

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

ARZINA GINEL,

Petitioner

CASE NO.: 2008-CA-34613

WRIT NO.: 08-73

v.

PROGRESSIVE SELECT INSURANCE
COMPANY,

Respondent.

Appeal from the County Court,
in and for Orange County, Florida,
Judge Antoinette Plogstedt.

William Finn, Esq., for Petitioner

Chandra Miller, Esq.,
Heather C. Goodis, Esq., for Respondent.

Before MACKINNON, J. ADAMS, AND BLACKWELL, JJ.

PER CURIAM

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Arzina Ginel, seeks review of the lower court's order dated February 7, 2008, granting Respondent's, Progressive Select Insurance Company, motion for protective order. This Court has jurisdiction pursuant to Florida Rule of Procedure 9.030(c)(2) and (3). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Ginel was involved in an automobile accident on December 26, 2005. Prior to the accident, Progressive issued an insurance policy which provided personal injury protection (PIP) coverage at the of Ginel's accident. As a result of the injuries Ginel sustained from the accident, she sought and received medical treatment from various providers, including Spargo Medical Rehabilitation Center (Spargo). Following treatment, Spargo submitted bills to Progressive for payment. Progressive reduced the amount of the bills and refused to pay the full amount.

Ginel filed an action for breach of contract in the lower court to compel Progressive to pay the full amount of Spargo's bills. Progressive filed their answer and both parties proceeded to propound discovery and schedule depositions. During two separate depositions of Progressive's adjusters Ginel learned the name of another Progressive employee, Doug Helton, who potentially had information regarding the reductions in Ginel's claims. Following these two depositions Ginel filed her "Notice of Taking Deposition Duces Tecum," for Doug Helton. In response, Progressive filed their "Motion for Protective Order." A hearing on the motion for protective order was held on January 28, 2008. The lower court judge granted the motion and precluded Ginel from taking the deposition of Doug Helton. Thereafter Ginel appealed the order and this Court proceeded to treat the appeal as a petition for writ of certiorari pursuant to Fla. R. App. P. 9.040(c).

Ginel has sought certiorari review of the order granting Progressive's Motion for Protective Order. A discovery order is reviewable by way of certiorari when the order "departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal." *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995).

Numerous appellate panels in this circuit have discussed the issue presented to this Court. "Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence." *Residence Inn by Marriott v. Cecile Resort Ltd.*, 822 So. 2d 548, 549, citing to, *Brooks v. Owens*, 97 So. 2d 693, 699 (Fla. 1957). Furthermore, it is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings. *Langston*, 655 So. 2d at 94, citing *Krypton v. MGM-Pathe Communications Co.*, 629 So. 2d 852, 854 (Fla. 1st DCA 1993). The lower court ruled that "[t]he information sought by the Plaintiff [Ginel] as represented at the hearing is irrelevant and unlikely to lead to the discovery of relevant or admissible evidence."

At the hearing on Progressive's Motion for Protective Order, the lower court judge cited to *Progressive Express Insurance Co. v. St. Germain Chiropractic*, 14 Fla. L. Weekly Supp. 758a (Fla. 9th Cir. Ct. May 25, 2007). In *St. Germain*, as well as other cases, courts have held that the reasoning behind the payments made by the insurance company is simply not relevant to a suit for PIP benefits. *Id.* In *Nationwide Mutual Fire Insurance Co. v. Augustine V. Joseph, M.D., P.A.*, 10 Fla. Weekly Supp. 379a (Fla. 9th Cir. Ct. March 3, 2003), Dr. Joseph sought to

find out why his bills were paid at PPO rates by Nationwide. *Id.* That court stated, “[t]he reasons or motivations, financial or otherwise, for an insurer’s actions are simply not relevant to a claim for insurance benefits, which is what is at issue here.” *Id.* They then proceeded to grant the insurer’s petition and quashed a lower court order compelling certain discovery.

This Court finds a highly analogous situation in the instant case. Ginel is seeking information regarding the legal authority for Progressive’s payment based on a 200% Medicare fee schedule. This information, based on the holdings from *St. Germain* and *Nationwide*, is not relevant to a claim for PIP benefits. As such, the lower court’s order granting the motion for protective order did not depart from the essential requirements of law.

Accordingly, it is hereby ORDERED and ADJUDGED that Petitioner Arzina Ginel’s Petition for Writ of Certiorari is DENIED.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this _3rd__ day of ____ June _____, 2010.

_____/S/_____
CYNTHIA Z. MACKINNON
Circuit Court Judge

_____/S/_____
JOHN H. ADAMS, SR.
Circuit Court Judge

_____/S/_____
ALICE L. BLACKWELL
Circuit Court Judge

