Third District Court of Appeal

State of Florida

Opinion filed October 23, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1534
Lower Tribunal No. 14-4053

Ricardo Perez and Luz Perez,
Petitioners,

vs.

Geico Indemnity Company, et al.,
Respondents.

A Case of Original Jurisdiction—Mandamus.

Silverstein, Silverstein & Silverstein, P.A., and Gregg A. Silverstein; The Powell Law Firm, P.A., and Brett C. Powell, for petitioners.

Shutts & Bowen LLP, and Frank A. Zacherl, Garrett A. Tozier and Suzanne Y. Labrit (Tampa), for respondents.

Before SALTER, SCALES and MILLER, JJ.

PER CURIAM.

In GEICO Indemnity Co. v. Perez, 260 So. 3d 342 (Fla. 3d DCA 2018) ("Perez I"), this Court: (i) affirmed the trial court's legal determination that GEICO was not entitled to section 627.727(1)'s[1] conclusive presumption that Perez had rejected uninsured/underinsured motorist ("UM") coverage under his automobile policy because GEICO's UM rejection form failed to track the precise disclaimer language set forth in the statute; but (ii) remanded for a new trial on the issue of whether Perez made a knowing, written rejection of UM coverage. Because we had already determined that GEICO was not entitled to the statute's conclusive presumption, we expressly noted in footnote nine of Perez I that we need not reach the issue of whether the trial court had erred by determining GEICO's click-through process also failed to comply with the statute. Id. at 352, n.9. In our view, the practical result of either alleged statutory violation was the same: GEICO's forfeiting the statute's conclusive presumption that Perez had waived UM benefits, with GEICO having to prove Perez made a knowing, written rejection of UM coverage.[2] Thus, because the adequacy of GEICO's online click-through process

[1] See § 627.727(1), Fla. Stat. (2013).

[2] This case is distinguishable from Jervis v. Castaneda, 243 So. 3d 996 (Fla. 4th DCA 2018). In Jervis, GEICO's insured purchased insurance policies for two vehicles and completed an online form which, GEICO argued, was an election of non-stacked UM coverage. The trial court determined that GEICO's non-stacking UM election form was void, a finding that GEICO did not appeal. Instead, GEICO was permitted to amend its affirmative defenses and argue to the jury that the insured had made an oral, knowing rejection of stacked UM coverage. Our sister court

had no bearing on GEICO's ability to proceed to trial in this case, this Court declined to reach that issue. The instant "Petition for Writ of Mandamus and/or Certiorari" is, therefore, denied.

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reversed the jury's verdict for GEICO, concluding that, "allow[ing] an insurance company to prove that an insured orally and knowingly rejected stacked [UM] coverage . . . would undermine the legislature's determination that such written notice is mandatory." Id. at 999. As we noted, though, in Perez I, this case is not about an oral rejection of UM coverage. Perez I, 260 So. 3d at 353. GEICO's claim in this case, as expressly noted in our Perez I remand instructions, is that Perez made a knowing, written rejection of UM coverage. Id. at 354.