NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1078

KELLY A. RAU,
Appellant

v.

ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-16-cv-00359)
District Court Judge: Honorable Robert D. Mariani

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 12, 2019

Before: CHAGARES, JORDAN, and RESTREPO, *Circuit Judges*.

(Filed: November 27, 2019)

OPINION[*]

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[*] This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

RESTREPO, *Circuit Judge*.

Appellant Rau claims that Allstate handled her underinsured motorist claim in bad faith, in violation of 42 Pa. C.S.A. § 8371. The District Court disagreed and granted Allstate's motion for summary judgment because Rau failed to show that Allstate did not have a reasonable basis for its valuation of her claim. On appeal, Rau argues that the District Court made procedural and substantive errors in granting summary judgment. We disagree and will affirm the District Court's grant of Allstate's motion for summary judgment.

I.

Rau was injured in a car accident with a drunk driver. She settled her claim against the driver for $95,000 of his $100,000 liability policy limit. Valuing her damages well above $95,000, Rau demanded that Allstate pay an additional $200,000—the limit of her underinsured motorist ("UIM") coverage. Allstate's claims adjuster, Bethany Johnson, initially valued Rau's total claim between $110,000 and $115,000, and offered to settle Rau's claim for $10,000 after crediting the $100,000 limit of the drunk driver's policy to that valuation. Rau refused Allstate's offer and filed suit to recover the full $200,000. Johnson later sought authority to negotiate the claim up to $50,000. After pretrial discovery and an unsuccessful attempt to mediate the UIM claim, the parties agreed to enter binding arbitration with high/low parameters of $200,000/$10,000. The arbitrator determined Rau's total claim was worth $306,345, and calculated Allstate's responsibility under the UIM policy to be $160,786.78.

Rau filed suit in Lackawanna County's Court of Common Pleas alleging that Allstate acted in bad faith during the UIM litigation. Allstate removed to the United States District Court for the Middle District of Pennsylvania. The District Court granted summary judgment for Allstate because Rau failed to "demonstrate that a genuine dispute of material fact exists with respect to Allstate's assertion and supporting evidence that it negotiated in good faith." J.A. 21. On appeal, Rau claims that the District Court improperly handled her response to Allstate's Statement of Undisputed Facts ("SUF") and her Counterstatement of Undisputed Facts ("CUF"). Rau also argues that the District Court applied an incorrect legal standard and failed to give her all reasonable inferences on summary judgment.

II.

The Middle District of Pennsylvania had diversity jurisdiction over Rau's bad faith claim under 28 U.S.C. § 1332, and we have jurisdiction over appeals arising from the Middle District. 28 U.S.C. § 1291.

A plaintiff must demonstrate bad faith with "clear and convincing evidence." *Nw. Mut. Life Ins. Co. v. Babayan*, 430 F.3d 121, 137 (3d Cir. 2005). We review a district court's interpretation of its local rules for abuse of discretion. *Weitzner v. Sanofi Pasteur Inc.*, 909 F.3d 604, 613 (3d Cir. 2018). We exercise plenary review over a district court's application of law and its decision to grant summary judgment. *Warner Lambert Co. v. LEP Profit Int'l, Inc.*, 517 F.3d 679, 681 (3d Cir. 2008).

III.

Rau sets forth various procedural and substantive arguments in support of her position that the District Court erred in granting Allstate's motion for summary judgment. She argues that the District Court abused its discretion by admitting certain paragraphs of Allstate's SUF that Rau denied and refusing to assign evidentiary value to Rau's CUF. Rau further argues that the District Court erred in its application of Pennsylvania's bad faith law.

We first address whether the District Court abused its discretion when it admitted paragraphs in Allstate's SUF over Rau's denials.[1] Middle District of Pennsylvania Local Rule 56.1 states that the party opposing summary judgment must file a "separate, short and concise statement of the material facts, responding to the numbered paragraphs set forth in the statement" of material facts by the party seeking summary judgment. If the opposing party fails to object to the moving party's statement of material facts, the moving party's statement is deemed admitted. L.R. 56.1. The District Court found that Rau repeatedly "denied" averments in Allstate's SUF but then wrote answers that did not actually reject the paragraphs it responded to. The Court found such answers failed to properly object to the SUF and therefore admitted Allstate's averments.

Rau's answers to Allstate's SUF aim to create the appearance of factual disputes, which frustrates Local 56.1's purpose "to bring greater efficiency to the work of []

[1] The District Court deemed part or all of the facts contained in paragraphs 2, 3, 5, 6, 14, 15, 16, 17, 20, 22, 23, 24, 27, 31, 34, 36, 38, 39, 41, 46, 54, 58, 61, 62, and 71 of Allstate's SUF admitted.

judges." *Weitzner*, 909 F.3d at 613. Because a failure to object to a statement of facts is an admission under Local Rule 56.1, and the District Court has authority to impose sanctions for noncompliance with the local rules, we find no abuse of discretion in the decision to deem certain paragraphs of Allstate's SUF admitted. *See id.* at 614.

Rau next argues that the District Court abused its discretion by refusing to assign evidentiary value to Rau's CUF that contained 289 paragraphs in addition to her response to Allstate's SUF. We defer to district courts' interpretation of their local rules and review for abuse of discretion. *Id.* at 613 ("[T]he District Court is in the best position to determine the extent of a party's noncompliance with Local Rule 56.1, as well as the appropriate sanction for such noncompliance."). The Middle District of Pennsylvania has previously disregarded other counterstatements of facts. *See, e.g.*, *Farmer v. Decker*, 353 F. Supp. 3d 342, 347 n.1 (M.D. Pa. 2018); *Barber v. Subway*, 131 F. Supp. 3d 321, 322 n.1 (M.D. Pa. 2015) (using a counterstatement to navigate the record but declining to "consider [it] in the manner contemplated by Local Rule 56.1").

The District Court found that Rau's CUF went outside the scope of Allstate's SUF and decided not to give the former any evidentiary value. The Court found that Rau's CUF did not merit evidentiary value because "such a counterstatement of material facts is not contemplated by the language of . . . Local Rule 56.1." J.A. 6. We find no abuse of discretion in the District Court's handling of Rau's counterstatement because of the latitude given to district courts interpreting their own local rules, Local Rule 56.1's purpose to increase efficiency, and its plain language.

Rau also challenges the District Court's application of Pennsylvania's bad faith statute. Bad faith exists when "(1) [the] insurer did not have a reasonable basis for denying benefits under the policy and (2) [the] insurer knew of or recklessly disregarded its lack of a reasonable basis." *Rancosky v. Wash. Nat'l Ins. Co.*, 170 A.3d 364, 365 (Pa. 2017). While successful bad faith claims do not need to show fraudulent behavior, negligence or bad judgment will not support a bad faith claim. *See id.* at 373–75. Nor will "a low but reasonable estimate of the insured's losses."[2] *Brown v. Progressive Ins. Co.*, 860 A.2d 493, 501 (Pa. Super. Ct. 2004).

The District Court properly applied this standard and granted summary judgment because the undisputed facts in the record show that Allstate had a reasonable basis for contesting Rau's UIM claim. The record shows that (1) a large portion of Rau's valuation of her claim was attributable to potential future surgery, (2) an independent medical examination disputed Rau's claim that she needed the future surgery, (3) Rau had additional health coverage that would defray the cost of future surgery, and (4) Allstate believed Rau was exaggerating her symptoms in her deposition during the underlying UIM litigation.

Viewing any remaining factual disputes in Rau's favor, Allstate is still entitled to judgment as a matter of law, because Rau cannot demonstrate that Allstate "did not have a reasonable basis for denying benefits." *Rancosky*, 170 A.3d at 365. We do not,

[2] The fact that Rau's claim was ultimately arbitrated above Allstate's valuation does not support a finding of bad faith.

therefore, need to address the second requirement of a bad faith claim, "that the insurer knew of or recklessly disregarded its lack of a reasonable basis" for denying a claim. *Id*.

IV.

Accordingly, for the reasons stated above, we will affirm the District Court's grant of summary judgment.