to timely provide notice of a covered loss.

The standard of review for an order granting summary judgment is de novo. Volusia County v. Aberdeen at Ormond Beach, 760 So. 2d 126, 130 (Fla. 2000). The Court must determine whether there is a "genuine issue as to any material fact" and whether "the moving party is entitled to a judgment as a matter of law." Krol v. City of Orlando, 778 So. 2d 490, 491-92 (Fla. 5th DCA 2001) (citing Fla. R. Civ. P. 1.510(c)). In reviewing a summary judgment, the appellate court must consider the evidence contained in the record, including any supporting affidavits, in the light most favorable to the non-moving party, and if the slightest doubt exists, the summary judgment must be reversed. Krol, 778 So. 2d at 492.

The parties' respective representations of the material facts are in agreement and are supported by the record. Thus, there are no genuine issues of material fact. Therefore, in reviewing the trial court's order, we must determine whether USAA is entitled to a judgment as a matter of law.

Under section 627.736(5)(d), all statements and bills for medical services shall be submitted to the insurer on a *properly completed* CMS 1500 form or other approved form. An insurer shall not be considered to have been furnished with notice of a covered loss unless "the statements or bills are *properly completed* in their entirety as to all material provisions . . . ." § 627.736(5)(d), Fla. Stat. (2007) (emphasis added). "'Properly completed' means providing truthful, *substantially complete*, and *substantially accurate* responses as to all material elements to each applicable request for information or statement . . . ." § 627.732(13), Fla. Stat. (2007) (emphases added).

If Box 31 of a CMS 1500 form contains the name of the correct healthcare provider but omits the provider's professional license number, it is still "substantially complete" and "substantially accurate," and therefore, the absence of the provider's professional license number alone does not prevent the CMS 1500 form from being "properly completed." United Auto. Ins. Co. v. Prof'l Med. Group, Inc., 26 So. 3d 21, 24 (Fla. 3d DCA 2009); USAA Cas. Ins. Co. v. Pembroke Pines MRI, Inc., 31 So. 3d 234, 238 (Fla. 4th DCA 2010); Fla. Ctr. for Orthopaedics v. Progressive Express Inc. Co., 36 Fla. L. Weekly D109 (Fla. 5th DCA Jan. 14, 2011), granting cert. and quashing, 17 Fla. L. Weekly Supp. 878a (Fla. 9th Cir. Ct. Mar. 2, 2010); see also Hendeles v. Sanford Auto Auction, Inc., 364 So. 2d 467, 468 (Fla. 1978) ("disposition of a case on appeal should be made in accord with the law in effect at the time of the appellate court's decision rather than the law in effect at the time the judgment appealed was rendered").

According to the testimony of USAA's corporate representative, ASI's first CMS 1500 form would have been properly completed, but for the missing professional license number in Box 31. Regardless of USAA's opinion, the first CMS 1500 form included the physician's name in Box 31, and USAA does not claim that the name provided is incorrect. Therefore, we find that Box 31 on the first CMS 1500 form is substantially complete and substantially accurate, and thus we find that the first CMS 1500 form was properly completed.

USAA attempts to avoid this result by distinguishing the instant matter from the above cited decisions of the district courts of appeal. First, USAA argues that the cases failed to address the legislative intent in the following language: "providers . . . *shall* include . . . the professional license number." § 627.736(5)(d), Fla. Stat. (2007) (emphasis added). However, USAA is incorrect in that assertion because Professional Medical Group quoted section 627.736(5)(d), including the subject language, and interpreted section 627.736(5)(d) in the context of the entire

"Florida Motor Vehicle No-Fault Law." See Prof'l Medical Group, 26 So. 3d at 24; §§ 627.730-627.7405, Fla. Stat. (2007). Pembroke Pines MRI relied on the Third District Court of Appeal's interpretation of the PIP statute in Professional Medical Group, and both decisions are binding upon this Court. See Pembroke Pines MRI, 31 So. 3d at 238; see also Sys. Components Corp. v. Fla. Dep't of Transp., 14 So. 3d 967, 973 n.4 (Fla. 2009) ("[i]n the absence of inter-district conflict or contrary precedent from [the Supreme Court of Florida], it is absolutely clear that the decision of a district court of appeal is binding precedent *throughout Florida*") (emphasis in original). Therefore, it would be improper for this court to interpret and apply section 627.736(5)(d), Florida Statutes, contrary to the binding precedent of the Third and Fourth District Courts of Appeal.

Second, USAA attempts to distinguish Professional Medical Group and Pembroke Pines MRI from the instant matter by identifying certain factual differences. In the instant matter, USAA objected to the missing professional license number by specifying in the Explanation of Reimbursement that it was denying the claim because of the missing license number. Furthermore, USAA refrained from taking any further action in processing the claim. In Professional Medical Group, the insurer failed to object to the missing professional license number prior to litigation, and it proceeded to process the claim. Prof'l Medical Group, 26 So. 3d at 24. Thus, USAA reasons that the rule of law promulgated in Professional Medical Group and its progeny does not apply to the instant matter.

However, an insurer's objection to a perceived defect in a claim form has no bearing upon whether the claim form was properly completed. Rather, an insurer's objection only bears upon its ability to later challenge the effectiveness of the claim form due to the perceived defect.[1]

[1] See Fla. Med. & Injury Ctr., Inc. v. Progressive Express Ins. Co., 29 So. 3d 329, 339-41 (Fla. 5th DCA 2010) (holding that, if an insurer identifies a defect in a claim but fails to notify the provider regarding the specific defect

Likewise, whether an insurer proceeds to process a claim or refrains from doing so has no bearing upon whether the claim form was properly completed, and its only significance is that proceeding to process a claim may be considered as evidence that the insurer did not intend to deny the claim based on a defective claim form.[2] Therefore, a properly completed claim form cannot be rendered defective merely because an insurer objects to a perceived defect or refrains from processing the claim, and likewise, a defective claim form will not be rendered properly complete merely because the insurer failed to object to the defect or proceeded to process the claim. Rather, the defective claim form remains defective, but the insurer is deemed to have waived the defective claim form defense by its conduct.

In Professional Medical Group, the district court did not hold that the insurer waived the defective claim form defense because the insurer failed to object to the defect or because the insurer proceeded to process the claim. Rather, the district court held that the claim form was properly completed, despite the missing professional license number, because it was substantially complete and substantially accurate. Id. The court merely mentioned the fact that the insurer failed to object to the missing professional license number and proceeded to process the claim to demonstrate that the insurer had not been prejudiced by the missing license number.[3]

We find that the holding in Professional Medical Group controls in the instant matter. Therefore, Box 31 of ASI's first CMS 1500 form is substantially complete and substantially accurate, and thus the first CMS 1500 form was properly completed. USAA's objection to the

---

so that it can be rectified, the insurer shall be deemed to have waived its objection to payment).

[2] See Alzate v. United Auto. Ins. Co., 11 Fla. L. Weekly Supp. 878a (Fla. 11th Cir. Ct. July 20, 2004) (holding that proceeding to process a claim, despite the presence of an ascertainable defect in the claim forms, "does not evince an intent to deny all bills based upon [the defect]").

[3] In addition, the court mentioned that the insurer never claimed that it did not know who the physician was or that the physician was not licensed. Id. In those two facts, Professional Medical Group is analogous to the instant matter. The only reason provided by USAA for its denial of ASI's claim, as submitted on its first CMS 1500 form, was that USAA believed that the form failed to comply with statutory requirements because it did not include the physician's professional license number.

missing professional license number and the fact that it refrained from further processing the claim has not rendered the first CMS 1500 form defective. Therefore, we find that USAA is not entitled to a judgment as a matter of law due to the missing professional license number, and the trial court erred in entering final summary judgment in USAA's favor. In light of this conclusion, we find it unnecessary to address the parties' additional arguments.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's "Final Summary Judgment for the Defendant," entered on April 23, 2009, is **REVERSED**; the Appellees' Motion for Attorney's Fees is **DENIED**; and this case is **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the ____22_____ day of _____February_____, 2011.

_/S/_____
JOHN H. ADAMS, SR.
Circuit Judge

_/S/_____
ROGER J. MCDONALD
Circuit Judge

__/S/_____
JANET C. THORPE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Thomas Andrew Player, Esq., Weiss Legal Group, P.A.**, 698 North Maitland Avenue, Maitland, Florida 32751 and **Douglas H. Stein, Esq., and Stephanie Martinez, Esq., Seipp & Flick, LLP,** Two Alhambra Plaza, Suite 800, Miami, Florida 33134 on the _____22____ day of _____February_____, 2011.

_/S/_____
Judicial Assistant