

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

**UNITED AUTOMOBILE INSURANCE,
COMPANY,**

CASE NO.: 2012-CV-000062-A-O
Lower Case No.: 2008-SC-009582-O

Appellant,

v.

RUPERT RAMGADOO,

Appellee.

Appeal from the County Court,
for Orange County, Florida,
Deborah B. Ansbro, County Judge.

Michael J. Neimand, Esquire, for Appellant.

Kevin B. Weiss, Esquire, for Appellee.

Before EVANS, SHEA, and HIGBEE, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant, United Automobile Insurance Company (“United Auto”), timely appeals the Trial Court’s “Final Judgment for Attorney’s Fees and Costs for Plaintiff” rendered August 6, 2012, nunc pro tunc to February 17, 2012 in favor of Appellee, Rupert Ramgadoo (“Ramgadoo”). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

Ramgadoo was in a motor vehicle accident on August 27, 2004. Ramgadoo sought medical treatment and was disabled from his employment for a period of time due to his accident related injuries. Ramgadoo sought payment from his insurer, United Auto, for his claims for loss of income and medical treatment. United Auto did not fully pay the claims. Ultimately, Ramgadoo filed suit against United Auto in case no. 2007-CC-016946-O (“*Ramgadoo I*”).

While *Ramgadoo I* was being litigated, Ramgadoo submitted a claim to United Auto for reimbursement of his mileage expense for travel to and from the office of his treating physician, Dr. Machuga. This claim was reimbursable under the personal injury protection (“PIP”) benefits coverage, but United Auto denied payment. On June 2, 2006 in *Ramgadoo I*, Ramgadoo took the deposition of United Auto’s corporate representative and adjuster, Darwin Bone, and inquired why the mileage expense claim was not paid. Mr. Bone testified that he could not offer any explanation.

Ramgadoo then filed a motion to amend the pending Complaint to add the claim for the mileage expense. United Auto objected to amending the Complaint arguing that such an amendment should not be allowed until after Ramgadoo provided United Auto with a statutory pre-suit demand letter for the mileage expense claim. Judge Antoinette Plogstedt, presiding at that time, agreed with United Auto and denied the motion to amend the Complaint and suggested that Ramgadoo provide United Auto with another statutory pre-suit demand letter and if United Auto did not pay the claim after receiving the demand letter, Ramgadoo could then file another motion to amend the Complaint.

Thereafter, on April 8, 2008, Ramgadoo forwarded the demand letter to United Auto for the unpaid mileage expense claim. On May 6, 2008, United Auto sent three checks to Ramgadoo's attorney in the sum of \$130.00 (travel expenses), \$22.88 (penalties and interest), and \$45.00 (interest). Each check included language stating: "Mileage Reimbursement as Full and Final Payment for PIP Benefits." On May 8, 2008, Ramgadoo's attorney received the checks and immediately returned them to United Auto advising that the checks with the words "As Full and Final Payment for PIP Benefits" was not acceptable because the parties were in the midst of litigating Ramgadoo's PIP benefits claims for the loss of income and the unpaid medical bills in the *Ramgadoo I* case. Also in the letter, Ramgadoo's attorney requested that United Auto re-issue the checks without the words "Full and Final Payment of PIP Benefits" and requested in the alternative, United Auto write the words on the check: "As Full and Final Payment For Mileage Reimbursement."

On June 30, 2008, after not receiving a response from United Auto, Ramgadoo filed suit for the mileage expense claim in case no. 2008-SC-009582-A-O ("*Ramgadoo II*"). On July 2, 2008, United Auto placed checks in the mail to Ramgadoo's attorney for the mileage expense claim that did not include the "Full and Final Payment of PIP Benefits" language. Shortly thereafter, United Auto also abandoned its defenses in the *Ramgadoo I* case and paid the income loss claim and the medical bills.

On July 22, 2008, in the *Ramgadoo II* case, Ramgadoo forwarded to United Auto a Request for Admissions that included Admissions confirming that he was entitled to reasonable attorney's fees and taxable costs in the case. United Auto did not respond to the Request for Admissions. Also on July 22, 2008, Ramgadoo filed a Motion for Entry of Final Judgment against United Auto and a Motion for Attorney's Fees and Costs.

On November 6, 2008, a hearing was held to address Ramgadoo's entitlement to attorney's fees and costs in the *Ramgadoo II* case before Judge Wilfredo Martinez. United Auto claimed that Ramgadoo was not entitled to any attorney's fees or to the cost of filing the lawsuit in *Ramgadoo II* because he did not need to file the lawsuit for the mileage claim and that United Auto paid the claim before the lawsuit was actually served on them through the Department of Financial Services. Ramgadoo argued that the payment after the lawsuit was filed was the equivalent of a confession of judgment. Also, Ramgadoo argued that United Auto was aware of the ongoing dispute and failed to make the mileage claim payment in accordance with the statutory demand letter, but instead sent checks with language that the cashing of which would have resulted in the pending litigation concerning Ramgadoo's unpaid income loss and the unpaid medical bills being wiped out by an accord and satisfaction defense. Further, Ramgadoo argued that United Auto failed to respond to the Request for Admissions that included an Admission confirming that he was entitled to attorney's fees and costs and thus, was deemed admitted by operation of law. After much discussion at the hearing, Judge Martinez continued the hearing in order to review Judge Plogstedt's rulings in the *Ramgadoo I* case.

Ultimately, the hearing was resumed on October 19, 2009 again before Judge Martinez who, at that point, decided to reserve ruling on the entitlement issue until he consulted with Judge Plogstedt about whether the *Ramgadoo II* case should be transferred or consolidated with *Ramgadoo I*. Thereafter, *Ramgadoo II* was transferred to Judge Plogstedt's division and a hearing was held on January 14, 2010 to hear Ramgadoo's Motions for Entry of Final Judgment and for Attorney's Fees and Costs. At the conclusion of the hearing, Judge Plogstedt denied Ramgadoo's Motions and entered a Summary Disposition in favor of United Auto as to the *Ramgadoo II* case. However, Judge Plogstedt did not enter a written order on her rulings.

Subsequently, on July 11, 2011, Ramgadoo filed a Motion for Reconsideration or Rehearing on his Motions for Final Judgment and Attorney's Fees and Costs. At that time, Judge Plogstedt was no longer presiding in the same division and was replaced by Judge Deborah Ansbro. On July 18, 2011, Judge Ansbro granted Ramgadoo's Motion for Reconsideration or Rehearing based on the situation that there was no written order entered to date following the hearing before Judge Plogstedt who was no longer presiding over the subject division.

On October 20, 2011, a new evidentiary hearing addressing Ramgadoo's Motions was held before Judge Ansbro. Upon conclusion of the hearing, Judge Ansbro ruled in favor of Ramgadoo setting aside Judge Plogstedt's ruling and granting summary judgment and attorney's fees and costs in favor Ramgadoo. On November 8, 2011, Judge Ansbro entered the "Order Determining Entitlement to Attorney Fees". On February 15, 2012, United Auto filed its Motion for Reconsideration of the Order. On February 16, 2012, an evidentiary hearing on United Auto's Motion was heard and denied by Judge Ansbro. Thereafter, Judge Ansbro entered the Final Judgment for Attorney's Fees and Costs on August 6, 2012, nunc pro tunc to February 17, 2012, that United Auto now appeals.

Arguments on Appeal

United Auto argues that the Trial Court erred in determining that Ramgadoo was entitled to an award of attorney's fees where prior to the lawsuit: 1) Ramgadoo rejected United Auto's unconditional payment of the PIP Claim and Ramgadoo was not forced to sue to receive his mileage reimbursement PIP Benefits and 2) Ramgadoo rejected United Auto's offer to settle the disputed PIP claim and where the Judgment obtained was not greater than the offer of settlement.

Conversely, Ramgadoo argues: 1) United Auto's payment of disputed benefits, after the filing of a necessary lawsuit, properly resulted in an award of attorney's fees and costs to Ramgadoo pursuant to section 627.428(1), Florida Statutes; 2) The case that United Auto relies upon, *State Farm Florida Insurance Co. v. Lorenzo*, 969 So. 2d 393 (Fla. 5th DCA 2007), is inapplicable because at the time Ramgadoo filed suit there was a dispute between United Auto and Ramgadoo as to the overdue insurance benefits; and 3) Ramgadoo is entitled to attorney's fees and costs pursuant to the Request for Admissions that have been deemed admitted by operation of law. Also, in this appeal, Ramgadoo filed a motion seeking an award of appellate attorney's fees and costs pursuant to Florida Rules of Appellate Procedure 9.400 and sections 627.736(8) and 627.428(1), Florida Statutes.

Standard of Review

Appellate review of a trial court's determination of entitlement to attorney's fees ordinarily involves an issue of law to be reviewed de novo. *Hinkley v. Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A.*, 971 So. 2d 955, 956 (Fla. 5th DCA 2007). Also, the standard of review is abuse of discretion for a trial court's reliance on a Request for Admissions being deemed admitted. *Farish v. Lum's Inc.* 267 So. 2d 325, 327-328 (Fla. 1972). Lastly, a decision of a trial court comes to the appellate court with a presumption of correctness and the burden is on the appellant to demonstrate reversible error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979).

Analysis

United Auto's First Argument

First, this Court addresses United Auto's argument that Ramgadoo rejected its unconditional payment of the PIP Claim and thus, Ramgadoo was not forced to sue to receive his

mileage reimbursement PIP Benefits. This Court finds that this argument lacks merit as the first set of checks issued for payment of the mileage expense claim included conditional language “Full and Final Payment of PIP Benefits” and in light of the other related PIP claims in the Ramgadoo I case, it was prudent that Ramgadoo, through his attorney, rejected the checks as written and immediately returned them to United Auto and requested that the checks be re-issued with the conditional language omitted. *See United Automobile Insurance Co. v. Palm Chiropractic Center Inc.*, 51 So. 3d 506, 509 (Fla. 4th DCA 2010) (holding that cashing a check containing language that it is in full payment of the debtor's obligations creates an accord and satisfaction with regard to the claim for which payment was tendered); *see also United Automobile Insurance Co. v. Silver Hills Health & Rehab Clinic, Inc.*, 20 Fla. L. Weekly Supp. 223a (Fla. 9th Jud. Cir. Ct. 2012) (citing *Palm Chiropractic* and holding that the cashing of a check for payment of PIP benefits that included the notation “Full and Final Payment,” constituted an accord and satisfaction of Silver Hills' claim).

Further, United Auto did not re-issue the checks per Ramgadoo’s request until after the expiration of the demand letter’s 30 day statutory period and after Ramgadoo filed the suit; thus, per section 627.428(1), Florida Statutes, United Auto’s action constituted a confession of judgment entitling Ramgadoo to an award of attorney’s fees. The fact that United Auto sent the re-issued checks prior to being served does not negate Ramgadoo’s entitlement to recover attorney fees. *See Ivey v. Allstate Insurance Co.*, 774 So. 2d 679, 684-685 (Fla. 2000) (holding that Allstate’s payment of the remainder of the claim after suit was filed was a confession of judgment; thus, entitling the insured to attorney fees); *Stewart v. Midland Life Insurance Co.*, 899 So. 2d 331, 332-333 (Fla. 2d DCA 2005) (holding that even though the insurer was unaware of the lawsuit since it paid the claim before service of process, the payment was the substantial

equivalent of a confession of judgment, and the beneficiary appropriately filed suit and sought attorney fees).

Also, this Court concurs with the Trial Court's findings and as Ramgadoo points out in his Answer Brief, that United Auto's reliance on the case, *State Farm Florida Insurance Co. v. Lorenzo*, 969 So. 2d 393 (Fla. 5th DCA 2007) is misplaced. In *Lorenzo*, the insureds, through their public adjuster, concealed that they had already performed the act necessary under the homeowner's policy to entitle them to final payment for replacement costs and the insurer was abiding by its obligations under a loss-settlement provision and did not withhold benefits or compel the insureds to sue. In the instant case, unlike in *Lorenzo*, when Ramgadoo filed suit there was a pending dispute between United Auto and Ramgadoo as to the overdue insurance benefits i.e. the problem with the checks. Ramgadoo also points out the case, *Jerkins v. USF & G Speciality Ins. Co.*, 982 So. 2d 15, 17-18 (Fla. 5th DCA 2008) (distinguishing *Lorenzo* and holding that the homeowners insurer's payment of an appraisal award acted as a confession of judgment in the insureds' suit; thus, the insureds were entitled to attorney fees under the statute).

Lastly, this Court finds that the procedural route taken by Ramgadoo, by filing a new law suit instead of again moving to amend the Complaint in the Ramgadoo I does not negate his entitlement to recover attorney fees. United Auto's failure to timely re-issue the checks entitled Ramgadoo to file a new lawsuit to ensure that his mileage claim was procedurally preserved or to file an amended complaint seeking payment of the mileage claim (provided that the motion to amend was granted). This Court notes that the route taken by Ramgadoo was not unreasonable in light of the procedural history in this case where Ramgadoo did initially move to amend Complaint, but United Auto objected and Judge Plogstedt's ruling denied his motion to amend

the Complaint and required that he issue and forward to United Auto a demand letter for the mileage claim.

United Auto's Second Argument

In United Auto's second argument, United Auto argues that the mileage claim amount it paid to Ramgadoo was the same amount Ramgadoo requested and thus, Ramgadoo is not entitled to recover attorney fees because he rejected United Auto's offer to settle the disputed PIP claim where the Judgment obtained was not greater than the offer of settlement. This Court finds that this argument is also without merit as the first checks issued with the conditional language precluded Ramgadoo acceptance of them as payment and thus, was not a true offer of settlement.

Ramgadoo's Argument as to the Request for Admissions

Per Florida Rule of Civil Procedure 1.370, the matter in a request for admissions is admitted unless the party to whom the request is directed serves upon the requesting party a written answer or objection within 30 days after service of the request or such shorter or longer time as the court may allow but, unless the court shortens the time, a defendant has up to 45 days after service of process and the initial pleading to serve answers or objections. Also, any matter admitted under Rule 1.370 is conclusively established unless the court per a motion permits withdrawal or amendment of the admission.

From review of the record in the lower case, United Auto did not respond to the Request for Admissions at any time. Thus, this Court concurs with Ramgadoo and the Trial Court's findings that he is entitled to attorney's fees and costs pursuant to the Request for Admissions that were properly deemed admitted by operation of law. *Morgan v. Thompson*, 427 So. 2d 1134, 1135 (Fla. 5th DCA 1983) (applying Rule 1.370 and holding that the trial court properly relied on the admissions in entering summary judgment).

Conclusion

In conclusion, from review of the record and governing statutes and case law, this Court concurs with Judge Ambro's detailed findings and analysis in the Order entered on November 8, 2011 determining that Ramgadoo was entitled to attorney's fees and thus, the Final Judgment that incorporated said Order and awarded Ramgadoo attorney's fees and costs must be affirmed.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED:**

1. The Trial Court's "Final Judgment for Attorney's Fees and Costs for Plaintiff" rendered August 6, 2012, nunc pro tunc to February 17, 2012 is **AFFIRMED**; and

2. As the prevailing party, Ramgadoo's "Appellee's Motion to Tax Appellate Attorney's Fees" filed July 25, 2013 is **GRANTED** as to the attorney's fees and the assessment of those fees is **REMANDED** to the Trial Court. Also, Ramgadoo is entitled to have costs taxed in his favor by filing a proper motion with the Trial Court pursuant to 9.400(a), Fla. R. App. P.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 14th day of May, 2014.

/S/ _____
ROBERT M. EVANS
Presiding Circuit Judge

SHEA and HIGBEE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Michael J. Neimand, Esquire**, The Office of the General Counsel, United Automobile Insurance Company, Trial Division, P.O. Box 694260, Miami, Florida 33269-9854 and **Kevin B. Weiss, Esquire**, The Nation Law Firm, 570 Crown Oak Centre Drive, Longwood, Florida 32750 on the 14th day of May, 2014.

/S/ _____
Judicial Assistant