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

CENTRAL FLORIDA MEDICAL AND CHIROPRACTIC CENTER A/A/O RONALD SEALEY,

Appellant,

v.

Case No. 5D21-29
LT Case Nos. 2014-20479-CONS
2020-100001-APCC

PROGRESSIVE AMERICAN INSURANCE COMPANY,

Appellee.

_____/

Opinion filed October 15, 2021

Appeal from the County Court
for Volusia County,
Angela Dempsey, Judge.

Kimberly P. Simoes, of The Simoes Law Group, P.A., DeLand, and Douglas H. Stein, of Douglas H. Stein, P.A., Coral Gables, for Appellant.

Kenneth P. Hazouri, of deBeaubien, Simmons, Knight, Mantzaris & Neal, LLP, Orlando, for Appellee.

HARRIS, J.

Central Florida Medical and Chiropractic Center a/a/o Ronald Sealy ("CFM") appeals the trial court's finding that Progressive American Insurance Company ("Progressive") was entitled to attorney's fees and costs pursuant to Progressive's proposal for settlement. CFM argues that the trial court erred in finding that the proposal for settlement was valid because Florida Rule of Civil Procedure 1.442 had not been specifically invoked in this small claims case. We disagree and affirm the trial court's ruling.

CFM filed a complaint against Progressive in county court, alleging that Progressive refused to pay CFM for medical services rendered to Ronald Sealy, a patient insured under Personal Injury Protection ("PIP") coverage issued by Progressive. CFM alleged that Sealy was injured in a motor vehicle accident and that it was an assignee of Sealy.

Progressive took the position that Sealy's failure to comply with section 627.736(1)(a), Florida Statutes (2013), which requires that medical treatment be sought within fourteen days of a motor vehicle accident, rendered the medical services provided to Sealy by CFM uncovered under the policy. Progressive then moved for a summary disposition on that basis and, approximately one month later, sent CFM a proposal for settlement

incorporating all provisions set forth in Rule 1.442 and section 768.79, Florida Statutes (2014).

CFM promptly moved to strike Progressive's proposal, asserting that this case was filed pursuant to the Florida Small Claims Rules and that Rule 1.442 was not invoked pursuant to Small Claims Rule 7.020(c). CFM argued that in order for Progressive to serve a valid proposal for settlement, it must request that Rule 1.442 be applied to this case.

The trial court ultimately granted Progressive's motion for summary final disposition, agreeing that Sealy did not seek medical services within fourteen days after the motor vehicle accident. Following judgment in its favor, Progressive moved to enforce its proposal for settlement and/or motion to tax attorney's fees and costs. After a hearing at which CFM continued to argue that Rule 1.442 was never invoked, the trial court entered an order granting Progressive's motion. CFM was ordered to pay a total of $71,437.26 in attorney's fees and costs. This appeal followed.

Proposals for settlement in Florida are authorized and governed by section 768.79, Florida Statutes, which, if complied with, can create a substantive right to attorney fees "in any civil action for damages filed in the courts of this state." It is well-established that the language of section 768.79 includes PIP suits such as the one brought by CFM in this case. In State

Farm Mutual Auto Insurance Co. v. Nichols, 932 So. 2d 1067 (Fla. 2006), the court found that Florida's proposal for settlement statute conveyed a clear and definite meaning and that the phrase "any civil action for damages" unambiguously includes suits to recover damages for breach of a PIP insurance contract. Similarly, the court in Tran v. State Farm Fire & Casualty Co., 860 So. 2d 1000 (Fla. 1st DCA 2003), held that section 768.79 specifically applies to cases pending in small claims court. The issue before us then is whether Progressive's proposal for settlement is enforceable against CFM in this case in the absence of a specific invocation of Rule 1.442.

The Florida Supreme Court explained that "section 768.79 generally creates a right to recover reasonable costs and attorney fees when a party has satisfied the terms of the statute and [Rule 1.442]." Att'ys Title Ins. Fund, Inc. v. Gorka, 36 So. 3d 646, 649 (Fla. 2010) (quoting MGR Equip. Corp. v. Wilson Ice Enters., Inc., 731 So. 2d 1262 (Fla. 1999)). While the substantive right to recover fees and costs was legislatively created, the method and means of implementing this right were established in Rule 1.442, which outlines the form and content of a valid proposal for settlement. See TGI Friday's Inc. v. Dvorak, 663 So. 2d 606 (Fla. 1995). To be enforceable, the proposal must comply with the substantive requirements of the statute as

well as the procedural requirements of the rule. See Audiffred v. Arnold, 161 So. 3d 1274 (Fla. 2015).

On appeal, CFM does not argue that Progressive's proposal did not comply with either section 768.79 or Rule 1.442. In fact, CFM concedes that Progressive's proposal complies with the terms of the statute and the rule. Instead, CFM argues only that Rule 1.442 did not apply in this case because it was never invoked by the parties or by the court.

Resolving the issue before this Court requires us to examine the interplay between the rules of civil procedure and the rules that apply to small claims. Florida Rule of Civil Procedure 1.010 provides that the rules of civil procedure apply to all actions of a civil nature but excludes those cases in which the small claims rules apply. Florida Small Claims Rule 7.020 provides that only certain rules of civil procedure automatically apply to small claims cases. Rule 1.442 is not among the list of civil procedure rules authorized by Rule 7.020. However, Rule 7.020 provides a mechanism by which the parties or the court can invoke additional rules of civil procedure. Upon the filing of a motion by one of the parties, by a stipulation of all of the parties, or on the court's own motion, the action may proceed under one or more additional rules of civil procedure. There is no dispute in this case that Rule 1.442 was

not specifically invoked by the parties or the court. However, our analysis does not end there.

Unlike other rules of civil procedure, Rule 1.442 clearly specifies the cases to which it applies. Despite the general statement of Rule 1.010, Rule 1.442 very clearly and unambiguously states that it "applies to all proposals for settlement authorized by Florida law." As set forth above, Florida law is clear that proposals for settlement are authorized in PIP cases filed in small claims court. Therefore, by its own terms, Rule 1.442 would apply in this case. Even if Rule 7.020 could be read to conflict with or contradict this conclusion, Rule 1.442 resolves any such conflict: "This rule . . . supersedes all other provisions of the rules and statutes that may be inconsistent with this rule." Fla. R. Civ. P. 1.442(a). Because the rule by its very terms applies to actions filed in small claims court, we find that Progressive was not required to specifically invoke Rule 1.442 in order for its proposal for settlement to be enforceable.

We affirm the trial court's order enforcing Progressive's proposal for settlement and its final judgment awarding Progressive its attorney's fees and costs incurred in defense of CFM's PIP suit.

AFFIRMED.

EISNAUGLE and WOZNIAK, JJ., concur.