DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

T.I.O. MEDICAL INTERVENTION, LLC
a/a/o **MARY FAISON,**
Appellant,

v.

LIBERTY MUTUAL FIRE INSURANCE COMPANY,
Appellee.

No. 4D2022-2130

[September 20, 2023]

Appeal from the County Court for the Seventeenth Judicial Circuit, Broward County; Giuseppina Miranda, Judge; L.T. Case No. COCE-20-30781.

John C. Daly, Matthew C. Barber, and Christina M. Kalin of Daly & Barber, P.A., Plantation, for appellant.

Jeffrey R. Geldens of Roig Lawyers, Miami, and Abbi Freifeld Carr and Veresa Jones Adams of Roig Lawyers, Deerfield Beach, for appellee.

DAMOORGIAN, J.

Appellant T.I.O. Medical Intervention, LLC ("the provider"), as assignee of Mary Faison ("Faison"), appeals from the county court's final summary judgment in favor of Liberty Mutual Fire Insurance Company ("the insurer") on the provider's breach of insurance contract claim. The action below was predicated on the provider's contention that a Georgia insurance policy provided Florida Personal Injury Protection ("PIP") coverage to a nonresident involved in an accident in our state. The provider challenges summary judgment on several procedural grounds as well as the county court's interpretation of the policy. We affirm the summary judgment and write to explain our holding regarding the county court's interpretation of the policy.

Faison was involved in an automobile accident in Florida for which she received medical services and treatment from the provider. At the time of the accident, the subject vehicle was insured under a Georgia insurance policy with the insurer. Faison was listed on the policy as an approved

driver. Following Faison's treatment, the provider submitted the medical bills to the insurer to be compensated. However, the provider never received payment from the insurer for the benefits sought. The provider later sued the insurer and alleged one count of breach of insurance contract.

At its core, the provider's complaint alleged the Georgia policy provided Florida PIP benefits and the insurer breached the insurance contract by failing to compensate it for the services provided to Faison. The insurer answered the complaint, arguing the policy did not provide for Florida PIP benefits, and asserted an affirmative defense of no coverage.

At an ensuing case management conference, the parties agreed the insurer's affirmative defense of no coverage did not involve factual issues and could be addressed by a motion for summary judgment. The insurer later moved for summary judgment. The provider filed its response and cross-motion for summary judgment which acknowledged the policy language and Florida Statutes were dispositive—a pure question of law.

At the hearing on the cross-motions for summary judgment, the county court considered the policy language and the pertinent Florida statute. Specifically, the county court examined the policy's Out of State Coverage provision and section 627.733(2), Florida Statutes (2017), governing PIP insurance requirements for nonresidents. The court found the clear and unambiguous Georgia policy did not provide for Florida PIP benefits given the statute's explicit presence requirement. The court also found that even if Faison had satisfied the presence requirement, the policy still would not provide for PIP benefits.

We have *de novo* review here. *Endurance Assurance Corp. v. Hodges*, 315 So. 3d 21, 24 (Fla. 4th DCA 2021). On appeal, the provider argues the policy's Out of State Coverage provision, paired with Florida's PIP statute, provides PIP benefits for Faison. The insurer counters the clear and unambiguous language of the policy does not provide for PIP benefits. We agree with the insurer and write to explain our reasoning.

"Where the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written." *Wash. Nat'l Ins. Corp. v. Ruderman*, 117 So. 3d 943, 948 (Fla. 2013) (citing *State Farm Mut. Auto. Ins. Co. v. Menendez*, 70 So. 3d 566, 569–70 (Fla. 2011)). "[W]here the provisions of an insurance policy are at issue, any ambiguity which remains after reading each policy as a whole and endeavoring to give every provision its full meaning and operative effect must be liberally construed

in favor of coverage and strictly against the insurer." *Id.* at 949–50. However, "[a] provision is not ambiguous simply because it is complex or requires analysis." *Garcia v. Fed. Ins. Co.*, 969 So. 2d 288, 291 (Fla. 2007) (citation omitted); *see also Detroit Diesel Corp. v. Atl. Mut. Ins. Co.*, 18 So. 3d 618, 620 (Fla. 4th DCA 2009).

The insurer's policy contains a specific provision governing out-of-state coverage on which both parties rely:

> If an auto accident to which this policy applies occurs in any state or province other than the one in which "your covered auto" is principally garaged, we will interpret your policy for that accident as follows:
>
> A. If the state or province has:
>
> . . . .
>
> 2. A compulsory insurance or similar law *requiring a nonresident to maintain insurance* ***whenever*** *the nonresident uses a vehicle in that state or province*, your policy will provide at least the required minimum amounts and types of coverage.

(emphasis added). Section 627.733, Florida Statutes (2017), governs PIP insurance coverage. The specific provision governing PIP coverage for nonresidents provides:

> Every nonresident owner or registrant of a motor vehicle which, whether operated or not, *has been physically present within this state for more than 90 days during the preceding 365 days* shall thereafter maintain security as defined by subsection (3) . . . .

§ 627.733(2), Fla. Stat. (2017) (emphasis added).

We conclude the policy's Out of State Coverage provision does not provide for Florida PIP benefits. Examining the clause inversely, the policy's Out of State Coverage provision "provide[d] at least the required minimum amounts and types of coverage" required by a foreign state's compulsory insurance law *if* that law "requir[es] a nonresident to maintain insurance *whenever* the nonresident uses a vehicle in that state or province." (emphasis added). In other words, the policy would provide Florida PIP coverage and/or benefits *if* Florida's PIP statute required a

nonresident to maintain insurance *whenever* the nonresident uses a vehicle in Florida. However, Florida requires nonresidents to carry PIP coverage only if physically present in our state for more than 90 days of the previous 365 days. Accordingly, Florida law does not require a nonresident to maintain coverage "whenever" a nonresident operates a vehicle in our state.

Here, the county court found no evidence that Faison "1) was the owner of a motor vehicle; 2) that she was driving that vehicle at the time of the loss[;] or 3) that she had been operating this vehicle for more than 90 days in Florida of the preceding 365." Further, as the county court noted, even if the provider had proven Faison satisfied the statute's explicit presence requirement, we would reach the same conclusion. Florida's PIP statute requires a nonresident to carry PIP coverage only if that nonresident is physically present within our state for the statutory period, and therefore, Florida's PIP law does not unconditionally require a nonresident to carry PIP coverage "*whenever*" that nonresident uses a vehicle in Florida, as contemplated by the policy.

While the provider advances precedent from the Second and Fifth Districts in support of its argument, we find the policy language at issue here markedly different than the policy language interpreted by our sister districts in those cases.

For example, in *Meyer v. Hutchinson*, 861 So. 2d 1185 (Fla. 5th DCA 2003), the Fifth District interpreted the following provision of a Michigan insurance policy:

> If an insured is in another state or Canada and, as a non-resident, *becomes subject to* its motor vehicle compulsory insurance, financial responsibility, or similar law:
>
> > (a) this policy will be interpreted to give the coverage required by the law . . . .

Id. at 1186–87 (emphasis added). Similarly, in *Jiminez v. Faccone*, 98 So. 3d 621 (Fla. 2d DCA 2012), the Second District considered virtually identical language. *See id.* at 625–26 ("The policy provision in question here is virtually identical to the policy provision discussed by the Fifth District in [*Meyer*].").

We conclude both *Meyer* and *Jiminez* are distinguishable from the instant case. Both cases interpret policy provisions where insurance coverage was available for nonresidents who *became subject to* Florida's

PIP statute by virtue of satisfying the presence requirement. Here, the Out of State Coverage provision's unambiguous language does not contain similar language affording coverage to nonresidents who are physically present for the statutory period. Instead, the policy explicitly applies only to unconditional out-of-state compulsory insurance laws. Accordingly, we conclude the Georgia policy does not provide for Florida PIP benefits and affirm the county court's entry of final summary judgment.

Affirmed.

GROSS and GERBER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.