IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CENTURY-NATIONAL INSURANCE COMPANY

Defendant/Appellant,

CASE NO.: 2018-CV-000019-A-O
Lower Case No.: 2016-CC-007170-O

vs.

HALIFAX CHIROPRACTIC AND INJURY CLINIC, INC. as assignee of RANTANEN BLOODWORTH,

,

Plaintiff/Appellee,

_____/

Appeal from the County Court,
for Orange County, Florida,
David P. Johnson, County Judge.

William J. McFarlane, III, Esquire,
for Appellant.

Chad A. Barr, Esquire,
for Appellee.

Before DOHERTY; CRANER; and BLECHMAN, JJ.

PER CURIAM.

ORDER AFFIRMING FINAL SUMMARY JUDGMENT

Appellant, CENTURY-NATIONAL INSURANCE COMPANY (hereinafter "C-N"), timely appeals the county court's "Amended Order on Plaintiff's Motion for Final Summary Judgment" entered on January 16, 2018. HALIFAX CHIROPRACTIC AND INJURY CLINIC, INC. as assignee of Rantanen Bloodworth (hereinafter "Halifax") timely responded November 19, 2018.

This Court has jurisdiction of appeals from county court orders. § 26.012(1), Fla. Stat. (2017); Fla. R. App. P. 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320. We affirm.

Facts and Procedural Background

Halifax provided medical services to Rantanen Bloodworth (hereinafter "Bloodworth") after injuries she sustained November 1, 2015 as a passenger in car crash. Bloodworth purchased an insurance policy from C-N[1] on or about October 22, 2015 which provided PIP[2] coverage. No later than December 8, 2015, Halifax sent to C-N invoice(s) for Bloodworth's treatment and C-N obtained, on January 5, 2016, a recorded statement of Bloodworth as part of its investigation of the claim. According to C-N, during the course of the recorded statement Bloodworth said that she was, and had been at the time of the issuance of the PIP policy, living with her parents and sister and that there were other automobiles garaged at her residence. Bloodworth's Application for Automobile Insurance did not contain this information. Ultimately, C-N took the position that the missing information was an omission and a material misrepresentation which, under terms of the policy and Florida Statutes § 627.409, allowed it to rescind the policy as if it had never been entered into.

More than sixty days after the January 5, 2016 recorded statement, C-N submitted a report of rescinded policy, dated March 15, 2016, to the Florida Office of Insurance Regulation and sent letters dated March 21, 2016 to Bloodworth and Halifax saying it "has completed its investigation" of the November 1, 2015 car crash and it was "declaring [the policy] to be void from its inception

[1] Some documents in the Record are under the heading of Pro General Insurance Solution, Inc. which is the claims administrator for Century-National Insurance Company.

[2] PIP is an acronym for "personal injury protection." *See* § 627.736(1)(a), (b), (c), Fla. Stat. (2015).

for material misrepresentation . . ." and returned Bloodworth's premium in its entirety. (R. 148, 151.) After Halifax received C-N's rescission notice it sued for payment of PIP benefits as Bloodworth's Assignee in Orange County Court on June 21, 2016. C-N answered on August 30, 2016 and asserted the affirmative defenses of "Rescission of Policy-void ab initio" and "Lack of Standing." (R. 36.)

The Parties filed competing motions for summary judgement, which were heard together on October 30, 2017. Halifax moved for summary judgment, *inter alia*, on grounds of waiver, arguing that the PIP statute is clear: An insurer upon being "furnished written notice of the fact of a covered loss and the amount of same" must either pay the claim within 30 days, deny the claim within 30 days, or itself give notice that it opts for 60 more days to investigate a suspected fraud; but in any event an insurer must either pay or deny a claim within 90 days. *See* § 627.736, Fla. Stat. Halifax completed its argument by asserting that since C-N did not pay, deny, or send notice within the statutorily mandated 30/60/90 day timeframe it was in breach of the policy and PIP statute, and consequently could not assert a fourth option: rescission. (R. 598.)

C-N moved for summary judgment on grounds that it had a unilateral right of rescission and it properly rescinded the contract, therefore it was as if the insurance contract never existed, *ipso facto* there never were any PIP benefits to recover. (R. 97.) For this proposition C-N relied heavily upon *United Auto. Ins. Co. v. Salgado*, 22 So. 3d 594 (Fla. 3d DCA 2009), which holds that failure to disclose other drivers in a household is a material misrepresentation and could be used to rescind a PIP policy. [3]

[3] *Salgado* was decided prior to the 2013 amendments to the PIP statute which added the portions of § 627 which strengthened the 30/60/90 deadlines to include the "in no event more than 90 days" language, and is silent as to the facts regarding United's investigation of Oscar Salgado's claim.

The trial court held a hearing on October 30, 2017 and issued an amended order on January 16, 2018 finding C-N in breach of the policy and PIP statute saying, "Once [C-N] failed to pay or deny the claim within 30 days after receiving bills for services provided by [Halifax], they were in breach of the policy, Fla. Stat.§ 627.736 and the stated purpose for enacting the personal injury protection (PIP) statute in the first place which is swift and automatic payment of claims." (R. 912.) In making its ruling the trial court cited to *Central Fla. Chiropractic Care v. GEICO Indemnity Co.*, 24 Fla. L. Weekly Supp. 152a (Orange Cty. Ct. April 22, 2016), *aff'd*, 26 Fla. L. Weekly Supp. 613a (Fla. 9th Cir. Ct. May 11, 2016), as Ninth Judicial Circuit precedent "that a prior breach prohibits an insurer from denying a claim for a breach on the part of the insured." (*Id.*) Concluding, "Because [C-N] violated the PIP statute by failing to pay or deny the claim within 30 days and did not invoke the additional time limitation under Fla. Stat. § 627.736(4)(i) they waived the ability to investigate or deny the claim for material misrepresentation." (R. 913.)

Arguments on Appeal

C-N's pertinent arguments on appeal are that the trial court erred in finding it waived its right to rescind, because, in fact, it properly exercised the rescission-right by giving notice of the rescission and returning the entirety of the premium within a reasonable time of discovery of the misrepresentation. Additionally, it argues, the trial court's ruling was improper because C-N rescinded by reason of material misrepresentation under § 627.409 and not for a fraudulent insurance act under § 627.736(4)(i). C-N contends the trial court "improperly relied on irrelevant provision of the Florida PIP statute," namely § 627.736(4)(i), in making its ruling. Appellant Int. Br. 47.

Standard of Review

The standard of review for an order granting a motion for judgment as a matter of law is *de novo*. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

Discussion

This is a PIP case, consequently C-N is subject to all of the PIP statute's strictures. C-N has consistently argued, in essence, here and in the court below, that this is not a PIP case because it chose to rescind the contract by reason of material misrepresentation rather than pursuing cancellation of the policy alleging a fraudulent insurance act. C-N invites the Court to view in isolation each reason the insurer might have had to avoid payment of this claim, agree with the insurer's selection, and deem the PIP statute inapplicable. This argument is belied by C-N's own conduct. C-N engaged the PIP statute prior to its attempted exercise of its unilateral right of rescission or failed to properly exercise its rescission-right timely. In either event, a hard deadline was in effect under the PIP statute which C-N failed to meet, putting it in breach of the statute.

The PIP statute is of a special nature, the intent of which is to guarantee swift payment of PIP benefits. *Crooks v. State Farm Mut. Auto. Ins. Co.* 659 So. 2d 1266, 1268 (Fla. 3d DCA 1995). PIP payments which are not made within 30 days after the insurer is furnished written notice of claim are overdue. § 627.736 (4)(b), Fla. Stat. An insurer is under this statutory time constraint even after raising a coverage issue. *January v. State Farm Mutual Ins. Co.*, 838 So. 2d. 604, 607 (Fla. 5th DCA 2003). An insurer is not free to assert a coverage issue, ignore the thirty-day deadline *to pay a claim*, and investigate further with no consequences. *Id.* Simply put, the deadline to verify, and pay, a claim is not tolled. *Superior Ins. Co. v Libert*, 776 So. 2d 360, 363 (Fla. 5th DCA 2001) (*citing Fortune Ins. Co. v Pacheco*, 695 So. 2d 394, 395 (Fla. 3d DCA 1997) (internal citations in *Pacheco* omitted)). Furthermore, the failure of an insurer to adhere to the statutorily mandated

timeframe is itself a breach of contract. *Amador v. United Auto. Ins. Co.*, 748 So. 2d 307, 309 (Fla. 3d DCA 1999).

C-N argues for a ruling that would allow an insurer to discover a colorable right of rescission during the investigation of a PIP claim, unilaterally ignore the time limitations found in § 627.736(4)(b) and § 627.736(4)(i), engage in other conduct pursuant to the PIP statute, and then, within a reasonable time, declare an entire contract of insurance void *ab initio.* C-N is correct that an insurer has a unilateral right to rescind a policy of insurance. *See Gonzalez v Eagle Ins. Co.*, 948 So. 2d. 1, 2 (Fla. 3d DCA 2006) (*citing Towers v. Clarendon Nat'l Ins. Co.*, 927 So. 2d 913 (Fla. 2d DCA 2006)). C-N is also correct that, the special nature of the PIP Statue notwithstanding, a unilateral right of rescission also applies to PIP policies. *United Auto. Ins. Co. v. Salgado*, 22 So. 3d 594, 604 (Fla. 3d DCA 2009). However, the unilateral right of rescission can be waived. *Echo v. MGA Ins. Co., Inc.* 157 So. 3d 507, 511 (Fla. 1st DCA 2015). Furthermore, C-N is incorrect that an insurance policy contract is automatically rendered void *ab initio* upon the discovery of an extant right of rescission. *See id.*

In the present case the record shows that C-N had notice of claim from December 8, 2015, but waited until January 5, 2016 to take Bloodworth's statement. According to C-N, during the course of Bloodworth's statement she admitted to material misrepresentations in her Application for Insurance which revealed the existence of a right of rescission. Since 30 days had not passed from the Notice of Claim, C-N could have exercised the rescission-right prior to the expiration of the 30 day deadline mandated by § 627.736(4)(b). This they failed to do. Attached to C-N's Motion for Summary Judgment filed December 15, 2016 is the affidavit of its custodian of records, Melissa Andrade. Ms. Andrade swears that the rescission of Bloodworth's policy occurred on or about

March 15, 2020.[4] (R. 120.) As the trial court correctly stated, "the statute under which the rescission took place is irrelevant" the threshold question was whether the invocation of the rescission-right was proper. It is indisputable that thirty days past December 8, 2015 C-N had not rescinded the policy, had not paid, not denied, and had not asked for more time to investigate the claim under § 627.736(4)(i). Rather, C-N continued to send out Explanation of Benefits and notice letters, pursuant to the PIP statute, at the same time it was aware that a rescission-right existed. These overt acts, while in breach of the PIP statute, waived its right of rescission. "[I]t is equally well settled in insurance law that, when an insurer has knowledge of the existence of facts justifying a forfeiture of the policy, any unequivocal act which recognizes the continued existence of the policy or which is wholly inconsistent with a forfeiture, will constitute a waiver thereof." *Johnson v. Life Ins. Co. of Ga.*, 52 So. 2d 813 (Fla. 1951).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED:**

1. The county court's "Amended Order on Plaintiff's Motion for Final Summary Judgment," entered on January 16, 2018, is **AFFIRMED.**

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 22 day of January, 2020.

/S/
PATRICIA A. DOHERTY
Presiding Circuit Judge

BLECHMAN and CRANER, JJ., concur.

[4] C-N points out in its Initial Brief that the trial court may have incorrectly interpreted the regulatory import of its March 15, 2016 Notice of Rescission sent to the State of Florida, however, this error, if it in fact exists, is *de minimis.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Judge David P. Johnson**, at 425 N. Orange Avenue, Orlando, Florida 32801; **William J. McFarlane, III, Esq.**, *counsel for Appellant*, at 210 N. University Dr., 6th Flr., Coral Springs, FL 33071; and **Chad A. Barr, Esq.**, *counsel for Appellee*, at 986 Douglas Ave., Suite 100, Altamonte Springs, FL 32714, on this 22 day of January, 2020.

/S/
Niyah Owens
Judicial Assistant