

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

**WEST SIDE CHIROPRACTIC, INC.,  
A/A/O ROMANN GENEUS,**

**Appellant,**

**CASE NO.: CVA1 08 - 12**

**v.**

**GEICO INDEMNITY COMPANY,**

**Appellee.**

---

On Appeal from the County Court  
for Orange County,  
Antoinette Plogstedt, Judge.

Crystal L. Eiffert, Esquire,  
for Appellant.

Deborah Cross, Esquire  
for Appellee.

Before Bronson, Lauten and Dawson, JJ.

PER CURIAM

**ORDER AFFIRMING FINAL SUMMARY JUDGMENT FOR  
GEICO INDEMNITY COMPANY**

**I. INTRODUCTION**

Plaintiff/Appellant, West Side Chiropractic, as assignee of Roman Geneus (“Appellant” or “West Side”) appeals a final order of the County Court granting the motion for summary judgment of Defendant/Appellee, GEICO Indemnity Company (“Appellee” or “GEICO”). This

Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument, Fla. R. App. P. 9.320, and affirm.

## **II. FACTS**

This is a PIP case.<sup>1</sup>

Romann Geneus sustained injuries in a motor vehicle accident. He sought treatment from West Side to which he assigned his PIP benefits. West Side sought payment of its bills for treatment of Geneus under the PIP coverage of a policy issued by GEICO to Natacha Bacoup.<sup>2</sup> GEICO denied payment and West Side brought the instant action.

Geneus was not the named insured, was not owner of the accident vehicle, was not the named insured, was not the driver, was not a passenger and was not a pedestrian. He claimed PIP benefits as a resident relative of the insured, Bacoup. Geico denied that Genus was a resident relative of the insured and obtained an affidavit (“the first affidavit”) from Bacoup stating that on the date of the accident Geneus did not live with her and that Geneus was not her relative. This affidavit is dated September 26, 2006 and was forwarded to plaintiff’s counsel on October 2, 2006. On or about November 8, 2006, GEICO filed a motion for summary judgment. Appellant’s counsel then secured an affidavit (“the second affidavit”) from Bacoup

---

<sup>1</sup> “PIP” is an acronym for “personal injury protection.” With limited exception, “each motor vehicle owner or registrant required to be licensed in Florida is required to carry a minimum amount of personal injury protection, or PIP insurance, for the benefit of the owner and other designees.” *Warren v. State Farm Mut. Auto. Ins. Co.*, 899 So. 2d 1090, 1094 (Fla. 2005). These “other designees” include “residents residing in the same household” as the named insured. § 627.736(1), Fla. Stat. (2005). PIP coverage includes benefits for accident-related medical expenses, disability (lost wages) and death. § 627.736(1)(a),(b),(c), Fla. Stat. (2005).

<sup>2</sup> Ms. Bacoup is also known as Natacha McCoy. We will refer to her as Bacoup for consistency sake.

stating that she retracted the first affidavit as “some of the contents were not completely accurate.” (Aff of Natacha McCoy Bacoup, Nov. 8, 2006).

Appellee’s summary judgment motion was apparently adjourned although the record does not indicate why. In any event, the parties conducted discovery including the deposition of Bacoup. At her deposition, Bacoup testified that the first affidavit was provided to her after speaking with GEICO’s counsel. She further testified that she read the affidavit and signed it even though it was false because she was “pissed” at Geneus because “he was trying to get money from [her].” (Bacoup dep. 32:12-13, Feb. 23, 2007.) While Bacoup swore in the second affidavit that Geneus lived with her (contrary to the first affidavit), she testified at her deposition that she “[didn’t] even know him from scratch.” (Bacoup dep. 32:12-13, Feb. 23, 2007.) Geneus’s (West Side’s???) attorney then contacted Bacoup and told her to come to her office and sign an affidavit which counsel had drafted. Bacoup did not read the second affidavit but signed it anyway. When asked directly which of the two affidavits was correct, Bacoup indicated the first one and when asked again she said that the second one was incorrect.

GEICO again moved for summary judgment and argued that Geneus was not a resident relative of Bacoup, the insured. This motion was filed in June of 2007. It was scheduled to be heard on November 16, 2007 but rescheduled for January 22, 2008. Appellant’s counsel did not file any opposition and did not show up for the hearing. On the hearing date, the trial court judge contacted Appellant’s attorney by phone. Counsel requested a continuance and her request was denied. The court below granted GEICO’s motion for summary judgment and found that 1) there were no material facts in dispute; 2) there was no record evidence that Geneus was a resident relative of Bacoup; and 3) Geneus maintained a separate residence from Natacha

Bacoup at all times relevant in this matter. Thus, Geneus was not covered by the Bacoup policy with GEICO.

## **II. PARTIES' ARGUMENTS**

West Side contends, first, that the judge below should have granted its request for a continuance. Secondly, it argues that the second affidavit of Bacoup creates an issue of fact sufficient to defeat GEICO's motion for summary judgment.

GEICO responds that the trial court did not abuse its broad discretion when it denied Appellant's motion for a continuance. As to the merits, GEICO claims that, even if Bacoup's second affidavit is considered, its summary judgment motion was properly granted.

## **III. DISCUSSION**

West Side's first argument is not without merit.

"Typically, it is more appropriate for the trial court to require the trial attorney to atone for his own sins rather than visit them upon the attorney's unfortunate client." *Anthony v. Schmitt*, 557 So. 2d 656, 662 (Fla. 2d DCA 1990) (citing *Beasley v. Girten*, 61 So. 2d 179 (Fla.1952)).

Remanding this matter, however would be an ineffectual waste of time and resources. Appellant asks us to review Bacoup's second affidavit and we have done so. "Our courts have consistently held ruled that a party who opposes summary judgment will not be permitted to alter the position of his or her previous pleadings, admissions, affidavits, depositions or testimony in order to defeat a summary judgment." *DeCosmo v. Fisher*, 683 So. 2d 659, 600 (Fla. 5th DCA 1996). Simply contradicting oneself does not make for a genuine issue of material fact. Bacoup's second affidavit was obviously drafted solely for the purpose of contradicting her first



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: Elizabeth C. Wheeler, Esquire, P.O. Box 2266, Orlando, Florida 32802-2266; and Crystal L. Eiffert, Esquire, 122 East Colonial Drive, Suite 210, Orlando, Florida 32801, on the 4 day of February, 2010.

/s/  
\_\_\_\_\_  
Judicial Assistant