

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CENTURY-NATIONAL INSURANCE COMPANY,

Appellant,

v.

REGIONS ALL CARE HEALTH CENTER, INC. a/a/o REMY JEAN,

Appellee.

No. 2D21-198

April 20, 2022

Appeal from the County Court for Hillsborough County; Michael C. Bagge-Hernandez, Judge.

William J. McFarlane, III, and Michael K. Mittelmark of McFarlane Dolan & Prince, Coral Springs, for Appellant.

Chad A. Barr of Law Office of Chad A. Barr, P.A., Altamonte Springs, for Appellee.

SMITH, Judge.

Century-National Insurance Company appeals from the trial court's entry of final summary judgment in favor of Regions All Care Health Center, Inc., as assignee of the insured Remy Jean, in this

personal injury protection (PIP) case. Because the trial court erred in determining that Century-National breached the contract by failing to pay or deny the claim within thirty days pursuant to section 627.736(4), Florida Statutes (2020), we reverse and remand for further proceedings consistent with this opinion.¹

On November 22, 2017, Mr. Jean completed and executed an application for automobile insurance with Century-National. Part of the application included the following: "**DRIVER INFORMATION:** Provide the names of all drivers in the household of children 14 years of age or older who reside at the mailing/garaging address, and include all persons that drive the insured vehicles on a regular basis." While Mr. Jean was living with his brother and sister-in-law at the time, he listed only himself under the "Driver Information" section of the application. Thereafter, Century-National issued an insurance policy in favor of Mr. Jean, which included \$10,000 in

¹ We address only the narrow issue related to the trial court's erroneous finding that Century-National breached the contract by failing to adhere to the thirty-day timeline to pay or deny the PIP claim pursuant to section 627.736(4), which appears on the face of the order granting summary judgment. We do not reach or comment on the merits of the coverage dispute.

personal injury protection benefits for his 2004 Suzuki Grand Vitara.

While the policy was in effect, Mr. Jean sustained injuries from a car accident while driving his 2004 Suzuki Grand Vitara. He sought treatment from and assigned his PIP benefits under the policy to Regions. Mr. Jean reported the accident to Century-National on April 3, 2018. Century-National received the first claim from Regions on April 16, 2018, and Regions continued to send claims for services provided through July 12, 2018.

On June 14, 2018, nearly two months after it received the first claim, Century-National interviewed Mr. Jean and took a recorded statement. During that interview, Mr. Jean allegedly admitted that he did not list either his brother or sister-in-law in the "Driver Information" section of the insurance application.

On July 16, 2018, Century-National attempted to rescind Mr. Jean's policy alleging that he had made a misrepresentation on the application. Regions was later notified by Century-National on September 26, 2018, that no PIP benefits would be issued under Mr. Jean's policy as a result of its decision to rescind the policy because of the alleged misrepresentation.

On October 12, 2018, Regions filed a complaint alleging a breach of the insurance contract, but as is significant to this opinion, Regions later amended its complaint seeking only declaratory relief.² In the amended complaint Regions requested a declaration as to coverage and Regions' eligibility to receive PIP benefits under the policy in light of Century-National's failure to pay or deny the claim within the thirty days prescribed in the PIP statute. *See* § 627.736(4)(b), (d), (i), (10)(d) (providing that to avoid statutory penalties should the insured ultimately be entitled to payment of its claim—including paying interest on overdue payments and exposure to attorneys' fees liability—the insurer "must" either pay the claim within thirty days after receipt of a written notice of a PIP claim, deny the claim within thirty days, or

² Under section 86.011, Florida Statutes (2018), "courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed." "The court's declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment." *Id.* A declaratory judgment may be rendered "on the existence, or nonexistence" of any right or "[o]f any fact upon which the existence or nonexistence of such . . . right does or may depend." *Id.*

give notice that it opts for an additional sixty days to investigate a suspected fraud).

In response to the amended complaint, Century-National raised the affirmative defense that its investigation of the claim revealed that Mr. Jean made material misrepresentations on the application for insurance, which facts were grounds for rescission of the policy under section 627.409 and resulted in the policy being void ab initio.

Regions moved for summary judgment on its declaratory judgment action arguing, in part, that because Century-National did not comply with section 627.736(4)—by failing to pay or deny the claim within thirty days of the first claim—Century-National could not rescind the policy under section 627.409 well after the expiration of the thirty-day time limit under section 627.736(4).³

³ While Regions also sought a declaration that Century-National could not prove any material misrepresentation in the application for insurance, that issue was not decided by the trial court in the final summary judgment. However, we note that the trial court's determination that Century-National failed to abide by the statutory timelines would not preclude Century-National from later raising the defense of misrepresentation should Regions file a later breach of contract suit. *See United Auto. Ins. Co. v. Rodriguez*, 808 So. 2d 82, 87 (Fla. 2001); *United Auto. Ins. Co. v. AFO Imaging*, 323 So. 3d 826, 827 (Fla. 5th DCA 2021).

Century-National did not file a response to the motion for summary judgment and does not dispute that it did not pay or deny the claim within the thirty-day time period of section 627.736(4).

A hearing on the motion for summary judgment was held on April 14, 2020,⁴ after which the trial court entered an order granting Regions' motion and finding that because Century-National failed to "pay or deny the claim within 30 days and did not invoke the additional time limitation under Fla. Stat. 627.736(4)(i), . . . [Century-National] was in breach of contract and [Century- National's] rescission of the policy was improper."⁵

⁴ A transcript of the hearing on the motion for summary judgment does not exist due to the court reporter's difficulty in connecting via Zoom to the virtual hearing, which took place during the COVID-19 pandemic. *See In re: COVID-19 Emergency Procedures in the Fla. State Courts*, Fla. Admin. Order No. AOSC20-13 (Mar. 13, 2020); *In re: COVID-19 Emergency Measures in the Fla. State Courts*, Fla. Admin. Order No. AOSC20-17 (Mar. 24, 2020); *In re: Comprehensive COVID-19 Emergency Measures for the Fla. State Courts*, Fla. Admin. Order No. AOSC20-23 (Apr. 6, 2020). The absence of a transcript does not pose an obstacle here where the error appears on the face of the order. *See Citizens Prop. Ins. Corp. v. Anderson*, 241 So. 3d 221, 228 (Fla. 2d DCA 2018).

⁵ While the trial court relied on *Amador v. United Automobile Insurance Co.*, 748 So. 2d 307 (Fla. 3d DCA 1999), in finding that "[t]he failure to adhere to the statutory time frame is itself a breach of contract," that reliance was misplaced. As the Third District later noticed, the "holding in *Amador* was limited" to the specific facts in

Century-National timely filed a motion for rehearing, which the trial court denied after a hearing.⁶ Thereafter, the trial court rendered a final summary judgment in favor of Regions.

The plain meaning of section 627.736(4) requires swift payment within thirty days of submission of the PIP claim, unless the insurer suspects fraud, in which case the insurer "must" notify the insured in writing within that same thirty-day period in order to toll the time period for payment and to conduct a sixty-day investigation—giving the insurer who gave the requisite notice a total of ninety days to pay or deny the claim. *See* § 627.736(4). If the insurer fails to either pay or deny the claim within this timeframe the payment becomes "overdue" and the insurer is subject to specific penalties, which include interest, a ten percent penalty on the overdue amount, and attorneys' fees, in the event the insured ultimately prevails. *See* § 627.736(4)(d), (8), (10). Once the

that case and cannot and should not be read "for the proposition that an insurer's failure to pay PIP benefits within thirty days thwarts its ability to investigate the claim or discover facts." *See Miracle Health Servs., Inc. v. Progressive Select Ins. Co.*, 326 So. 3d 109, 114 (Fla. 3d DCA 2021).

⁶ Our record also does not contain a transcript of the hearing on the motion for rehearing.

claim is "overdue," including any additional time the insurer has to investigate the claim under section 627.736(4)(b), the insured may provide the insurer with written notice of an intent to initiate litigation; and thirty days later, if the claim remains unpaid, the insured may bring suit. See § 627.736(10)(a), (d).

The statute is clear, the penalty for failing to pay or deny a PIP claim within the time constraints of the statute results in the claim being "overdue." However, "[n]othing in the statute provides that once a payment becomes overdue the insurer is forever barred from contesting the claim." *Rodriguez*, 808 So. 2d at 87 (Fla. 2001); see also *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 892 (Fla. 2003) ("[T]he insurer is not barred from contesting the claim just because a payment becomes overdue."); *AFO Imaging*, 323 So. 3d at 827 (Fla. 5th DCA 2021) (explaining that while "section 627.736(4)(b) and (i) . . . establishes a timeframe for investigating claims and making payments, those provisions do not bar an insurer from contesting the claim"); *January v. State Farm Mut. Ins. Co.*, 838 So. 2d 604, 607 (Fla 5th DCA 2003) ("The insurer may contest the claim after the thirty days, but accepts the risk that if the insured prevails, the insurer will be liable to pay interest on the

claim and the insured's attorney's fees."); *Jones v. State Farm Mut. Auto. Ins. Co.*, 694 So. 2d 165, 166 (Fla. 5th DCA 1997) (holding insurer who fails to pay claim within thirty days does not lose right to contest claim but is exposed to the statutory penalties attendant to overdue claim).

Accordingly, while the failure to pay or deny the claim within the thirty days prescribed by section 627.736(4) made Regions' claim "overdue"—which entitles Regions to bring suit for breach of contract and exposes Century-National to additional penalties should Regions ultimately prevail—that failure to pay or deny the claim in accordance with section 627.736(4) does not constitute a breach of contract and does not constitute a waiver of Century-National's defenses under section 627.409. And so it follows that the trial court erred in granting final summary judgment in favor of Regions where it found that Century-National breached the contract by failing to pay or deny the claim within the thirty-day timeframe under section 627.736(4).

Reversed and remanded.

ROTHSTEIN-YOUAKIM and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official publication.