

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

Orlando Orthopaedic Center
a/a/o Jennifer Chapman,
Appellant,

v.

CASE NO.: 2015-CV-64-A-O
Lower Court Case No.:
2014-SC-2566-O

**State Farm Mutual Automobile
Insurance Company,**
Appellee.

Appeal from the County Court,
for Orange County, Florida,
Tina Caraballo, County Judge.

Chad A. Barr, Esq., for Appellant.

Diane H. Tutt, B.C.S., Esq., for Appellee.

Before LUBET, H. RODRIGUEZ, and S. KEST, J.J.

PER CURIAM.

Appellant Orlando Orthopaedic Center seeks review of the order granting State Farm Mutual Automobile Insurance Company's Motion to Dismiss. We have jurisdiction. § 26.012(1), Fla. Stat. (2015); Fla. R. App. P. 9.030(c)(1)(A). Because there was an assignment of insurance benefits from Jennifer Chapman to Orlando Orthopaedic, thus conferring standing to sue State Farm for payment of those benefits upon Orlando Orthopaedic, we reverse.¹

The complaint alleges that Chapman was injured in an automobile accident in 2009 and had PIP insurance with State Farm. Orlando Orthopaedic treated Chapman for those injuries.

¹ As this issue is dispositive, we decline to address the other arguments in the briefs.

Chapman signed a form, which states, “You agree to assign and authorize Orlando Orthopaedic Center to bill, collect and/or negotiate payment by the insurance plan on behalf of your insurance benefits in place at time services are rendered.” (R. 9.)

Orlando Orthopaedic billed State Farm for the treatment it provided to Chapman. State Farm made a partial payment to Orlando Orthopaedic, and Orlando Orthopaedic filed suit to recover the unpaid portion.

State Farm moved to dismiss, arguing that there was not an effective assignment between Orlando Orthopaedic and Chapman, among other things. The trial court granted the motion to dismiss and then denied Orlando Orthopaedic’s motion for clarification and reconsideration. Orlando Orthopaedic now seeks review of the dismissal.

Standard of Review

An order granting a motion to dismiss is reviewed de novo. *Sobi v. Fairfield Resorts, Inc.*, 846 So. 2d 238, 1204 (Fla. 5th DCA 2003). In determining whether the complaint states a cause of action upon which relief may be granted, review is confined to the complaint, all allegations are accepted as true, and all inferences are drawn in favor of the pleader. *Id.* Exhibits attached to the complaint are considered part of the complaint, and are reviewed “in determining a motion to dismiss.” *Fladell v. Palm Beach Cnty. Canvassing Bd.*, 772 So. 2d 1240, 1242 (Fla. 2000). A complaint should not be dismissed with prejudice unless the movant establishes, beyond any doubt, that there are no set of facts that would support the claim. *Morris v. Fla. Power & Light Co.*, 753 So. 2d 153, 154 (Fla. 4th DCA 2000).

Discussion

Chapman signed a form from Orlando Orthopaedic that states, “You agree to assign and authorize Orlando Orthopaedic Center to bill, collect and/or negotiate payment by the insurance

plan on behalf of your insurance benefits in place at time services are rendered.” (R. 9.) State Farm argues that this form was not a direction to pay or an assignment of benefits. It contends that it was only an agreement for Orlando Orthopaedic to submit a claim to State Farm on Chapman’s behalf. State Farm states that the sentence indicates that Chapman agreed to assign, but the sentence does not indicate what is being assigned. It argues that the form assigned the right to bill, collect, or negotiate payment to Orlando Orthopaedic, but that this was not a direction to pay, and if it was a direction to pay, a direction to pay does not give Orlando Orthopaedic standing to sue.

An assignment is ““a transfer of rights or property[,]”” *Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins. Co.*, 185 So. 3d 638, 641 (Fla. 2d DCA 2016) (quoting Black’s Law Dictionary (9th ed. 2009)), which “generally refers to ‘a voluntary act of transferring an interest[,]’” *Cont'l Cas. Co. v. Ryan Inc. E.*, 974 So. 2d 368, 376 (Fla. 2008). Subject to three exceptions not applicable here, contractual rights are assignable. *Bioscience*, 185 So. 3d at 640.

In *State Farm Fire & Casualty Co. v. Ray*, 556 So. 2d 811, 812 (Fla. 5th DCA 1990), the plaintiff assigned his PIP benefits to the hospital, but then directed his insurance company to pay only a portion of those benefits to the hospital. The Fifth District held that the plaintiff’s directions to his insurance company were not an assignment because he “did not transfer his interest in the policy to another party. To the contrary, he merely reapportioned his own benefits.” *Id.* at 812-13. The agreement between the plaintiff and the hospital was an assignment, however, because it was titled “Irrevocable Assignment of Benefits,” and it provided for “the transfer of any proceeds accruing to Ray from State Farm under the policy stemming from Ray’s accident and subsequent hospitalization.” *Id.* at 813.

In this case, the form states that Chapman “agree[s] to *assign* and authorize Orlando Orthopaedic Center to bill, collect and/or negotiate *payment by the insurance plan on behalf of*

your insurance benefits in place at time services are rendered.” (R. 9 (emphasis added).) Like the assignment to the hospital in the *Ray* case, it specifically states that Chapman assigns her insurance benefits to Orlando Orthopaedic.

The assignment between Chapman and Orlando Orthopaedic conferred standing to sue State Farm for the insurance benefits upon Orlando Orthopaedic. *See Progressive Express Ins. Co. v. McGrath Cnty. Chiropractic*, 913 So. 2d 1281, 1285 (Fla. 2d DCA 2005) (“[A]n assignment of PIP benefits concerns the claimant’s standing to bring the action.”). It is a “clearly established principle[] of law that an assignee of post-loss insurance benefits can sue for breach of such benefits.” *United Water Restoration Grp., Inc. v. State Farm Fla. Ins. Co.*, 173 So. 3d 1025, 1027 (Fla. 1st DCA 2015). ““A claim on an insurance policy is a chose in action and is assignable as such.”” *One Call Prop. Servs. Inc. v. Sec. First Ins. Co.*, 165 So. 3d 749, 753 (Fla. 4th DCA 2015) (quoting *United Cos. Life Ins. Co. v. State Farm & Fire Cas. Co.*, 477 So. 2d 645, 646 (Fla. 1st DCA 1985)). The assignee may sue upon such a chose in action and receives all the assignor’s interests and rights in and to the thing assigned. *Id.* at 752. An assignee’s “right . . . to sue for breach of contract to enforce assigned rights predates the Florida Constitution.” *Nationwide Mut. Fire Ins. Co. v. Pinnacle Med., Inc.*, 753 So. 2d 55, 57 (Fla. 2000).

In *Restoration 1 CFL v. State Farm Florida Insurance Co.*, 189 So. 3d 340, 341 (Fla. 5th DCA 2016), the Fifth District rejected the insurer’s argument that an assignment of benefits “transferred the right to collect benefits but not the right to participate in a suit to determine coverage under the policy regarding those benefits.” When the assignor transferred the insurance benefits to the assignee, the assignee received “standing to litigate the coverage issue raised by [the insurance company] when it denied the claim.” *Id.* *See also Superior Ins. Co. v. Libert*, 776 So. 2d 360, 365 (Fla. 5th DCA 2001) (“An assignee may enforce payment or performance of an

obligation due under the contract.”). Thus, because Chapman assigned her insurance benefits to Orlando Orthopaedic, she also assigned all her interests and rights to those benefits, including, under *Restoration 1 CFL*, standing to sue State Farm for coverage providing those benefits.

State Farm relies on *Open MRI of Orlando, Inc., a/a/o Raquel Ramos v. State Farm*, 17 Fla. L. Weekly Supp. 731a (Fla. 9th Cir. Ct. Apr. 16, 2010), a PIP case decided by this Court sitting in its appellate capacity. This Court held that although all benefits due under the policy were assigned, that assignment “fail[ed] to transfer to Open MRI the insured’s rights in her insurance contract.” *Id.* In support of this statement, an Orange County Court order and a Florida Seventh Circuit order were cited. *Id.* The Court held that Open MRI did not have standing to sue State Farm “[b]ecause the assignment was merely a direction to pay Open MRI directly” *Id.*

Open MRI was decided six years before the Fifth District held in *Restoration 1 CFL* that an assignment of insurance benefits transfers to the assignee standing to litigate insurance coverage against the insurance company. The Fifth District’s holding directly contradicts *Open MRI*’s statement that the assignment of benefits failed to confer standing to sue for insurance coverage. Unlike the cases cited in *Open MRI*, *Restoration 1 CFL* is binding upon this Court. The law is now clear that an assignment of insurance benefits transfers to the assignee standing to sue the insurance company for benefits. Because Chapman assigned her insurance benefits to Orlando Orthopaedic, Orlando Orthopaedic had standing to sue State Farm for those benefits.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The “Final Order of Dismissal,” entered on January 14, 2016, is **REVERSED** and this matter is **REMANDED** for proceedings consistent with this opinion.

2. "Appellant's Motion for Award of Appellate Attorneys' Fees, filed on October 1, 2015, is **GRANTED** contingent upon Orlando Orthopaedic prevailing under the insurance policy, and the assessment of those fees is **REMANDED** to the trial court.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 11th day of July, 2016.

/S/
MARC L. LUBET
Presiding Circuit Judge

H. RODRIGUEZ and S. KEST, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **The Honorable Tina Caraballo, Orange County Judge**, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; **Chad A. Barr, Esq.**, Law Office of Chad A. Barr, P.A., 698 North Maitland Avenue, Suite 300, Maitland, FL 32751; and **Diane H. Tutt, B.C.S., Esq.**, Conroy Simberg, 3440 Hollywood Blvd., Second Floor, Hollywood, FL 33021; on this 12th day of July, 2016.

/S/
Judicial Assistant