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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1111

Filed 7 May 2024

Davidson County, No. 23CVS712

PAULINE OSBORNE NORMAN, Plaintiff,

v.

ALLSTATE INSURANCE COMPANY, Defendant.

Appeal by plaintiff from an order entered 31 July 2023 by Judge John Morris in Davidson County Superior Court. Heard in the Court of Appeals 16 April 2024.

The Law Office of Herman L. Stephens, by Herman L. Stephens, for plaintiff-appellant.

McAngus, Goudelock & Courie, P.L.L.C., by John P. Barringer, for defendant-appellee.

FLOOD, Judge.

Pauline Osborne Norman (“Plaintiff”) appeals from the trial court’s order granting Allstate Insurance Company’s (“Defendant”) motion to dismiss and dismissing Plaintiff’s claim of unfair and deceptive trade practices. On appeal, Plaintiff argues she sufficiently stated a claim upon which relief may be granted, such that her claim should have survived Defendant’s motion to dismiss. Upon review, we conclude Plaintiff failed to state a proper claim, as she is a third-party claimant

alleging unfair and deceptive trade practices against the insurer of an adverse party, and we affirm the trial court's order.

I. Factual and Procedural Background

This case arises from an automobile accident that occurred on or about 16 April 2017 in Greensboro, North Carolina, where Plaintiff was the front-seat passenger of a vehicle driven by Yasmin Hilton. Ms. Hilton's vehicle collided with a vehicle driven by Humnarayan Shrestha. Mr. Shrestha had a policy with Defendant for automobile liability insurance (the "Policy"), and Defendant provided coverage for this accident. Ms. Hilton had a policy with Nationwide Mutual Insurance Company ("Nationwide") for underinsured motorist's coverage ("UIM coverage") which, after credit for Allstate's liability coverage limit, would have provided \$20,000 in additional bodily injury coverage. Plaintiff made a bodily injury claim on the Policy and in June 2017, after an investigation, Defendant determined that Plaintiff was injured by Mr. Shrestha's negligence and indicated to Plaintiff that it would tender to her the Policy's liability limit of \$30,000.

On 3 December 2018, Defendant sent a tender letter to Nationwide, advising Nationwide that Defendant was offering to pay Plaintiff the \$30,000 in exchange for a full and final release of all claims against Mr. Shrestha by "30 days from December 6, 2018." No response to this letter appears in the Record on appeal.

On 12 April 2019, Plaintiff filed a lawsuit (the "First Suit") against Mr. Shrestha. Plaintiff alleged Mr. Shrestha's negligence as the cause of the automobile

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accident and her resulting injuries and identified Nationwide as an unnamed defendant as Ms. Hilton’s liability insurance carrier who provided UIM coverage. Plaintiff never served Mr. Shrestha with a summons or complaint for the First Suit.

On 1 May 2019, after Plaintiff had filed the First Suit, Defendant again indicated to Plaintiff that Defendant “has tendered its 30K in coverage,” and that it would do so in exchange for a full and final release of all claims against Mr. Shrestha. The Record on appeal does not contain a response from Plaintiff, and Plaintiff filed a voluntary dismissal of the First Suit on 28 July 2020.

On 26 July 2021, Plaintiff filed a second lawsuit (the “Second Suit”) against Mr. Shrestha, with Nationwide as an unnamed defendant. Mr. Shrestha served Plaintiff with a North Carolina Rules of Civil Procedure Rule 68(a) Offer of Judgment for \$30,000, representing the tender of Defendant’s per-person limit. Plaintiff, however, did not respond to or accept the Offer of Judgment within ten days as required by Rule 68(a)—a fact which Plaintiff’s counsel conceded in the complaint in the present case¹—and Defendant refused to renew its Offer of Judgment.

On or about 16 March 2022, Mr. Shrestha filed a Motion to Dismiss the Second Suit on the grounds that Plaintiff failed to properly serve him for the First Suit and the applicable statute of limitations had expired prior to the filing of the Second Suit.

¹ Paragraph 15 of the complaint states, “[Mr. Shrestha] served Plaintiff’s counsel with an Offer of Judgment pursuant to Rule 68 of the Rules of Civil Procedure for the sum of \$30,000.00 which Plaintiff’s [sic] inadvertently overlooked and did not discover after the [ten] day period for acceptance of the offer provided by Rule 68 [had] expired.”

On 14 June 2022, the trial court dismissed Plaintiff's Second Suit with prejudice.

On 4 April 2023, Plaintiff filed a complaint against Defendant (the "Complaint") in the present case, alleging Defendant had engaged in unfair and deceptive trade practices pursuant to N.C. Gen. Stat. §§ 75-1.1(a) and 58-63-15(11), due to its handling of the liability claim involving Plaintiff. On or about 5 May 2023, in lieu of an answer to Plaintiff's Complaint, Defendant filed a North Carolina Rules of Civil Procedure Rule 12(b) Motion to Dismiss Plaintiff's Complaint (the "Motion"), alleging insufficient process per Rule 12(b)(4), insufficient service of process per Rule 12(b)(5), lack of personal jurisdiction per Rule 12(b)(2), and failure to state a claim upon which relief may be granted per Rule 12(b)(6).

On 14 July 2023, the trial court heard Defendant's Motion. On 31 July 2023, after "consider[ing] the Motion[] and arguments of counsel along with the court file and materials presented at the time of the hearing," the trial court issued an order (the "Order") granting Defendant's Motion and dismissing with prejudice Plaintiff's Complaint. Plaintiff timely appealed.

II. Jurisdiction

Plaintiff's appeal is properly before this Court as an appeal from a final judgment of a superior court pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

III. Analysis

On appeal, Plaintiff challenges the trial court's Order only as it concerns Defendant's 12(b)(6) motion, and argues the Order was in error. In support of this

argument, Plaintiff specifically contends she stated a claim upon which relief may be granted, such that her claim should have survived Defendant’s 12(b)(6) Motion. After careful consideration, we disagree.

“The standard of review of a Rule 12(b)(6) motion to dismiss is *de novo*.” *Locklear v. Cummings*, 262 N.C. App. 588, 592–93, 822 S.E.2d 587, 590 (2018) (citation and internal quotation marks omitted). Under the scope of this *de novo* review, “this Court affirms or reverses the disposition of the trial court—the granting of the Rule 12(b)(6) motion to dismiss—based on [our] review of whether the allegations of the complaint are sufficient to state a claim.” *Thomas v. Vill. of Bald Head Island*, 290 N.C. App. 670, 673, 892 S.E.2d 888, 891 (2023) (citation and internal quotation marks omitted).

Dismissal under Rule 12(b)(6) is proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.

Wood v. Guilford Cnty., 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002). In our consideration of whether one of these three conditions is satisfied, the allegations of the plaintiff’s complaint are “treated as true[,]” and the facts are viewed in the light most favorable to the plaintiff. *Rollings v. Shelton*, 286 N.C. App. 693, 696, 882 S.E.2d 70, 72 (2022); *see also Robertson v. City of High Point*, 129 N.C. App. 88, 90, 497 S.E.2d 300, 302 (1998) (“[A] motion to dismiss for failure to state a claim upon

which relief may be granted is addressed to whether the facts alleged in the complaint, when viewed in the light most favorable to [the] plaintiffs, give rise to a claim for relief on any theory.”) (citation and internal quotation marks omitted) (cleaned up)).

The claim of unfair and deceptive trade practices is a creation of statute, and where such a claim concerns the insurance industry, it is governed by N.C. Gen. Stat. §§ 58-63-15 and 75-1.1 (2023). *See Miller v. Nationwide Mut. Ins. Co.*, 112 N.C. App. 295, 302, 435 S.E.2d 537, 542 (1993) (“Unfair or deceptive trade practices in the insurance industry are governed by [N.C. Gen. Stat.] § 58-63-15. A violation of N.C. Gen. Stat. § 58-63-15 constitutes an unfair and deceptive trade practice in violation of [N.C. Gen. Stat.] § 75-1.1 as a matter of law.” (citations omitted)); *see also* N.C. Gen. Stat. § 75-1.1(a) (“Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.”). To sufficiently state a claim for unfair and deceptive trade practices, one must allege: “(1) an unfair or deceptive act or practice, or unfair method of competition, (2) in or affecting commerce, and (3) which proximately caused actual injury to the plaintiff[.]” *Miller*, 112 N.C. App. at 301, 435 S.E.2d at 542 (citation omitted).

Even where a plaintiff makes the necessary allegations for a claim of unfair and deceptive trade practices, however, this Court has provided, “a private right of action under N.C. [Gen. Stat.] § 58-63-15 and N.C. [Gen. Stat.] § 75-1.1 may not be

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asserted by a third-party claimant against the insurer of an adverse party.” *Lee v. Mut. Cmty. Savs. Bank, SSB*, 136 N.C. App. 808, 810–11, 525 S.E.2d 854, 856–57 (2000) (citation and internal quotation marks omitted) (“North Carolina does not recognize *any* cause of action for unfair or deceptive trade practices by third-party claimants against the insurance company of an adverse party.”). The seminal case for this standard is *Wilson v. Wilson*, where the plaintiff suffered an injury as a result of her husband’s alleged negligence in driving a vehicle insured by the defendant insurance company. 121 N.C. App. 662, 663, 468 S.E.2d 495, 496 (1996). Following the accident, the plaintiff claimed medical expenses and other special damages. The defendant insurance company offered her a monetary figure in full settlement of her claim, but the plaintiff rejected the offer and filed a claim against the defendant insurance company, seeking damages based on, *inter alia*, unfair and deceptive trade practices. *Id.* at 663, 468 S.E.2d at 496. This matter came before the trial court, which dismissed under Rule 12(b)(6) the plaintiff’s unfair and deceptive trade practices claim, and the plaintiff appealed to this Court from the trial court’s dismissal. *Id.* at 663, 468 S.E.2d at 496.

Upon our review of the plaintiff’s complaint on appeal, while assuming per our standard of review for a Rule 12(b)(6) dismissal that the allegations stated in the plaintiff’s complaint were true, we concluded “that North Carolina does not recognize a cause of action for third-party claimants against the insurance company of an adverse party based on unfair and deceptive trade practices under N.C. [Gen. Stat.]

§ 75-1.1.” *Id.* at 665–67, 468 S.E.2d at 497–98 (reasoning that, “[f]irst, allowing such third-party suits against insurers would encourage unwarranted settlement demands, since plaintiffs would be able to threaten a claim for an alleged violation of N.C. Gen. Stat. § 58-63[-]15 in an attempt to extract a settlement offer[,]” and second, allowing such suits “may result in a conflict of interest for the insurance company. Upon defending its insured, the insurer has a duty to act diligently and in good faith to its insured”) (citations omitted)). Applying this conclusion to the plaintiff’s claim, we held that, as the plaintiff was neither a policyholder with the defendant insurer nor “in privity” with the defendant insurer, the plaintiff failed to state a claim upon which relief may be granted, and we affirmed the trial court’s dismissal of her claim. *Id.* at 665–67, 468 S.E.2d at 497–98; *cf. Pearce v. Am. Def. Life Ins. Co.*, 316 N.C. 461, 463–65, 468–73, 343 S.E.2d 174, 176–77, 179–81 (1986) (the estate of the plaintiff-decedent which sued to cover on a life insurance policy issued by the defendant-insurer properly brought an unfair trade practices claim); *Miller*, 112 N.C. App. at 297–98, 307, 435 S.E.2d at 539–40, 545 (the plaintiff-insured who sued his own insurer for underinsured motorist coverage properly brought an unfair trade practices claim).

Here, Plaintiff argues she made such allegations in her Complaint that she sufficiently stated a claim for unfair and deceptive trade practices pursuant to N.C. Gen. Stat. §§ 75-1.1(a) and 58-63-15(11). We need not address the allegations of Plaintiff’s complaint, however, as she is not a party who could properly bring an

unfair and deceptive trade practices claim against Defendant.

The facts of this case are analogous to those in *Wilson*: Plaintiff suffered an automobile injury due to the negligence of another; she claimed medical expenses and other special damages against the negligent party's insurer; the insurer—Defendant—offered Plaintiff a monetary figure in full settlement of her claim, and she never responded to this offer; and Plaintiff filed a claim against Defendant, seeking damages for unfair and deceptive trade practices. *See Wilson*, 121 N.C. App. at 663, 468 S.E.2d at 496. Further, as with the plaintiff in *Wilson*, Plaintiff is not an insured policyholder with Defendant, nor is Plaintiff in privity with Defendant. *See id.* at 665–67, 468 S.E.2d at 497–98; *see also Pearce*, 316 N.C. at 463–65, 468–73, 343 S.E.2d at 176–77, 179–81; *Miller*, 112 N.C. App. at 297–98, 307, 435 S.E.2d at 539–40, 545. Rather, Plaintiff is a third-party claimant alleging unfair and deceptive trade practices against the insurance company of an adverse party—namely, Defendant—and as this Court has provided, North Carolina courts do not recognize such causes of action. *See Wilson*, 121 N.C. App. at 665–67, 468 S.E.2d at 497–98; *see also Lee*, 136 N.C. App. at 810–11, 525 S.E.2d at 856–57.

As Plaintiff, categorically, could not properly bring a third-party claim for unfair and deceptive trade practices against Defendant, upon our *de novo* review of the trial court's 12(b)(6) dismissal of Plaintiff's Complaint, treating the allegations of the Complaint as true and viewing the facts in the light most favorable to Plaintiff, we conclude the face of Plaintiff's Complaint reveals that no law supports Plaintiff's

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claim, and Plaintiff brought no claim upon which relief may be granted. *See Locklear*, 262 N.C. App. at 592–93, 822 S.E.2d at 590; *see also Rollings*, 286 N.C. App. at 696, 882 S.E.2d at 72; *Robertson*, 129 N.C. App. at 90, 497 S.E.2d at 302; *Wood*, 355 N.C. at 166, 558 S.E.2d at 494. The trial court, therefore, did not err in granting Defendant’s 12(b)(6) Motion and dismissing Plaintiff’s claim, and its Order is affirmed.

IV. Conclusion

Plaintiff, as a third-party claimant alleging unfair and deceptive trade practices against the insurance company of an adverse party, has failed to demonstrate that she made a claim upon which relief may be granted. As such, it was not in error for the trial court to grant Defendant’s 12(b)(6) Motion and dismiss Plaintiff’s Claim with prejudice, and we affirm the trial court’s Order.

AFFIRMED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).