In the Florida Supreme Court

MRI ASSOCIATES OF TAMPA, INC., d.b.a. Park Place MRI,

Petitioner,

vs.

Fla. S. Ct. Case No. SC18-1390

STATE FARM MUTUAL AUTO. INS. CO.,

Fla. 2d DCA Case No. 2D16-4036

Respondent.

_____/

PETITIONER'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Florida Rule of Appellate Procedure 9.225, the Petitioner, MRI Associates of Tampa, Inc., doing business as Park Place MRI, provides the following supplemental authority which was issued after the oral arguments in this case, and states:

1. *Hands On Chiropractic PL, a/a/o Justin Wick v. Geico Gen. Inc. Co.,* Case No. 5D20-2705, -- So.3d --, 2021 WL 4127820 (Fla. 5th DCA Sept. 10, 2021), attached hereto as "**Exhibit A**," is cited concerning the following issues:

(a) Whether Section 627.736(1)(a), Florida Statutes (2012-2021) imposes a reasonable medical expenses coverage mandate, which PIP insurers must satisfy by electing either the fact-dependent method described in Section 627.736(5)(a), or the schedule of

maximum charges method described in Section 627.736(5)(a)1-5. *See,* Initial Brief at pages 28-32; Reply Brief at pages 11 and 16; *Hands On,* 2021 WL 4127820 at *2.

(b) Whether a PIP insurer who lawfully elects the schedule of maximum charges method is authorized to limit its reimbursement for medical expenses to any amount that is different than the amount of reimbursement allowed by Section 627.736(5)(a)1-5, Florida Statutes (2012-2021). *See,* Initial Brief at pages 20-21 and 35-39; Reply Brief and pages 4, 9, and 16; *Hands On,* 2021 WL 4127820 at *1-*3.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was **electronically filed** with the Clerk of the Court, and **electronically served** on the following persons on this 22nd day of September, 2021:

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District Court of Appeal of Florida, Fifth District.

HANDS ON CHIROPRACTIC PL a/a/o Justin Wick, Petitioner,
v.
GEICO GENERAL INSURANCE COMPANY, Respondent.

Case No. 5D20-2705
|
Opinion filed September 10, 2021

Petition for Certiorari Review of Decision from the Circuit Court for Orange County Acting in its Appellate Capacity.

Attorneys and Law Firms

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Opinion

EDWARDS, J.

***1** This PIP case concerns the rate at which an insurer must pay health care providers for services rendered. We hold that when an insurer chooses to reimburse according to scheduled rates, it must pay 80 percent of 200 percent of the statutorily adopted applicable fee schedule.[1] There is nothing in the statutory scheme that permits a PIP insurer to limit reimbursements to 80 percent of the billed amount.

[1] The "applicable fee schedule" is based upon the fee schedule or payment limitations under Medicare Part B (as further described and defined in section 627.736(5)(a)2., Florida Statutes (2019)).

Petitioner, Hands On Chiropractic PL ("Hands On"), as assignee of Justin Wick ("Wick"), seeks second-tier certiorari review in our Court of the appellate opinion of the circuit court regarding at what rate a health care provider is to be reimbursed pursuant to statutorily-defined Personal Injury Protection ("PIP") insurance benefits by Respondent, GEICO General Insurance Company ("Geico"). Exercising our certiorari jurisdiction, we find that the circuit court departed from the essential requirements of law when it ruled that Geico could limit payments to 80 percent of the billed amount submitted by Hands On, as there is no such provision in the controlling statute.

Granting the writ of certiorari is appropriate, given the pervasive effect that the circuit court's decision has on similar cases that are now pending.[2] Exercising our new appellate jurisdiction regarding appeals from county court, we affirm in part the county court's summary judgment entered in favor of Hands On and remand to that court for calculation and entry of a final judgment ordering Geico to reimburse Hands On at the rate of 80 percent of 200 percent of the applicable fee schedule for the services rendered that are reflected in the otherwise undisputed bill. We explain below how we arrived at our decision.

[2] Under the circumstances, while we grant the petition, it will not be necessary to actually issue the writ of certiorari.

Factual and Procedural Background

Wick purchased a policy of automobile insurance that included statutorily-required PIP coverage from Geico. He was injured in a car wreck and sought treatment from Hands On. Wick assigned to Hands On his right to receive PIP benefits under his Geico policy. Hands On submitted bills to Geico for treatment rendered to Wick for accident-related injuries. Although Geico did make payments to Hands On for treating Wick, it did so at a rate lower than that called for by the controlling statute, section 627.736(5)(a)1., Florida Statutes (2019). Hands On disputed the underpayment and, as assignee of Wick's PIP rights, sued Geico.

Hands On filed an amended motion for summary

EXHIBIT A tabbies

judgment in which it argued that Geico breached the insurance contract when it paid only 80 percent of the amount billed by Hands On, instead of paying 80 percent of the 200 percent of the statutorily defined applicable fee schedule. The county court granted summary judgment in Hands On's favor and ruled that Geico had to pay the billed amount in full, given that the billed amount was less than 200 percent of the Medicare Part B schedule of physicians payments.

***2** Geico appealed to the circuit court and argued that it should be allowed to apply its 20 percent coinsurance charge against all PIP medical reimbursements. Focusing on that argument, the circuit court reversed the final summary judgment rendered by the county court. The circuit court's ruling relied upon, but misapplied, this Court's opinion in *Geico Indemnity Co. v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019).

Limited Second-Tier Certiorari Review

"Our second-tier certiorari review 'is limited to those instances where the lower court did not afford procedural due process or departed from the essential requirements of law,' and it 'should not be used to grant a second appeal.' " *Id.* at 983 (quoting *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 889 (Fla. 2003)). Here, Hands On does not allege lack of procedural due process; thus, we will only consider whether the circuit court failed to apply clearly established law. According to the Florida Supreme Court, " 'clearly established law' can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law." *Kaklamanos*, 843 So. 2d at 890. Granting certiorari review is appropriate "when the circuit court's [appellate] decision establishes a rule of general application for future cases in county court, thus exacerbating the effect of the [circuit court's] legal error." *Irizarry*, 290 So. 3d at 984 (internal quotations and citations omitted).

Statutory Payment Schedules

Section 627.736(1)(a) requires PIP insurers to provide coverage that pays for 80 percent of all reasonable expenses for medically necessary services. Under section 627.736(5)(a), insurers have the option to engage in fact-specific analysis of whether a health care provider's charges are reasonable. Section 627.736(5)(a)1. gives insurers the option to avoid factually analyzing whether charges are reasonable by permitting them to pay health care providers pursuant to certain ratios of applicable fee schedules, such as those adopted for Medicare or Workers Compensation.

The method for calculating PIP medical payments to providers, relevant to our case, is set forth in section 627.736(5)(a)1.f.(I), which provides:

> 1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:
>
> ....
>
> f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:
>
> (I)The participating physicians fee schedule of Medicare Part B
>
> ....

If a PIP insurer chooses to pay pursuant to the foregoing schedule-related method, the insurance policy must include a notice of the insurer's election to so limit medical payments. Hands On agrees that Geico provided appropriate notice that it would employ the payment method just described. The Geico policy provides, in pertinent part, that pursuant to the controlling statute, it will pay 80 percent of 200 percent of the applicable fee schedule. That is the same "amount allowed" provided under section 627.736(5)(a)1.

Geico's Unauthorized Hybrid Payment

In the case before the Court, rather than pay Hands On the amount allowed, namely 80 percent of the 200 percent of the applicable fee schedule pursuant to section 627.736(5)(a)1.f.(I) and its policy, Geico paid only 80 percent of the billed amount submitted by Hands On for Wick's treatment. The only relevant statutory provision that provides for payment to a healthcare provider based on the billed amount rather than the applicable fee schedule is section 627.736(5)(a)5. which states: "If a provider submits a charge for an amount *less than* the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted."[3] (emphasis added). The "amount allowed under subparagraph 1." refers to 80 percent of the 200 percent of the applicable fee schedule. Geico's policy has similar language, stating that it will pay the billed amount where it is less than the "amount allowed." However, the parties agree that the

billed amount of the Hands On bill for Wick's treatment was more than 80 percent of the 200 percent fee schedule, making section 627.736(5)(a)5. inapplicable.

[3] In Geico's Florida Policy Amendment FLPIP 01-13, Geico contractually elected to always pay the billed amount in full where the billed amount was less than 80 percent of the 200 percent of the applicable fee schedule.

***3** There is nothing in the applicable statute or Geico's policy that allows it to pay 80 percent of the billed amount. It must either pay the amount allowed based on the applicable fee schedule (80 percent of 200 percent) or, if the billed amount is less than the amount allowed, it is to be paid in full. Therefore, Geico's hybrid payment to Hands On at 80 percent of the billed amount is impermissible.

Circuit Court's Misapplication of the *Irizarry* Case

Following the county court's ruling and after Geico commenced its appeal in circuit court, we released our opinion in *Geico Indemnity Co. v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019). That case dealt with a bill submitted by the health care provider for an amount less than 200 percent of the applicable fee schedule, but for more than 80 percent of 200 percent of the applicable fee schedule. Rather than pay the provider's bill in full or pay 80 percent of the 200 percent of the fee schedule, Geico paid only 80 percent of the billed amount, just as it did here. The health care provider sued Geico in county court, where it received summary judgment in its favor finding that Geico was required to pay the full amount of all bills submitted if they were less than 200 percent of the applicable fee schedule. *Id.* at 982. Geico appealed to the circuit court, which affirmed the county court's summary judgment. *Id.*

We concluded in *Irizarry* that the circuit court was correct when it stated there was nothing in the applicable statute that allowed Geico to limit its payment to 80 percent of the billed amount. However, we found that the circuit court, and derivatively the county court, erred by requiring full payment of the billed amount if the billed amount was simply less than 200 percent of the applicable fee schedule.[4] We noted that the "amount allowed" under subparagraph 1. of section 627.736(5)(a) is not 200 percent of that schedule; rather, it is a fraction of that, namely 80 percent of 200 percent of the applicable fee schedule. *Id.* at 984. "Accordingly, if the billed amount is less than 80 percent of [200 percent of] the fee schedule (the required amount an insurer must pay), the insurer may opt to pay the lower billed amount in full." *Id.* Nowhere in *Irizarry* does it say that the insurer may pay 80 percent of a billed amount.

[4] Before our Court, Hands On appropriately concedes that, given *Irizarry,* it is not entitled to payment in full of the billed amount, which is what the county court ruled; rather, it claims it is entitled to the difference between 80 percent of the billed amount, which Geico paid, and 80 percent of the 200 percent of the applicable fee schedule for the services rendered We agree and accept that concession.

Geico's concern, that it could be required to pay more than the billed amount unless it is always allowed a 20 percent discount, is hard to understand. If the applicable fee schedule itself allowed a payment of $100 for a specific coded treatment, then to find the amount allowed under section 627.736(5)(a), one would first increase that amount by 200 percent to $200 and then reduce it to 80 percent, which would be $160. Whether the billed amount from a provider was $380, $280, or $180, the statutorily defined amount allowed, and thus payable to the provider, would remain $160, because that calculation is dependent upon the fee schedule only. If instead the billed amount was $140, the relevant statute, section 627.736(5)(a)5., provides the insurer an option: rather than pay $160 as the amount allowed, it could pay the billed amount in full, namely $140. However, the statute does not permit the insurer to then discount that billed amount further.[5]

[5] We agree with the Fourth District that Geico's M608 notice does not authorize Geico to pay 80 percent of a billed amount. *See GEICO Indemn. Co. v. Muransky Chiropractic P.A. a/a/o Carlos Dieste*, —— So. 3d ——, 46 Fla. L. Weekly D1513, 2021 WL 2584107 (Fla. 4th DCA June 24, 2021).

***4** Based on the foregoing, we hold that the circuit court departed from the essential requirements of law and we grant the petition for certiorari by quashing the circuit court's appellate decision. In the past, we would have remanded this matter to the circuit court for further proceedings. However, this Court now has direct appellate jurisdiction over appeals such as this one from county court.[6] Accordingly, we affirm the county court's summary judgment in part but reverse it in part, based upon *Irizarry* and Hands On's concession that it is

entitled only to the amount allowed, i.e., 80 percent of 200 percent of the applicable fee schedule, rather than payment of 100 percent of any billed amount that is simply lower than 200 percent of the applicable fee schedule. We remand to the county court for further proceedings consistent with this opinion.[7]

[6] The following detailed discussion from the Second District does an excellent job of explaining why we are first granting the writ of certiorari and then resolving the appeal on its merits:

> In the past, we would have remanded the case for the circuit court to reconsider the merits of this appeal. *See* *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 844 (Fla. 2001) (explaining that the district court's quashal of a circuit court order on second-tier certiorari review returns the parties to the same positions they were in preceding the entry of the circuit court's ruling). At this time, however, the circuit court's jurisdiction over the appeal has been eliminated by chapter 20-61, section 3, Laws of Florida, effective January 1, 2021. Should we remand the case, the circuit court—now lacking appellate jurisdiction—would then be compelled to transfer the appeal to this court, which has appellate jurisdiction over final judgments of trial courts that are not directly appealable to a circuit court under article V, section 4(b)(1), of the Florida Constitution. In the interest of judicial economy, we have reviewed the merits of the appeal ... and remand the case to the county court for further proceedings.

Hicks v. Keebler, 312 So. 3d 1001, 1007 (Fla. 2d DCA 2021).

[7] By a separate order, we provisionally grant Hands On's motion for appellate attorney's fees which will be determined by the county court on remand.

PETITION FOR CERTIORARI GRANTED; CIRCUIT COURT'S OPINION QUASHED. County Court's Summary Judgment AFFIRMED, in Part; REVERSED, in Part; and REMANDED to County Court with instructions.

WALLIS and WOZNIAK, JJ., concur.

All Citations

--- So.3d ----, 2021 WL 4127820

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