IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

GEICO INDEMNITY COMPANY, ET AL.,

Petitioners,

v.

ACCIDENT & INJURY CLINIC, INC. A/A/O FRANK IRIZARRY, ET AL.,

Respondents.

_____/

Case Nos. 5D19-1409, 5D19-1752, 5D19-2302, 5D19-2303, 5D19-2304, 5D19-2306, 5D19-2308, 5D19-2312, 5D19-2314, 5D19-2321, 5D19-2323

Opinion filed December 20, 2019

Petition for Certiorari Review
of Order from the Circuit Court
for Volusia County,
Randell H. Rowe, III, Judge,
Kathryn D. Weston, Judge,
Michael S. Orfinger, Judge,
Matthew M. Foxman, Judge,
Steven C. Henderson, Judge,
Elizabeth A. Blackburn, Judge,
Karen A. Foxman, Judge,
Dawn D. Nichols, Judge,
Raul A. Zambrano, Judge,
Sandra C. Upchurch, Judge,
Dennis Craig, Judge,
James Robert Clay, Judge.

Peter D. Weinstein, Thomas L. Hunker, Michael A. Rosenberg of Cole, Scott & Kissane, P.A., Plantation, and Rebecca O'Dell Townsend, Louis Schulman, and Scott W. Dutton, of Dutton Law Group, P.A., Tampa, for Petitioners.

Mark K. Delegal and Tiffany A. Roddenberry, of Holland & Knight L.L.P., Tallahassee, Amicus Curiae Brief for Personal Insurance Federation of Florida and American Property Casualty Insurance Association, in support of Petitioners.

Douglas H. Stein, of Douglas H. Stein, P.A., Miami, and Brooke Boltz, of Boltz Legal, Oviedo, for Respondents.

GROSSHANS, J.

In its petition for writ of certiorari in case number 5D19-1409, Geico Indemnity Company ("Geico") seeks to quash a decision of the circuit court sitting in its appellate capacity. That decision affirmed a final summary judgment entered in county court in favor of one of the Respondents pursuant to Florida's personal injury protection ("PIP") statute. See § 627.736, Fla. Stat. (2017). For the reasons expressed below, we grant Geico's petition and quash the circuit court's decision.

Background

The PIP statute authorizes an insurer to limit reimbursement to a provider for certain charges resulting from the rendering of care and services to an insured. Specifically, the PIP statute authorizes an insurer to limit reimbursement to 80% of a schedule of maximum charges if it provides an appropriate notice in its policy. See § 627.736(5)(a)1. ("subparagraph 1"); see also § 627.736(5)(a)5. ("subparagraph 5").

Geico issued a PIP insurance policy to Frank Irizarry. Following an automobile collision, Irizarry received medical care from the Accident & Injury Clinic, A/A/O Frank Irizarry ("the Clinic"). The Clinic sought payment from Geico for reimbursement based on an assignment of Irizarry's benefits under the Geico policy. The amount billed by the Clinic

was less than the maximum listed in the policy's schedule of fees and charges. After reviewing the claim, Geico remitted 80% of the billed amount pursuant to the policy. Subsequently, the Clinic filed a complaint, claiming that it was entitled to full reimbursement of the billed amount based upon the plain language of Geico's policy, which states as follows:

> The Company will pay in accordance with the Florida Motor Vehicle No Fault Law (as enacted, amended, or newly enacted), and where applicable in accordance with all fee schedules contained in the Florida Motor Vehicle No Fault Law, to or for the benefit of the injured person:
>
> (A) Eighty percent (80%) of medical benefits which are medically necessary, pursuant to the following schedule of maximum charges contained in the Florida Statutes § 627.736(5)(a)1., (a)2. and (a)3.:
>
> . . . . [Schedule of fees]
>
> A charge submitted by a provider, <u>for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted</u> . . . .

(Emphasis added).

The Clinic sought summary judgment, arguing that Geico was precluded from limiting its reimbursement to 80% of the billed amount because the billed amount was less than the schedule of maximum charges in the policy. Relying on section 627.736, Geico argued that its policy tracked the statute's text and any deductions were properly applied.

The county court granted the Clinic's motion for summary judgment, finding as follows:

> [T]he language of the policy [is] clear and unambiguous on its face as to the BA [Billed Amount] issue. The policy requires GEICO [to] pay the full amount of the charge submitted for

> those charges that are submitted in an amount which is less than 200% of the participating physicians fee schedule of Medicare Part B.

Geico appealed the final order to the circuit court, arguing—as it had in the county court—that it was not required by its policy language or by statute to pay more than 80% of the billed amount, even if the billed amount was less than the schedule of maximum charges as listed in its policy or the statute. The circuit court agreed with Geico that its policy did not unambiguously require full payment of the billed amount. However, the circuit court affirmed the county court's ruling on the basis that the plain language of section 627.736(5) precluded the insurer from reducing the reimbursement amount. Specifically, the circuit court noted:

> [T]he controlling PIP provision specifically provide[s] that if elected the insurer would pay BA charges: "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." Florida Statutes, Section 627.736(5)(a)5. There is nothing in this statutory language which allows an insurer to limit the BA payment to 80%.

Geico now petitions for a writ of certiorari, arguing that the circuit court departed from the essential requirements of law by misinterpreting section 627.736(5) to mandate that an insurer must reimburse the full amount billed, where the amount billed is less than the maximum allowed under the statutory fee schedule. The Clinic argues that the circuit court properly interpreted the statute by finding when a provider bills at an amount lower than the statutory fee schedule, the insurer is precluded from applying any deduction and must pay the bill in full.

Post-Petition Proceedings

Since the filing of this petition, Geico has filed ten other petitions for writ of certiorari involving the same reimbursement issue. In each underlying case, the circuit court affirmed a final summary judgment in favor of a provider, citing to the Irizarry decision. For purposes of review, we have consolidated these ten petitions with the initial petition.

Standard for 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." Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 889 (Fla. 2003). In this case, we focus on the second requirement. "[T]he departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error." Id. However, the misinterpretation of a statute "may be the basis for granting certiorari review." Id. at 890; see also State Farm Mut. Auto. Ins. Co. v. Rhodes & Anderson, D.C., P.A., 18 So. 3d 1059, 1061 (Fla. 2d DCA 2008). This is especially true 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." Progressive Express Ins. Co. v. McGrath Cmty. Chiropractic, 913 So. 2d 1281, 1287 (Fla. 2d DCA 2005); see also United Auto. Ins. Co. v. Santa Fe Med. Ctr., 21 So. 3d 60, 63 (Fla. 3d DCA 2009); State Farm Fla. Ins. Co. v. Lorenzo, 969 So. 2d 393, 398 (Fla. 5th DCA 2007).

Analysis

With this framework in mind, we now address the following question: Does the plain language of the PIP statute preclude an insurer from limiting its reimbursement to

80% of the total billed amount when the amount billed is less than the statutory fee schedule?

A statute that is clear and unambiguous on its face requires no construction and should be applied in a manner consistent with its plain meaning. See Universal Prop. & Cas. Ins. Co. v. Colosimo, 61 So. 3d 1241, 1243 (Fla. 3d DCA 2011). It is a well-settled principle of statutory construction that "all parts of a statute must be read together in order to achieve a consistent whole." Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992); see also Giamberini v. Dep't of Fin. Servs., 162 So. 3d 1133, 1136 (Fla. 4th DCA 2015) ("'A statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts.' A single word or provision of a statute cannot be read in isolation." (first quoting State ex rel. City of Casselberry v. Mager, 356 So. 2d 267, 269 n.5 (Fla. 1978); and then citing Jones v. ETS of New Orleans, Inc., 793 So. 2d 912, 915 (Fla. 2001))).

Because statutory interpretation is a holistic endeavor, see United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988), we not only focus on the text of the statute, but also must consider the relationship between the applicable statutory provisions. Subsection five of section 627.736 concerns charges for services and supplies rendered to those insured under a PIP policy. As for payment of the charges, the statute authorizes insurers to limit reimbursement to 80% of an amount fixed through a fee schedule, see § 627.736(5)(a)1.a.–f., provided that they have elected in the policies to take advantage of these reimbursement limitations, see § 627.736(5)(a)5. And, as pertinent here, subparagraph 1 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:

(1) The participating physicians fee schedule of Medicare Part B . . . .

§ 627.736(5)(a)1.f.(1) (emphasis added).

In subparagraph 5, the statute further provides: "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." § 627.736(5)(a)5. (emphasis added). Thus, in considering the statute as a whole, we conclude that "the amount allowed under subparagraph 1" necessarily encompasses 80% of the applicable fee schedule option. Accordingly, if the billed amount *is less than 80% of the fee schedule* (the required amount an insurer must pay), the insurer may opt to pay the lower billed amount in full.

In the Irizarry decision, the circuit court held that "the amount allowed under subparagraph 1" referred only to the fee schedule. As seen from the analysis above, this holding was erroneous and a misinterpretation of the PIP statute.

Accordingly, we conclude that certiorari relief is appropriate as the circuit court failed to apply the correct law. We grant Geico's consolidated petitions, quash the circuit court's Irizarry decision as well as the ten circuit court decisions consolidated in this review, and remand for proceedings consistent with this opinion.

PETITIONS GRANTED; ORDERS UNDER REVIEW QUASHED; and REMANDED for further proceedings.

EDWARDS and HARRIS, JJ., concur.