DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

Progressive Select Insurance Company v. Emergency Physicians, Inc., d/b/a Emergency Resources Group, as Assignee of Michelle Archer

Progressive Select Insurance Co. · No. 5D21-967 · Decided June 17, 2022

SUMMARY

The Florida Fifth District Court of Appeal reversed a summary judgment awarding priority to an emergency medical provider's claim for payment under Florida's personal injury protection statutes. The court held that when an insurer receives emergency and non-emergency medical bills on the same day and the precise order of receipt cannot be established, the statutes do not require the non-emergency bill to be applied to the deductible first. The case was remanded for further proceedings.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	WALLIS, J.; Wallis, J.; Evander, J.; Wozniak, J.
JURISDICTION	Florida
DECIDED	June 17, 2022
DOCKET	5D21-967
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Progressive appealed an order granting Emergency Physicians' motion for summary judgment in an action seeking additional payment of personal injury protection benefits.
STANDARD OF REVIEW	Not expressly stated in the opinion; the appeal concerns competing motions for summary judgment.
PRECEDENTIAL VALUE	Published opinion of the Florida Fifth District Court of Appeal; precedential value is not otherwise stated in the source.
PARTIES	Progressive Select Insurance Company v. Emergency Physicians, Inc., d/b/a Emergency Resources Group, as Assignee of Michelle Archer

TOPICS

insurance coverage | statutory interpretation | plain meaning rule | appellate procedure | standard of review

PRACTICE AREAS

insurance | personal injury protection benefits | statutory interpretation | appellate procedure

QUESTIONS PRESENTED

1. When an insurer receives an emergency provider's bill and a non-emergency provider's bill on the same day, without evidence establishing the precise order of receipt, must the insurer apply the non-emergency provider's bill to the deductible first so that the emergency provider's bill is paid in full?
2. Do sections 627.736(4)(c) and 627.739(2), Florida Statutes (2015), require emergency-provider claims to be prioritized over non-emergency claims for purposes of applying a policy deductible?

HOLDINGS

1. An insurer is not required to apply the non-emergency provider's bill to the deductible first merely because the insurer cannot establish which of two same-day bills it received first. The trial court therefore had no legal basis to require prioritization in the manner advocated by Emergency Physicians.

KEY QUOTATIONS

> *"Therefore, based on the facts and the law applicable to this case we hold that the trial court had no legal basis in which to rule that an insurer must prioritize an emergency service provider's claim in the manner advocated by ERG."* (at 5)

> *"Accepting ERG's argument, the trial court's ruling would expand the law beyond this Court's opinion in Mercury and the plain text of the aforementioned statutes."* (at 5)

FACTUAL BACKGROUND

Michelle Archer was insured under an automobile policy issued by Progressive and was injured in an automobile accident. Emergency Physicians provided emergency medical care and submitted a bill under section 627.736(4)(c), Florida Statutes (2015), while another, non-emergency provider also submitted a bill on the same day. Progressive processed the emergency provider's bill first, applied it to the deductible, and after the deductible was met paid the balance of that bill and the non-emergency provider's bill in full. Progressive had no procedure or records establishing the precise time of receipt of the two bills.

PROCEDURAL HISTORY

After an automobile accident, Emergency Physicians submitted an emergency medical-services bill to Progressive under Florida's PIP statute. Progressive applied the bill to the policy deductible, exhausted the deductible, and then paid the remaining amount of the emergency provider's bill and a non-emergency provider's bill. Emergency Physicians sued, and the county court granted its motion for summary judgment, ruling that the emergency provider's claim had to be prioritized. The Fifth District reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order granting Emergency Physicians' motion for summary judgment was reversed and the matter was remanded for further proceedings.

CASES CITED

- Mercury Insurance Co. of Florida v. Emergency Physicians of Central Florida, LLP, 182 So. 3d 661 (Fla. 5th DCA 2015)
