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

DEPOSITORS INSURANCE COMPANY,

Appellant,

v. Case No. 5D21-71

PASCO-PINELLAS HILLSBOROUGH COMMUNITY HEALTH SYSTEM, D/B/A FLORIDA HOSPITAL WESLEY CHAPEL, A/A/O ALMA L. MCKINNEY,

Appellee.
_____/

Opinion filed June 4, 2021

Appeal from the County Court
for Orange County,
Elizabeth Starr, Judge.

Lara J. Edelstein and Hinda Klein, of Conroy Simberg, Hollywood, for Appellant.

Chad A. Barr, of Law Office of Chad A. Barr, P.A., Altamonte Springs, and K. Doug Walker, of Bradford Cederberg, P.A., Orlando, for Appellee.

LAMBERT, J.

Appellant, Depositors Insurance Company ("Depositors"), appeals the final summary judgment entered in favor of Appellee, Pasco-Pinellas Hillsborough Community Health System d/b/a Florida Hospital Wesley Chapel ("Florida Hospital"), a/a/o Alma L. McKinney, that also denied its own motion for summary judgment. We reverse the final judgment and remand with directions to the trial court to enter final summary judgment in favor of Depositors.

McKinney was involved in a motor vehicle accident in which her car was rear-ended by a pickup truck while she was stopped at a red light. She thereafter drove herself to the emergency room at Florida Hospital where she presented with a complaint of back pain. McKinney underwent a CT scan, received a prescription for a muscle relaxer, and was released from the hospital later that same day.

At the time of the accident, McKinney held an insurance policy with Depositors, which, among other things, provided her with personal injury protection ("PIP") benefits under the Florida Motor Vehicle No-Fault Law, codified at section 627.736, Florida Statutes (2017). McKinney timely submitted an application for PIP benefits to Depositors. McKinney's policy closely tracked the substantive language contained in section 627.736(1)(a)3., providing PIP benefits of up to $10,000 if a licensed

physician, dentist, or advanced registered nurse practitioner determined that the injured person had sustained an "emergency medical condition."[1] The policy further provided that if a physician, dentist, or advanced registered nurse practitioner determined that the injured person did not have an emergency medical condition, then the PIP benefits were limited to $2,500. *See* § 627.736(1)(a)4., Fla. Stat. (2017).[2]

Having received the claim for payment of PIP benefits, Depositors sent a written request to Florida Hospital under section 627.736(6)(b), Florida

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[1] Section 627.732(16), Florida Statutes (2017), defines "emergency medical condition" as follows:

> (16) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:
>
> (a) Serious jeopardy to patient health.
>
> (b) Serious impairment to bodily functions.
>
> (c) Serious dysfunction of any bodily organ or part.

McKinney's insurance policy contained essentially the identical definition of "emergency medical condition."

[2] Section 627.736(1)(a)3. and 4. also includes a physician assistant as one of the providers who may determine whether the injured person did or did not sustain an emergency medical condition.

Statutes (2017), for a written determination as to whether McKinney had suffered an emergency medical condition resulting from her motor vehicle accident. Having received no response, Depositors limited its payment of PIP benefits to $2,500.

As a result, Florida Hospital did not receive the full amount of monies for treating McKinney that it would have otherwise received had the available PIP benefits been $10,000. McKinney then assigned to Florida Hospital any rights that she had to PIP benefits under the policy, and Florida Hospital sued Depositors for breach of the insurance contract to recover the remaining balance that it claimed was owed to it by Depositors for treating the insured, McKinney.

Each party eventually moved for summary judgment. Depositors argued that because *no* affirmative determination was made by a physician, dentist, or advanced registered nurse practitioner that McKinney had suffered an "emergency medical condition" from the accident, PIP benefits were properly limited to $2,500 and Florida Hospital was thus entitled to no further monies under the policy. Florida Hospital countered in its own summary judgment motion that because the record conclusively showed that no affirmative determination was made by one of the aforementioned medical professionals or providers that McKinney did not have an

"emergency medical condition," Depositors erroneously limited the available PIP benefits to $2,500. The trial court entered final summary judgment in favor of Florida Hospital and denied Depositors' motion.

Our standard of review of the trial court's final summary judgment is de novo. *See Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074 (Fla. 2011). The question for our resolution is relatively straightforward—when it is undisputed that there has been no affirmative diagnosis or determination whatsoever by one of the aforementioned medical providers that an injured person sustained an "emergency medical condition" caused by a motor vehicle accident, are the available PIP benefits up to $10,000, or are they limited to $2,500?

Two of our sister courts, as well as the Eleventh Circuit Court of Appeals, have directly answered this question. Each court thoroughly analyzed the aforementioned PIP statutes; and each court concluded that, under such circumstances, the PIP benefits are limited to $2,500. *See Progressive Am. Ins. v. Eduardo J. Garrido D.C. P.A.*, 211 So. 3d 1086, 1093 (Fla. 3d DCA 2017) (holding that when no emergency medical condition diagnosis has been provided by an authorized medical provider as required by section 627.736(1)(a)3., the available PIP medical benefits are limited to $2,500); *Med. Ctr. of Palm Beaches v. USAA Cas. Ins.*, 202 So. 3d 88, 89

(Fla. 4th DCA 2016) ("Further, we find that if either there is no determination of whether the insured has an emergency medical condition or there has been a determination that the insured does not have an emergency medical condition, then the [PIP] benefits would be limited to $2,500."); *Robbins v. Garrison Prop. & Cas. Ins.*, 809 F.3d 583, 588 (11th Cir. 2015) (holding that where there is no determination by one of the medical providers listed in section 627.736(1)(a)3. that the injured person suffered an emergency medical condition, section 627.736 "limits an insurer's obligation to provide personal injury protection benefits to $2,500").

We agree with the result reached by these courts. More specifically, where, as here, there was no affirmative determination or diagnosis by either a physician, dentist, or advanced registered nurse practitioner that the injured person—in this case, McKinney—suffered an emergency medical condition from a motor vehicle accident, we conclude that, under the policy, the PIP benefits are limited to $2,500.[3] Accordingly, we reverse the final summary judgment entered in favor of Florida Hospital and remand with

[3] We reject, without further discussion, all remaining arguments raised by Florida Hospital for affirmance, including its arguments that the insurance policy at issue provided greater coverage than that contained in the PIP statutes or that the medical records and billing report generated from McKinney's visit to the emergency room showed that she had sustained an emergency medical condition.

directions that the trial court enter a final summary judgment in favor of Depositors.[4]

REVERSED and REMANDED, with directions.

HARRIS and SASSO, JJ., concur.

[4] As a result, we find it unnecessary to address the alternative ground raised by Depositors for reversal.