

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

ALFA VISION INSURANCE CORPORATION,

Appellant,

v.

CASE NO.: 2011-CV-87

Lower Case No.: 2007-CC-8404

TAMPA CHIROPRACTIC CENTER

a/a/o VICTOR GUE,

Appellee.

_____ /

Appeal from the County Court, for Orange County,
Heather L. Higbee, County Judge.

Robert Alden Swift, Esquire and
Tara Tamoney, Esquire, for Appellant.

Crystal L. Eiffert, Esquire and
Chad A. Barr, Esquire for Appellee.

Before PERRY, JR., WALLIS, JOHNSON, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Alfa Vision Insurance Corporation (“ALFA”) timely files this appeal of the lower court’s “Final Judgment of Attorney’s Fees and Costs” rendered on October 11, 2011 in favor of Appellee, Tampa Chiropractic Center a/a/o Victor Gue (“TAMPA”). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

This action arose from claims brought by TAMPA against ALFA for payment of No-Fault benefits for medical services rendered to three assignors/patients. After granting TAMPA's various summary judgment motions, the lower court entered a Final Judgment in favor of TAMPA on February 24, 2011. TAMPA also filed a Motion to Tax Attorney's Fees and Costs pursuant to sections 57.041, 627.428, and 627.736(8), Florida Statutes. On September 8, 2011 and September 30, 2011 hearings were held on TAMPA's Motion to Tax Attorney's Fees and Costs. On October 11, 2011, the lower court entered the Final Judgment of Attorney's Fees and Costs granting TAMPA attorneys' fees, costs and prejudgment interest in the amount of \$162,964.88.

ALFA appealed both Final Judgments. The Final Judgment entered on February 24, 2011 was appealed under Case No. 2011-CV-22 and on February 18, 2013, this Court affirmed in part and reversed in part the lower court's rulings as to that Final Judgment. Accordingly, this Court now addresses ALFA's appeal of the lower court's rulings as to the Final Judgment of Attorney's Fees and Costs rendered on October 11, 2011.¹

Arguments on Appeal

On appeal, ALFA argues that:

1) The lower court committed reversible error in granting summary judgment in favor of TAMPA thus, the Final Judgment of Attorney's Fees and Costs, which is based on the erroneously entered summary judgment, must be reversed as well;

¹ ALFA also appealed the Final Judgments entered in favor of Wellness Health Associates, Inc., from the consolidated case no. 2007-CC-8404. Specifically, in case no. 2011-CV-21, this Court entered an Order on February 18, 2013 affirming in part and reversing in part the lower court rulings as to the underlying Final Judgment and in case no. 2011-CV-88, the appeal of the Final Judgment of Attorney's Fees and Costs will be addressed by separate order.

2) The lower court erred in ruling that ALFA's expert could not raise any objections that were not previously raised by ALFA pursuant to the lower court's preliminary order governing the process for determining attorney's fees and costs since the subject matter at issue was within the purview of the experts to be retained, and no deadline was exceeded as to the experts. Thus, ALFA argues that the lower court abused its discretion in precluding the testimony; and

3) The lower court issued an inconsistent Final Judgment as it stated an entitlement date of April 6, 2011 but calculated interest from February 23, 2011, which is improper.²

Conversely, TAMPA argues that:

1) The relief requested by ALFA is nothing more than an advisory opinion;³

2) As to ALFA's argument that the lower court abused its discretion in excluding testimony regarding objections, TAMPA argues that ALFA had either expressly waived or waited over five months to attempt to assert the objections. Further, TAMPA argues that ALFA's claim of error is not properly before this Court as the arguments raised were not previously raised before the lower court. Lastly, TAMPA argues that notwithstanding that fact, ALFA has failed to carry its burden in showing that the exclusion was an abuse of discretion; and

3) As to ALFA's argument that the lower court erred in awarding prejudgment interest, TAMPA argues that the law in Florida is well established that a final judgment is the triggering event for recovery of attorney's fees in a PIP case.

² In the Final Judgment of Attorney's Fees and Costs, it appears that the lower court inadvertently stated the underlying Final Judgment date as February 23, 2011 instead of the correct date of February 24, 2011.

³ The basis of this argument appears to be that when the briefs were filed for this appeal, the appeal of the underlying Final Judgment entered February 24, 2011 was still pending.

Discussion

This Court's Order entered on February 18, 2013 in case no. 2011-CV-22 affirming in part and reversing in part the lower court rulings as to underlying Final Judgment entered on February 24, 2011 is dispositive for the instant appeal and warrants reversal of the Final Judgment of Attorney's Fees and Costs rendered by the lower court on October 11, 2011. *Olesh v. Greenberg*, 9 So. 3d 44, 45 (Fla. 5th DCA 2009) (holding that the attorney fee judgment should be reversed and remanded because the underlying summary final judgment had been reversed). *See Massachusetts Casualty Insurance Company v. Forman*, 516 F.2d 425, 431 (5th Cir. 1975) (applying Florida law and holding that the attorney's fees awarded to the insured under section 627.428, Florida Statutes, had to be reversed where the major part of the judgment for the insured on the merits was reversed).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the lower court's Final Judgment of Attorney's Fees and Costs rendered on October 11, 2011 is **REVERSED** and this cause is **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 3rd day of June, 2013.

/S/

BELVIN PERRY, JR.
Circuit Judge

/S/

F. RAND WALLIS
Circuit Judge

/S/

ANTHONY H. JOHNSON
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished to: **Robert Alden Swift, Esquire and Tara Tamoney, Esquire**, Cole, Scott & Kissane, P.A., Tower Place, Suite 750, 1900 Summit Tower Boulevard, Orlando, Florida 32810, robert.swift@csklegal.com, tara.tamoney@csklegal.com, meghan.falk@csklegal.com and **Crystal L. Eiffert, Esquire and Chad A. Barr, Esquire**, Eiffert & Associates, P.A., 122 E. Colonial Drive, Suite 210, Orlando, Florida 32801, service@ealawgroup.com, cbarr@ealawgroup.com on this 3rd day of June, 2013.

/S/ _____
Judicial Assistant