

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1826**

Maria M. Schimming,
Appellant,

vs.

BlueCross BlueShield of Minnesota,
Respondent.

**Filed April 19, 2011
Affirmed
Lansing, Judge**

Dakota County District Court
File No. 19HA-CV-09-7502

Maria M. Schimming, St. Paul, Minnesota (pro se appellant)

Kathy S. Kimmel, Aaron Mills Scott, Oppenheimer Wolff & Donnelly LLP,
Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

LANSING, Judge

The issue presented in this case is whether BlueCross BlueShield of Minnesota breached provisions of its health-care contract, notice of privacy practices, or notice of financial privacy policies and practices during a telephone inquiry from Maria Schimming's employer about Schimming's request for reimbursement of health-insurance premiums. Because, as a matter of law, no contract was breached, we affirm the district court's summary judgment.

FACTS

Equity Services of St. Paul Inc. employed Maria Schimming as a full-time licensed practical nurse. Based on its belief that Schimming "knowingly committed fraud" in her reimbursement requests for health-insurance premiums, Equity Services terminated Schimming's employment on December 19, 2008. Schimming alleges that BlueCross BlueShield of Minnesota (BlueCross) is responsible for her termination and seeks damages for lost wages.

As part of its employment benefits, Equity Services reimburses employees for health-insurance premiums up to a monthly maximum of \$650. Schimming submitted reimbursement requests for health-insurance premiums for April, May, June, August, October, and November 2008. Although Schimming does not dispute that she had no health-insurance policy in place during these months, she accepted \$3,030 in reimbursement from Equity Services for health-insurance premiums.

In November 2008 Equity Services began investigating Schimming's reimbursement requests. On December 9 and again on December 12, 2008, Equity Services requested that Schimming provide proof of health insurance. Because Schimming did not have insurance at that time, she did not and could not provide proof of insurance.

To obtain a document to submit to Equity Services, Schimming applied for a health-insurance policy with BlueCross in December 2008. BlueCross denied her application for a \$500 deductible plan, but indicated that she could obtain insurance with a higher deductible if she signed and returned an amendment to her application. Schimming signed the amendment on December 16, 2008, and obtained health insurance, which had an effective coverage date of December 5, 2008.

Schimming provided Equity Services a receipt related to her December application for health insurance from BlueCross. To verify that Schimming had health insurance, Equity Services contacted BlueCross. BlueCross told Equity Services that the receipt Schimming provided as proof of insurance was for an application to obtain an insurance policy and that Schimming did not have a health-insurance policy in place from April 2008 to November 2008. Schimming alleges that, during the conversation, BlueCross also told Equity Services that all of her checks had bounced.

Concluding that Schimming had not been covered by a health-insurance policy during the time period for which she submitted claims for health-insurance-premium reimbursements, Equity Services terminated Schimming's employment. Equity Services sent Schimming a letter on December 19, 2008, informing her that her employment was

terminated because she “knowingly committed fraud.” Schimming sued BlueCross, alleging that it violated provisions in three separate contracts that protect her private information when it informed Equity Services that she was not insured and that her checks had bounced.

The district court granted BlueCross’s motion for summary judgment and dismissed Schimming’s breach-of-contract claim. The district court concluded that Schimming’s claim failed as a matter of law because her damages did not naturally and necessarily result from BlueCross’s alleged breach of contract, or alternatively, because BlueCross’s disclosure did not breach a contract with Schimming. The district court also denied Schimming’s cross-motion for summary judgment both on the merits and because it was not timely served. Schimming appeals, arguing that the district court erred by granting summary judgment to BlueCross and by denying her motion for summary judgment based on untimely service.

D E C I S I O N

The district court granted summary judgment against Schimming’s breach-of-contract claims based on its conclusion that BlueCross’s alleged statements to Schimming’s employer did not breach any provision of its health-care contract, notice of privacy practices, or notice of financial privacy policies and practices. The district court determined that the alleged statements—that Schimming had not been insured and that her checks had bounced—were not protected by any of the three documents.

“The interpretation of an insurance policy is a question of law reviewed de novo.” *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2002). Summary

judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. On review of summary judgment we “view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Schimming alleges that BlueCross breached the provision of the health-care contract that states:

You agree to allow all health care providers to give us needed information about the care they provide to you. We may need this information to process claims, conduct utilization review, care management and quality activities, and for other health plan activities permitted by law. We keep this information confidential, but we may release it if you authorize release, or if state or federal law permits or requires release without your authorization.

The plain language of this provision applies only to information given to BlueCross by health-care providers. *See Kwong v. Depositor’s Ins. Co.*, 627 N.W.2d 52, 55 (Minn. 2001) (applying plain and ordinary meaning of policy language). It is undisputed that none of BlueCross’s alleged statements to Equity Services relate to information given to them by health-care providers. Therefore, the district court correctly concluded that, as a matter of law, BlueCross did not breach this provision when it gave information to Schimming’s employer.

Schimming next alleges that BlueCross breached the provision of the notice of privacy practices that states:

[BlueCross has] always been committed to maintaining the security and confidentiality of the information we receive from our members. Whether it's your medical information or identifiable information (such as your name, address, phone number, or member identification number), we maintain careful safeguards to protect you against unauthorized access and use.

The district court concluded that, as a matter of law, information related to whether a person has health-insurance coverage is not included within federal and state laws defining protected health information or personal or privileged information, and therefore, that BlueCross's statements to Equity Services did not breach its notice of privacy practices. Schimming does not dispute the district court's determination. On this record, we conclude that the district court correctly determined that BlueCross's statements to Equity Services do not impinge on federal or state law protections and do not constitute a breach of the notice of privacy practices. *See* 45 C.F.R. § 160.103 (2010) (defining "health information"); Minn. Stat. § 72A.491, subd. 10, 17, 19 (2010) (defining "health record information," "personal information," and "privileged information" for purposes of Minnesota Insurance Fair Reporting Act).

Finally, Schimming alleges that BlueCross violated its notice of financial privacy policies and practices, which states that BlueCross does "not disclose nonpublic personal financial information about [its] customers or former customers except as permitted by law." The district court correctly concluded that BlueCross's alleged disclosure—that Schimming was not covered by health insurance and that her checks had bounced—did not violate this provision because neither federal nor state law protects the information and because the information was not nonpublic personal financial information.

Because we affirm the district court's summary judgment based on our conclusion that BlueCross did not, as a matter of law, breach a contract with Schimming, we do not address the district court's alternative grounds for summary judgment. And because we affirm the district court's denial of Schimming's cross-motion for summary judgment on the merits, we do not reach the procedural issue of whether Schimming's motion was timely served.

Affirmed.