

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY  
Case No.: 50-2017-AP-000120-CAXX-MB  
L.T. NO.: 50-2017-SC-001669-XXXX-MB

OCEAN CHIROPRACTIC AND  
HEALTH CENTER, INC. a/a/o  
MATHEUS ASHFORD,  
Appellant,

v.

FIRST FLORIDIAN AUTO AND  
HOME INSURANCE COMPANY,  
Appellee.

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Opinion filed: **AUG 17 2018**

Appeal from the Palm Beach County Court, Judge Dana Santino

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PER CURIAM.

Appellant Ocean Chiropractic and Health Center, Inc. (“Ocean Chiropractic”) appeals a final summary judgment in favor of Appellee First Floridian Auto and Home Insurance Company (“First Floridian”). In the underlying action, Ocean Chiropractic filed a complaint against First Floridian, alleging breach of contract and seeking declaratory relief regarding personal injury protection (“PIP”) benefits and medical payment benefits. In granting summary judgment, the trial court ruled that Ocean Chiropractic’s claim was barred pursuant to a class-action settlement that was entered in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, on July 11, 2014, and specifically found that “Plaintiff was a member of this class as its claim for PIP benefits fell within the applicable class period.” The trial court also denied Ocean Chiropractic’s motion for continuance and motion to compel discovery.

On appeal, Ocean Chiropractic argues that First Floridian did not meet its burden of showing that there was no genuine issue of material fact as to whether Ocean Chiropractic was a member of the class-action settlement class. Ocean Chiropractic also argues that the trial court abused its discretion by denying Ocean Chiropractic’s motion for continuance and motion to compel discovery. We agree that the final summary judgment must be reversed as to the first issue, and therefore decline to address the remaining issues.

“The standard of review of an order granting summary judgment is de novo.” *Florida Atl. Univ. Bd. of Trustees v. Lindsey*, 50 So. 3d 1205, 1206 (Fla. 4th DCA 2010) (quoting *Bender v. CareGivers of Am., Inc.*, 42 So. 3d 893, 894 (Fla. 4th DCA 2010)). Florida Rule of Civil Procedure 1.510 places the burden of proof at summary judgment on the movant, regardless of who has the burden at trial. *Nowicki v. Cessna Aircraft Co.*, 69 So. 3d 406, 409 (Fla. 4th DCA 2011). The burden is upon the party moving for summary judgment to show conclusively the complete absence of any genuine issue of material fact. *Dominko v. Wells Fargo Bank, N.A.*, 102 So. 3d

696, 698 (Fla. 4th DCA 2012). “The proof must be such as to overcome all reasonable inferences which may be drawn in favor of the opposing party.” *Maldonado v. Publix Supermarkets*, 939 So. 2d 290, 293 (Fla. 4th DCA 2006) (quoting *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966)). Until the moving party has successfully met the burden of proving the absence of a genuine issue of material fact, the opposing party is under no obligation to show that such an issue or issues remain to be tried. *Adams v. Bell Partners, Inc.*, 138 So. 3d 1054, 1057 (Fla. 4th DCA 2014).

Where a reviewing court finds that there are still genuine issues of material fact in connection with the summary judgment, reversal is appropriate. *See, e.g., Moore v. Morris*, 475 So. 2d 666 (Fla. 1985) (reversing grant of summary judgment in favor of physician where evidence did not conclusively show when parents were on notice that doctor had committed malpractice).

Having reviewed the record on appeal, we find that First Floridian did not meet its burden of showing that there was no genuine issue of material fact as to whether Ocean Chiropractic was a member of the class-action settlement class. The Final Order and Judgment Approving Class Action Settlement from the Thirteenth Judicial Circuit included detailed criteria outlining which persons or entities are included in the settlement class. First Floridian failed to meet its burden by simply attaching the order and alleging that Ocean Chiropractic’s claim for PIP benefits fell within the applicable settlement class period, and further alleging that Ocean Chiropractic did not opt out of the class. First Floridian failed to conclusively prove that Ocean Chiropractic was charged rates exceeding the rates described in section 627.736(5)(a)2.a.–f., Florida Statutes (2007–2012), or, in the case of MRI services, that the amounts charged exceeded 80% of 200% of the Outpatient Prospective Payment System (“OPPS”). First Floridian also did not prove that Ocean Chiropractic received payment from First Floridian based on the rates described in section 627.736(5)(a)2. a.–f., Florida Statutes (2007–2012), or, in the case of MRI services, based on the rates described in the OPPS. Given the genuine issue of material fact in this case, we REVERSE the summary

judgment below, direct the lower court to vacate the order granting final judgment in favor of Appellee, and REMAND this cause to the trial court for proceedings consistent with this opinion.

We also conditionally GRANT Appellant's Motion for Appellate Attorney's Fees filed pursuant to Florida Rule of Appellate Procedure 9.400 and sections 627.736(8) and 627.428, Florida Statutes, conditioned upon Ocean Chiropractic ultimately prevailing on remand. If Ocean Chiropractic prevails, then the trial court shall award Ocean Chiropractic a reasonable amount of appellate attorney's fees.

SMALL, COATES, and NUTT, JJ., concur.

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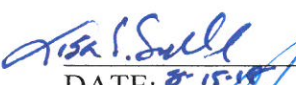
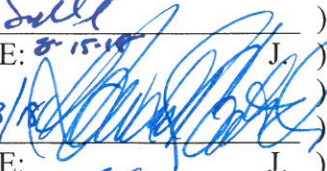
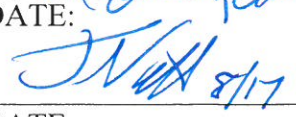
Date of Appeal: September 22, 2017

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DATE OF PANEL: JULY 24, 2018

PANEL JUDGES: SMALL, COATES, NUTT

GRANTED/DENIED/OTHER: AFFIRMED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
	)		)		)
DATE: <u>8-15-18</u>	J. )		J. )		J. )
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DATE: <u>8/13/18</u>	J. )		J. )		J. )
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