IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2011

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Appellant,

v. Case No. 5D09-1488 & 5D09-2091

ROBIN CURRAN,

Appellee.

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Opinion filed January 28, 2011

Appeal from the Circuit Court
for Brevard County,
Bruce Jacobus, Judge.

Elizabeth K. Russo, James H. Wyman, and Susan S. Lerner, of Russo Appellate Firm, P.A., Miami, and The Turner Law Firm, LLC, Viera, for Appellant.

O. John Alpizar of Alpizar Law LLC, Palm Bay and Marjorie Gadarian Graham of Marjorie Gadarian Graham, P.A., Palm Beach Gardens, for Appellee.

PER CURIAM.

Appellant, State Farm Mutual Automobile Insurance Company, appeals the judgment entered in favor of its insured, Robin Curran, after she was injured in an accident with an underinsured tortfeasor. That judgment awards Curran the limits of the underinsured/uninsured benefits (UM) in the insurance policy State Farm issued to her.

State Farm contends that the benefits are not owed to Curran because she breached a condition precedent in the policy requiring her to attend a compulsory medical examination (CME).[1]

The policy specifically provides in pertinent part that "[a]ny ***person*** making claim . . . under the . . . uninsured motor vehicle and death, dismemberment and loss of sight coverages shall . . . be examined by physicians chosen and paid by us as often as we reasonably may require. . . ." State Farm is correct that compliance with this policy provision is a condition precedent to suit and recovery of policy benefits. See De Ferrari v. Gov't Emps. Ins. Co., 613 So. 2d 101, 102 (Fla. 3d DCA) (affirming summary judgment in favor of insurance company in a suit to recover UM benefits; concluding that the insured failed to comply with a condition precedent in the policy requiring that "[t]he injured person will submit to examination by doctors chosen by us, at our expense, as we may reasonably require" and that the insurance company did not have to show that it was prejudiced by the noncompliance), review denied, 620 So. 2d 760 (Fla. 1993); see also Kazouris v. Gov't Emps. Ins. Co., 706 So. 2d 960, 960 (Fla. 5th DCA 1998) (specifically adopting the analysis in De Ferrari to resolve the issue "whether the insurer can insist on an independent medical examination when the insured makes a claim under uninsured motorist coverage."); Goldman v. State Farm Gen. Fire Ins.

[1] The other issues raised are whether: (1) the trial court erred in granting summary judgment on the issue of Curran's comparative negligence; and (2) the trial court abused its discretion during jury selection by replenishing the exhausted venire panel with a previously stricken venire member and moved an agreed juror into the position of alternate. State Farm also seeks to appeal two postjudgment orders—the postjudgment order awarding Curran attorney's fees and the subsequent order awarding her costs. Neither of these orders is final, however, as each contains a reservation of jurisdiction to award additional fees and costs. Nevertheless, all of these issues are moot based on our resolution of the issue regarding Curran's failure to comply with the CME provisions of the policy.

Co., 660 So. 2d 300 (Fla. 4th DCA 1995), review denied, 670 So. 2d 938 (Fla. 1996); Stringer v. Fireman's Fund Ins. Co., 622 So. 2d 145, 146 (Fla. 3d DCA 1993). We note, parenthetically, that Curran does not argue otherwise in her brief.

We have thoroughly reviewed the record in this case and conclude that Curran refused to attend a scheduled CME and filed suit to recover the UM benefits under the policy without compliance with this condition precedent. Her refusal constitutes a breach of the policy that prohibits her recovery. Accordingly, we reverse the judgment in her favor and remand this case to the trial court to enter judgment in favor of State Farm.

REVERSED and REMANDED.

SAWAYA and PALMER, JJ. and ROUSE, JR., R.K., Associate Judge, concur.