SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

Hernandez v. Merchants Mut. Ins. Co.

2022 NY Slip Op 04156 (N.Y. Ct. App. 2022) · No. 2017-11209; 2018-03241 · Decided June 29, 2022

SUMMARY

The New York Supreme Court, Appellate Division, Second Department affirmed a judgment awarding Mario Hernandez $44,573.86 in first-party no-fault benefits against Merchants Mutual Insurance Company. The court held that Hernandez established that the claims were mailed and received and that the insurer failed to pay or validly deny them within the statutory period. The court rejected the insurer's lack-of-medical-necessity defense and concluded that Hernandez had standing to pursue the claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Angela G. Iannacci, J.; Cheryl E. Chambers, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	June 29, 2022
DOCKET	2017-11209; 2018-03241
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order granting the plaintiff summary judgment on his claim for first-party no-fault benefits and from the resulting judgment awarding $44,573.86.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. On the appeal from the judgment, the court reviewed the issues raised on the prior order pursuant to CPLR 5501(a)(1).
PRECEDENTIAL VALUE	Published opinion
PARTIES	Merchants Mutual Insurance Company v. Mario Hernandez

TOPICS

insurance coverage | summary judgment | appellate procedure | standing | civil procedure

PRACTICE AREAS

No-fault automobile insurance | Civil procedure | Appellate procedure | Summary judgment

QUESTIONS PRESENTED

1. Whether the appeal from the interlocutory order granting summary judgment had to be dismissed after entry of the final judgment.
2. Whether the plaintiff established prima facie entitlement to summary judgment on his claim for first-party no-fault benefits.
3. Whether the defendant raised a triable issue of fact concerning the medical necessity or medical justification for the claimed benefits.
4. Whether the plaintiff had standing to pursue the no-fault benefit claims.

HOLDINGS

1. The direct appeal from the order granting summary judgment must be dismissed because the right to direct appeal from the order terminated upon entry of the judgment; the issues raised on the order were reviewable on the appeal from the judgment.
2. A plaintiff establishes prima facie entitlement to summary judgment on a no-fault claim by submitting evidence that the prescribed statutory billing forms were mailed and received and that payment of the benefits was overdue.
3. The defendant failed to raise a triable issue of fact as to whether the claimed benefits were properly denied for lack of medical justification.
4. The plaintiff had standing to pursue his claims for first-party no-fault benefits.

KEY QUOTATIONS

> *"A plaintiff makes a prima facie showing of entitlement to judgment as a matter of law by submitting evidence that the prescribed statutory billing forms were mailed and received, and that payment of no-fault benefits was overdue"* ([*2])

> *"The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action"* ([*1])

FACTUAL BACKGROUND

In 2008, a vehicle operated by Mario Hernandez and insured by Merchants Mutual Insurance Company was struck from behind by a sanitation truck owned by the City of White Plains. Hernandez later underwent surgery to remove his L5-S1 disc and replace it with an artificial lumbar disc. Merchants denied related no-fault claims on the ground that the surgery was not medically necessary, and Hernandez commenced an action to recover $44,573.86 in unpaid first-party benefits.

PROCEDURAL HISTORY

Mario Hernandez sued Merchants Mutual Insurance Company to recover unpaid first-party no-fault benefits after the insurer denied claims for medical services associated with spinal surgery on the ground that the surgery was not medically necessary. The Supreme Court, Westchester County, granted Hernandez's motion for summary judgment and entered judgment for $44,573.86. The Appellate Division dismissed the appeal from the order because direct appellate review terminated upon entry of judgment, reviewed the order on the appeal from the judgment, and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- Matter of Johnson v. Buffalo & Erie County Private Indus. Council, 84 NY2d 13, 18
- Matter of Fiduciary Ins. Co. v. American Bankers Ins. Co. of Florida, 132 AD3d 40, 47
- Long Is. Radiology v. Allstate Ins. Co., 36 AD3d 763, 765
- Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 NY3d 498, 501
- A.B. Med. Servs., PLLC v. Liberty Mut. Ins. Co., 39 AD3d 779, 780
- New York & Presbyt. Hosp. v. Allstate Ins. Co., 29 AD3d 547, 547
- Global Liberty Ins. Co. v. W. Joseph Gorum, M.D., P.C., 143 AD3d 768
- New York & Presbyt. Hosp. v. Selective Ins. Co. of Am., 43 AD3d 1019
- Hobby v. CNA Ins. Co., 267 AD2d 1084
- DeGiorgio v. Racanelli, 136 AD3d 734
- Geffner v. North Shore Univ. Hosp., 57 AD3d 839
- Allstate Ins. Co. v. Kapeleris, 183 AD3d 626

OPINION

PER CURIAM.

Hernandez v Merchants Mut. Ins. Co. (2022 NY Slip Op 04156) Hernandez v Merchants Mut. Ins. Co. 2022 NY Slip Op 04156 Decided on June 29, 2022 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on June 29, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

ANGELA G. IANNACCI CHERYL E. CHAMBERS LINDA CHRISTOPHER, JJ. 2017-11209 2018-03241 (Index No. 68054/13) [*1]Mario Hernandez, respondent, vMerchants Mutual Insurance Company, appellant. Lawrence N. Rogak, LLC, Oceanside, NY, for appellant. Law

Offices of Michael H. Joseph, PLLC, White Plains, NY (Clifford S. Nelson of counsel), for respondent. DECISION & ORDER In an action to recover first-party no-fault benefits under a policy of automobile insurance, the defendant appeals from (1) an order of the Supreme Court, Westchester County (Sam D. Walker, J.), dated September 30, 2017, and (2) a judgment of the same court, dated October 26, 2017.

The order granted the plaintiff's motion for summary judgment in the principal sum of $44,573.86. The judgment, upon the order, is in favor of the plaintiff and against the defendant in the principal sum of $44,573.86. ORDERED that the appeal from the order is dismissed; and it is further, ORDERED that the judgment is affirmed; and it is further, ORDERED that one bill of costs is awarded to the plaintiff.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (see Matter of Aho, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (see CPLR 5501[a][1]).

In 2008, a vehicle operated by the plaintiff and insured by the defendant, Merchants Mutual Insurance Company, was struck in the rear by a sanitation truck owned by the City of White Plains. The plaintiff subsequently underwent surgery to remove his L5-S1 disc and replace it with an artificial lumbar disc.

After the defendant denied the subject claims on the ground that the surgery was not medically necessary, the plaintiff commenced the instant action to recover first-party no-fault benefits. The defendant answered the complaint and the plaintiff later moved for summary judgment in the principal sum of $44,573.86, representing unpaid first-party no-fault benefits under the insurance policy.

The defendant opposed the motion. The Supreme Court granted the plaintiff's motion and issued a judgment in favor of the plaintiff in the principal sum of $44,573.86. The defendant appeals. "The No-Fault Automobile Insurance Law defines 'first party benefits' as 'payments [*2]to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle'" (Matter of Johnson v Buffalo & Erie County Private Indus.

Council, 84 NY2d 13, 18, quoting Insurance Law § 5102[b]; see Matter of Fiduciary Ins. Co. v American Bankers Ins. Co. of Florida, 132 AD3d 40, 47). The no-fault law defines "basic economic loss" (Insurance Law § 5102[a]) as "[a]ll necessary expenses incurred for: (i) medical, hospital... [and] surgical... services" (id. § 5102[a][1][i]) as well as loss of earnings from work.

Like the statute, the regulations promulgated thereunder expressly state that reimbursable medical expenses consist of "necessary expenses" (11 NYCRR 65-1.1; see Long Is. Radiology v Allstate Ins. Co., 36 AD3d 763, 765). A plaintiff makes a prima facie showing of entitlement to judgment

as a matter of law by submitting evidence that the prescribed statutory billing forms were mailed and received, and that payment of no-fault benefits was overdue (see Insurance Law § 5106[a]; 11 NYCRR 65-3.8[c]; Viviane Etienne Med.

Care, P.C. v Country-Wide Ins. Co., 25 NY3d 498, 501; A.B. Med. Servs., PLLC v Liberty Mut. Ins. Co., 39 AD3d 779, 780; New York & Presbyt. Hosp. v Allstate Ins. Co., 29 AD3d 547, 547). In support of his motion, the plaintiff submitted, inter alia, the disputed claims, the defendant's form denials, the affidavit of his surgeon, Richard Peress, and the affidavit of Christine Taylor, assistant director of patient accounts for Phelps Memorial Hospital (hereinafter the hospital).

The plaintiff demonstrated, prima facie, that the prescribed statutory billing forms relative to the medical services provided by Peress were mailed and received, and that the defendant failed to pay or validly deny the claims within the permissible 30 days (see Insurance Law § 5102[a][1]; Global Liberty Ins. Co. v W. Joseph Gorum, M.D., P.C., 143 AD3d 768; New York & Presbyt.

Hosp. v Selective Ins. Co. of Am., 43 AD3d 1019; Hobby v CNA Ins. Co., 267 AD2d 1084; see also DeGiorgio v Racanelli, 136 AD3d 734; Geffner v North Shore Univ. Hosp., 57 AD3d 839). In opposition, the defendant failed to submit evidence in admissible form sufficient to raise a triable issue of fact as to whether the claimed benefits were properly denied on the ground of lack of medical justification (see 11 NYCRR 65-3.8[b][4]).

Contrary to the defendant's contention, the plaintiff had standing to pursue his claims for no-fault benefits (see Allstate Ins. Co. v Kapeleris, 183 AD3d 626). Given that the amount of the outstanding no-fault benefits relative to the medical services provided by Peress exceeds the principal sum awarded in the judgment, we need not reach the parties' remaining contentions, including whether the plaintiff was entitled to no-fault benefits relative to the medical services provided by the hospital.

Accordingly, we affirm the judgment. BARROS, J.P., IANNACCI, CHAMBERS and CHRISTOPHER, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court