

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

United Automobile Insurance Company v. Gables Rehab, Inc.

United Automobile Insurance Company v. Gables Rehab, Inc. · No. 3D21-91 · Decided April 14, 2021

SUMMARY

The Third District Court of Appeal of Florida reversed an order granting summary judgment to Gables Rehab, Inc. in a dispute over personal injury protection benefits. The court held that the trial court abused its discretion by striking an opposing expert's affidavit under the bald repudiation doctrine because the affidavit did not contradict the expert's deposition testimony. The affidavit raised a genuine issue of material fact regarding the relatedness and medical necessity of the chiropractic treatment, requiring further proceedings.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Fernandez, J.; Lindsey, J.; Bokor, J.
JURISDICTION	Florida
DECIDED	April 14, 2021
DOCKET	3D21-91
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	United Automobile Insurance Company appealed from an order striking its expert affidavit, an order granting Gables Rehab, Inc.'s motion for final summary judgment, and the resulting final judgment awarding PIP benefits and interest.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The striking of an affidavit submitted in opposition to summary judgment under the bald repudiation doctrine is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion; precedential status is not otherwise qualified in the opinion text.
PARTIES	United Automobile Insurance Company v. Gables Rehab, Inc.

TOPICS

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PRACTICE AREAS

Insurance

Civil procedure

Appellate procedure

Evidence

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by striking Dr. Weinreb's affidavit under the bald repudiation doctrine.
2. Whether the conflicting affidavit and deposition evidence created a genuine issue of material fact precluding summary judgment.

HOLDINGS

1. The trial court abused its discretion by striking Dr. Weinreb's affidavit because the affidavit did not baldly repudiate his deposition testimony.
2. Summary judgment was improper because Dr. Weinreb's testimony conflicted with the treating chiropractor's testimony and therefore raised a genuine issue of material fact.

KEY QUOTATIONS

“A trial court’s ruling on a motion for summary judgment is reviewed de novo.” (at 3)

“To the contrary, Dr. Weinreb’s affidavit does state that the injuries were causally related” (at 4)

“Dr. Weinreb’s testimony undoubtedly raises a genuine issue of material fact as it clearly conflicts with the testimony of the treating chiropractor, Dr. Draisel.” (at 5)

FACTUAL BACKGROUND

Gables Rehab sought PIP benefits after receiving an assignment of benefits from an insured in exchange for medical services. United Auto denied payment based on an independent medical examination and opposed summary judgment with an adjuster's affidavit concerning reasonableness and a chiropractor's affidavit concerning relatedness and medical necessity. The trial court struck the chiropractor's affidavit as a bald repudiation of his deposition testimony, then granted Gables Rehab summary judgment and awarded \$7,808 in benefits and interest.

PROCEDURAL HISTORY

Gables Rehab sued United Automobile Insurance Company for PIP benefits assigned by an insured. The county court struck the affidavit of United Auto's medical expert under the bald repudiation doctrine, granted Gables Rehab summary judgment, and entered final judgment for \$7,808 in benefits and interest. The Third District Court of Appeal reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings after reversal of the order striking Dr. Weinreb's affidavit and the order granting summary judgment. The court did not reach the other issues raised on appeal.

CASES CITED

- Ellison v. Anderson, 74 So. 2d 680, 681 (Fla. 1954)
- Major League Baseball v. Morsani, 790 So. 2d 1071, 1074 (Fla. 2001)
- Master Tech Satellite, Inc. v. Mastec N. Am., Inc., 49 So. 3d 789, 790 (Fla. 3d DCA 2010)
- Lesnik v. Duval Ford, LLC, 185 So. 3d 577, 580 (Fla. 1st DCA 2016)

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