

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017AP000041CAXXMB
L.T. NO.: 502015SC006116XXXXMB

CENTRAL PALM BCH PHYS & URGENT
CARE, INC. D/B/A TOTAL MD, A FLORIDA
CORP. (a/a/o AZMI, AHARON),
Appellant,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Appellee.

Opinion filed: **MAR 25 2019**

Appeal from the County Court in and for Palm Beach County,
Judge Ted Booras

For Appellant: Russell Lazega, Esq.
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PER CURIAM.

Appellant, Central Palm Beach Physicians & Urgent Care, Inc. d/b/a Total MD a/a/o Aharon Azmi ("Total MD"), appeals the trial court's Final Judgment in favor of Defendant/Appellee, State Farm Mutual Automobile Insurance Company ("State Farm"). The underlying action is a small claims matter arising from the breach of contract for insurance benefits

in the amount of \$425.78. Total MD argues on appeal that the trial court erred in ruling that State Farm was relieved of its statutory obligation to pay benefits because of Azmi's prior bodily injury settlement.¹ Total MD further contends that a Personal Injury Protection ("PIP") carrier's obligation as payor is not extinguished by any secondary payment, including a bodily injury settlement. We find that the trial court erred in determining that State Farm was relieved of its statutory obligation to pay benefits because of Azmi's prior bodily injury settlement.

Pursuant to section 768.76(1), Florida Statutes (2014), "the court shall reduce the amount of such award by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources. . . . [T]here shall be no reduction for collateral sources for which a subrogation or reimbursement right exists." *See also Bruner v. Caterpillar, Inc.*, 627 So. 2d 46, 47 (Fla. 1st DCA 1993) ("a collateral source offset pursuant to section 768.76(1) is not allowed due to the statutory subrogation right which pertains under section 440.39(a), as section 768.76 does not imbue a wrongful tortfeasor with the benefit of a plaintiff's settlement of a third party claim with a negotiated subrogation waiver"). A PIP insurer is an "indemnitor against liability for reasonable and necessary medical expenses incurred by persons the PIP or medpay provisions cover." *State Farm Mutual Automobile Insurance Company v. Care Wellness Center LLC*, 240 So. 3d 22, 27 (Fla. 4th DCA 2018) (citing *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 898 (Fla. 2003)).

Because Azmi assigned all rights and benefits under his State Farm insurance policy to Total MD, Total MD possesses a subrogation right and can therefore collect the full amount owed in accordance with section 768.76(1). Furthermore, because State Farm is a PIP indemnitor and Total MD retains a right of subrogation to benefits, the bodily injury settlement does not relieve

¹ Azmi's prior counsel made a \$600.00 payment to Total MD towards Azmi's medical bills, as well as an additional \$400.00 payment for Azmi's July 1, 2014 treatment.

State Farm of its statutory obligation to pay for reasonable and necessary medical expenses incurred by Amzi. Thus, we reverse the trial court's final judgment in favor of State Farm.

Total MD also filed a Motion to Tax Appellate Attorney's Fees based upon section 627.428, Florida Statutes, which allows for the recovery of fees "[u]pon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer." *See also United Auto. Ins. Co. v. Perez*, 990 So. 2d 607, 608 (Fla. 3d DCA 2008) (holding that if plaintiff prevails upon remand, then she will be entitled to attorney's fees and costs under section 627.428). We find that Total MD is entitled to appellate attorneys fees if it prevails on remand.

Accordingly, we **REVERSE** the trial court's final judgment in favor of State Farm and **REMAND** for further proceedings. Total MD's Motion to Tax Appellate Attorney's Fees is **GRANTED**, conditioned on Total MD prevailing on remand. If Total MD prevails on remand, then the trial court shall assess a reasonable amount of appellate attorney's fees.

NUTT, CURLEY, and SASSER, JJ. concur.

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Opinion/Decision filed: **MAR 25 2019**

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Appeal from Palm Beach County Court
Judge Ted Booras

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Appellee.

Date of Appeal: March 7, 2017

DATE OF PANEL: OCTOBER 15, 2018

PANEL JUDGES: NUTT, CURLEY, SASSER

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:

) DISSENTING:

) CONCURRING SPECIALLY:

) With/Without Opinion

) With/Without Opinion

DATE: 3/21/19 J.)

J.)

DATE: 3/21/19 J.)

J.)

DATE: 3/21/19 J.)

J.)