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

MEDICAL THERAPIES, LLC,
f/k/a MEDICAL THERAPIES, INC.,
d/b/a ORLANDO PAIN CLINIC, as
assignee of SONJA M. RICKS,

Appellant,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Appellee.
_____/

CASE NO.: 2012-CV-000067-A-O
Lower Case No.: 2011-SC-005923-O

Appeal from the County Court,
for Orange County, Florida,
Deborah B. Ansbro, County Judge.

Aaryn Fuller, Esquire, for Appellant.

Jeffrey G. Regenstreif, Esquire, for Appellee.

Before MUNYON, DAVIS, and J. KEST, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant, Medical Therapies, LLC ("Medical Therapies") as assignee of Sonja M. Ricks, timely appeals the Trial Court's "Final Summary Judgment in Favor of Defendant State Farm Mutual Automobile Insurance Company" rendered August 10, 2012. 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

Sonja M. Ricks, who was insured by State Farm Mutual Automobile Insurance Company ("State Farm"), was in a motor vehicle accident on June 24, 2010. Ms. Ricks incurred injuries from the accident and obtained medical treatment from Medical Therapies. Thereafter, Medical Therapies, as assignee of Ms. Ricks' personal injury protection ("PIP") benefits, sought payment from State Farm for the medical services it provided to Ms. Ricks on July 19 and July 20, 2010. On or about September 2010, Medical Therapies sent a demand letter to State Farm and on or about June 30, 2011 sent State Farm a second demand letter.

Thereafter, on August 18, 2011, Medical Therapies filed an action against State Farm for medical bills alleged to be unpaid. On October 21, 2011, State Farm filed its Answer and Affirmative Defenses asserting that Medical Therapies failed to comply with a condition precedent to the filing of the action by failing to serve a demand letter that complied with section 627.736(10), Florida Statutes. Medical Therapies did not file a Reply to the Affirmative Defenses. On December 9, 2011, State Farm filed a Request for Admissions and filed its Motion for Summary Judgment. Medical Therapies did not respond to the Request for Admissions. On June 21, 2012, State Farm's Motion for Summary Judgment was heard whereupon the Trial Court granted the Motion and on August 10, 2012 entered the Final Summary Judgment in favor of State Farm that Medical Therapies now appeals.

Arguments on Appeal

Medical Therapies argues: 1) The Trial Court should have granted Medical Therapies' Motion to Continue the hearing addressing State Farm's Motion for Summary Judgment; 2) State Farm was not entitled to the Final Summary Judgment because State Farm did not meet its burden of proof in the instant case and because Medical Therapies' demand letter complies or

substantially complies with section 627.736, Florida Statutes; and 3) The Trial Court should have abated or stayed the instant case in order to allow Medical Therapies the opportunity to submit another demand letter. Also, in this appeal Medical Therapies seeks appellate attorney fees and costs per sections 627.428, 627.736(8), and 627.730-627.7405, Florida Statutes, and Florida Rule of Appellate Procedure 9.400.

Conversely, State Farm argues: 1) The Trial Court properly denied Medical Therapies' Motion to Continue; 2) This Court should affirm the Final Summary Judgment because neither demand letter complies with the requirements of section 627.736(10), Florida Statutes, and Medical Therapies' "substantial compliance" theory has no basis in Florida law; and 3) An abatement and/or stay of the instant case was properly denied by the Trial Court. Also, State Farm seeks appellate attorney fees and cost per sections 57.041, 57.105, and 768.79, Florida Statutes, Florida Rules of Civil Procedure 1.442 and 1.525, and Florida Rule of Appellate Procedure 9.400.

Standard of Review

The standard of review addressing the entry of a summary judgment is de novo. *Krol v. City of Orlando*, 778 So. 2d 490, 491 (Fla. 5th DCA 2001); *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Accordingly, an appellate court must determine if there is any genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Krol* at 491- 492, citing Fla. R. Civ. P. 1.510(c).

The abuse of discretion standard of review applies when reviewing a trial court's denial of a motion for continuance; a trial court's denial of a motion to stay or abate; and a trial court's reliance on a request for admissions being deemed admitted. *Onett v. Ahola*, 780 So. 2d 979, 980 (Fla. 5th DCA 2001) (addressing denial of a continuance); *U.S. Borax, Inc. v. Forster*, 764

So. 2d 24, 29 (Fla. 4th DCA 1999) (addressing denial of motion to stay); *Farish v. Lum's Inc.*, 267 So. 2d 325, 327-328 (Fla. 1972) (addressing request for admissions).

Lastly, a decision of a trial court comes to the appellate court with a "presumption of correctness" and the burden is on the appellant to demonstrate reversible error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979).

Analysis

Medical Therapies' First and Third Arguments
Addressing the Motion for Continuance and Motion to Stay or Abate Proceeding

The grounds in Medical Therapies' Motion for Continuance of State Farm's Motion for Summary Judgment were: 1) Medical Therapies' counsel had been unavailable due to medical reasons from December 8, 2011 through April 14, 2012; 2) During this period of time when counsel was unavailable, State Farm filed its Motion for Final Summary Judgment; and 3) Medical Therapies' counsel has not had the opportunity to conduct the depositions necessary to refute the allegations contained in State Farm's Motion for Final Summary Judgment. In Medical Therapies' Motion to Stay or Abate Proceeding, Medical Therapies requested a stay or abatement of the proceeding for 35 days in order to allow the opportunity to submit another demand letter to State Farm because State Farm alleged that the demand letter was insufficient.

Motion for Continuance

First, from review of the record, as the Trial Court pointed out, the only Notice of Unavailability filed by Medical Therapies' counsel was the Notice filed on February 28, 2012 stating that she would be unavailable from February 28, 2012 to April 13, 2012. State Farm filed its Motion for Summary Judgment on December 9, 2011. Thus, the first and second grounds in the Motion for Continuance are unsupported by the record. The third ground in the Motion lacks merit as well because from review of the record there was ample time of over six months

between the filing of the Motion for Summary Judgment and the hearing on June 21, 2012 for depositions to be held, notwithstanding the time period of 46 days being unavailable. Further, the Motion lacks merit because the hearing on the Motion for Summary Judgment had already been continued two times. Accordingly, this Court finds that the Trial Court's findings and denial of the Motion for Continuance were not an abuse of discretion.

Motion to Stay or Abate Proceeding

First, this Court finds that the Motion to Stay or Abate Proceeding, like the Motion for Continuance, lacks merit for the same reasons as stated above. Second, it was reasonable for the Trial Court to find that a statutorily sufficient demand letter is a condition precedent and thus, an abatement or stay of the proceeding was not appropriate and instead, the proper remedy would have been dismissal. As State Farm points out in its Answer Brief, an abatement or stay of an action is proper when a lawsuit is premature as it can be cured simply by the passage of time. *See Angrand v. Fox*, 552 So. 2d 1113, 1115 (Fla. 3d DCA 1989) (holding that abatement was proper in the medical malpractice action where the lawsuit was filed prior to the expiration of the 90-day screening and investigation period); *Bierman v. Miller*, 639 So. 2d 627, 628 (Fla. 3d DCA 1994) (holding that abatement was proper in the legal malpractice action where the lawsuit was premature due to a pending severance agreement).

Conversely, in the instant case, it was reasonable for the Trial Court to conclude that the passage of time would not satisfy the condition precedent, being a statutorily compliant demand letter, that would instead require that a new lawsuit be filed. Further, as State Farm points out, Medical Therapies' assertion that abatement is appropriate appears to be at least a tacit admission that the two demand letters previously served on State Farm did not satisfy the condition precedent contained in section 627.736(10), Florida Statutes. Thus, the Trial Court's findings

and ruling as to the Motion to Stay or Abate Proceeding was not an abuse of discretion as the findings and ruling were reasonable especially because the Motion was brought at such a late stage in the action.

Medical Therapies' Second Argument Addressing the Demand Letters

Next, this Court addresses the sufficiency of Medical Therapies' demand letters. Subsection 627.736(10)(a) and (b), Florida Statutes, addresses the requirements for demand letters that include as a condition precedent to filing any action for benefits, that the insurer be provided with written notice of an intent to initiate litigation and that such notice may not be sent until the claim is overdue and must include an itemized statement specifying each exact amount.

At the hearing and in the Final Judgment, the Trial Court reviewed Medical Therapies' demand letters and included detailed findings that the letters did not strictly comply with the statute. Specifically, the demand letter dated June 30, 2011, sought payment for amounts previously paid by State Farm in the amount of $267.28 of the $605.00 demanded. The other undated demand letter that was authenticated by the Affidavit of Deborah Garn, also sought payment for amounts previously paid and appears to have been sent before the claim was overdue. Also, Ms. Garn's Affidavit did not deny partial payment of the bills attached to the undated demand letter and did not deny that such payment was received by Medical Therapies before it sent the demand letter and before the letter was received by State Farm.

The Trial Court also pointed out that Medical Therapies did not file a Reply to State Farm's Answers and Affirmative Defenses which included as a defense, Medical Therapies' failure to comply with the condition precedent, being a statutorily compliant demand letter. Also, the Trial Court pointed out that Medical Therapies did not respond to State Farm's Request for Admissions that included an admission that State Farm had actually paid the $267.28 of the

$605.00 demanded prior to service of the demand letter. Lastly, the Trial Court also distinguished the instant case from cases cited by Medical Therapies that applied the substantial compliance standard.

First, this Court concurs with the Trial Court that the cases cited by Medical Therapies are distinguishable and the Trial Court correctly applied the strict compliance standard as explained in the Final Judgment. Second, this Court concurs with the Trial Court that applying the plain meaning of the statute, the demand letters did not comply with the statute as they were defective because the letters demanded payment for amounts that State Farm already paid and they demanded payment for amounts that were not overdue. "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Fla. Dep't of Revenue v. New Sea Escape Cruises, LTD.*, 894 So. 2d 954, 960 (Fla. 2005) (quoting *A.R. Douglas, Inc. v. McRainey*, 137 So. 157, 159 (Fla. 1931)). Further, a court is "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power." *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998) (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). Moreover, courts should avoid a reading of a statute that would render part of a statute meaningless. *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452, 456 (Fla. 1992).

Specifically, the Florida Supreme Court has addressed the plain language of the PIP statute. "As always, legislative intent is the polestar that guides a Court's inquiry under the no-fault law." *Allstate Insurance Co. v. Holy Cross Hospital, Inc.*, 961 So. 2d 328, 334 (Fla. 2007); *United Automobile Insurance Co. v. Rodriguez*, 808 So. 2d 82, 85 (Fla. 2001). "Where the

wording of the Law is clear and amenable to a logical and reasonable interpretation, a court is without power to diverge from the intent of the legislature as expressed in the plain language of the Law." *Warren v. State Farm Mutual Automobile Insurance Co*., 899 So. 2d 1090, 1095 (Fla. 2005) (quoting *Rodriguez*, 808 So. 2d at 85).

Further, as the Trial Court pointed out, Medical Therapies' argument lacks merit due to its failure to respond to State Farm's Answer and Affirmative Defenses and Request for Admissions. Thus, the Trial Court's findings were correct and the Request for Admissions were properly deemed admitted per Florida Rule of Civil Procedure 1.370. *Morgan v. Thomson*, 427 So. 2d 1134, 1135 (Fla. 5th DCA 1983) (applying Rule 1.370 and affirming the trial court's reliance on the admissions in entering summary judgment).

Conclusion

In conclusion, from review of the record and governing statutes and case law, this Court finds that Medical Therapies arguments in this appeal lack merit and we concur with the Trial Court's detailed findings in the Final Judgment that must be affirmed.

State Farm's Entitlement to Appellate Attorney Fees

From review of the record, on December 7, 2011, State Farm served a Proposal for Settlement on Medical Therapies in the amount of $51.00. Thus, per section 768.79, Florida Statutes, State Farm as the prevailing party is entitled to attorney's fees and costs. Also, as the prevailing party, State Farm is entitled to an award of costs per section 57.041(1), Florida Statutes. Therefore, State Farm as the prevailing party in this appeal is entitled to appellate attorney's fees and costs per Florida Rules of Appellate Procedure 9.400(a) and (b).

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

1. The Trial Court's "Final Summary Judgment in Favor of Defendant State Farm Mutual Automobile Insurance Company" rendered August 10, 2012 is **AFFIRMED**;

2. As the prevailing party, State Farm's "Defendant's Motion for Attorneys' Fees and Costs" filed December 23, 2013 is **GRANTED** as to the appellate attorney's fees and the assessment of those fees is **REMANDED** to the Trial Court. Also, State Farm is entitled to have costs taxed in its favor by filing a proper motion with the Trial Court pursuant to 9.400(a), Fla. R. App. P.; and

3. Medical Therapies LLC's "Appellant's Motion for Appellate Attorney Fees and Costs" filed March 20, 2014 is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 1st day of July, 2014.

/S/
LISA T. MUNYON
Presiding Circuit Judge

DAVIS and J. KEST, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Aaryn Fuller, Esquire**, Bogin, Munns & Munns, PA, 2601 Technology Drive, Orlando, Florida 32804 and **Jeffrey G. Regenstreif, Esquire**, Gobel Flakes, LLC, 189 South Orange Avenue, Suite 1430, Orlando, Florida 32801 on the 1st day of July, 2014.

/S/
Judicial Assistant