

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT**

**WATER DAMAGE EXPRESS, LLC a/a/o JOANNE DILLARD v.
FIRST PROTECTIVE INSURANCE COMPANY d/b/a
FRONTLINE INSURANCE**

No. 4D21-618 · No. No. 4D21-618 · Decided March 16, 2022

SUMMARY

The Florida Fourth District Court of Appeal held that section 627.7152(10), Florida Statutes (2019), did not retroactively bar an assignee's claim for attorney's fees under section 627.428(1). Because the insurance policy, covered loss, and assignment of benefits agreement all preceded the effective date of section 627.7152, the court reversed the order striking the fee motion and remanded for further proceedings.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Forst, J.; Ciklin, J.; Gerber, J.
JURISDICTION	Florida
DECIDED	March 16, 2022
DOCKET	No. 4D21-618
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellant appealed an order granting the insurer's motion to strike appellant's motion for attorney's fees in an assignment-of-benefits insurance action.
STANDARD OF REVIEW	De novo review applies to underlying statutory-interpretation questions when denial of attorney's fees is predicated on statutory interpretation.
PRECEDENTIAL VALUE	published
PARTIES	Water Damage Express, LLC a/a/o Joanne Dillard v. First Protective Insurance Company d/b/a Frontline Insurance

TOPICS

insurance coverage

statutory interpretation

appellate procedure

remedies

standard of review

PRACTICE AREAS

property insurance

assignment of benefits

attorney's fees

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether section 627.7152(10), Florida Statutes (2019), applies retroactively to an assignment-of-benefits agreement executed before the statute's effective date when the lawsuit was filed after the statute became effective.
2. Whether the appellant's statutory right to attorney's fees is governed by section 627.428(1), Florida Statutes (2018), or by section 627.7152(10), Florida Statutes (2019).
3. Whether the trial court erred by striking the appellant's motion for attorney's fees.

HOLDINGS

1. Section 627.7152(10) does not apply retroactively to an assignment-of-benefits agreement executed before May 24, 2019, merely because the related lawsuit was filed after that date.
2. Section 627.428(1), Florida Statutes (2018), governs the appellant's attorney's-fee claim because it was the applicable statute when the insurance policy was issued, the loss occurred, and the assignment-of-benefits agreement was executed.
3. The trial court erred in striking Water Damage Express's motion for attorney's fees.

KEY QUOTATIONS

"As set forth above, the trial court erred in striking Appellant's section 627.428(1) motion for attorney's fees."
(at 5)

"Reversed and remanded for proceedings consistent with this opinion." (at 5)

"the statute in effect at the time an insurance contract is executed governs substantive issues arising in connection with that contract." (at 3)

FACTUAL BACKGROUND

The homeowners' property was insured under a homeowners policy issued before an August 12, 2018 fire loss. On August 27, 2018, the homeowners assigned benefits to Water Damage Express in exchange for remediation services. Water Damage Express filed suit on June 13, 2019, seeking \$7,624.24 in contract damages, interest, and attorney's fees; the insurer contested only the statutory entitlement to fees.

PROCEDURAL HISTORY

After homeowners suffered fire damage and assigned benefits to Water Damage Express for remediation services, Water Damage Express sued First Protective for breach of contract, damages, interest, and attorney's fees. The insurer did not contest liability for the damages or prejudgment interest but argued that section

627.7152(10), Florida Statutes (2019), barred attorney's fees. The county court granted the insurer's motion to strike the fee request, and the Fourth District reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must enter an order denying the insurer's motion to strike, granting appellant's motion for reasonable attorney's fees and costs, and setting an evidentiary hearing to determine the amount of fees and costs to be awarded.

CASES CITED

- Destination Boat Clubs, Inc. v. Island Breeze Boat Club & Rental Inc., 226 So. 3d 301, 303 (Fla. 2d DCA 2017)
- Menendez v. Progressive Express Insurance Co., 35 So. 3d 873 (Fla. 2010)
- Hassen v. State Farm Mutual Automobile Insurance Co., 674 So. 2d 106, 108 (Fla. 1996)
- Timmons v. Combs, 608 So. 2d 1, 2–3 (Fla. 1992)
- State Farm Fire & Casualty Co. v. Palma, 629 So. 2d 830, 832 (Fla. 1993)
- Procraft Exteriors, Inc. v. Metropolitan Casualty Insurance Co., No. 2:19-CV-883, 2020 WL 5943845, at *3 (M.D. Fla. May 13, 2020)
- CMR Construction & Roofing, LLC v. Hartford Insurance Co. of the Midwest, No. 9:19-CV-81610, 2020 WL 264671, at *1 (S.D. Fla. Jan. 17, 2020), reconsideration denied, No. 9:19-CV-81610, 2020 WL 1043799 (S.D. Fla. Mar. 4, 2020)
- JPJ Companies, LLC v. Hartford Insurance Co. of the Midwest, No. 9:19-CV-81696, 2020 WL 264673, at *2 (S.D. Fla. Jan. 17, 2020), reconsideration denied, No. 9:19-CV-81696, 2020 WL 1043798 (S.D. Fla. Mar. 4, 2020)
- Castilla Roofing, Inc. v. Hartford Insurance Co. of the Midwest, No. 2:19-CV-613, 2020 WL 821051, at *3 (M.D. Fla. Jan. 30, 2020), report and recommendation adopted sub nom. Castilla Roofing, Inc. v. Hartford Insurance Co. of the Midwest, No. 2:19-CV-613, 2020 WL 820235 (M.D. Fla. Feb. 19, 2020)