IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL BELLAS, EXECUTOR OF THE ESTATE OF STELLA BELLAS, DECEASED,
Appellant,
vs.
LIFE INVESTORS INSURANCE COMPANY OF AMERICA, AN IOWA CORPORATION F/K/A BANKERS UNITED LIFE ASSURANCE CO.,
Respondent.

No. 56060

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment resolving third-party claims in an insurance action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Summary judgment is appropriate when there is no genuine issue of material fact, and thus, the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). To avoid summary judgment once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions, but must instead set forth by affidavit or otherwise specific facts demonstrating the existence of a genuine issue of material fact for trial. NRCP 56(e); Wood, 121 Nev. at 731, 121 P.3d at 1030-31. This court reviews an order granting summary judgment de novo. Wood, 121 Nev. at 729, 121 P.3d at 1029. The interpretation of an insurance policy is a question of law, also

reviewed de novo. Farmers Ins. Exch. v. Neal, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003).

Having considered the parties' arguments and reviewed the record on appeal, we conclude that the district court properly granted summary judgment in favor of respondent. The only fact that appellant now disputes is whether the decedent, appellant's late mother, personally received an "Outline of Coverage" document from the insurance agent, which is not material to his claims because the document is not part of the contested insurance policy. Appellant's remaining arguments on appeal relate to the construction of the insurance policy, which the district court correctly decided as a matter of law. See Allstate Insurance Co. v. Fackett, 125 Nev. 132, 138, 206 P.3d 572, 575 (2009); Dupre v. Allstate Ins. Co., 62 P.3d 1024, 1027 (Colo. Ct. App. 2002).

A clear and unambiguous insurance policy will be upheld as written. See Powell v. Liberty Mutual Fire Ins. Co., 127 Nev. ___, ___, 252 P.3d 668, 672 (2011) (citing Neal, 119 Nev. at 64); see also Spaur v. Allstate Ins. Co., 942 P.2d 1261, 1263 (Colo. Ct. App. 1996). The decedent's insurance policy unambiguously requires that covered "care or services must be provided in a Nursing Home," or alternatively in a nursing facility "only if [an advisor selected by the insurance company] pre-certifies that the facility substantially complies [with the definition of a Nursing Home]." The policy also clearly and unambiguously defines what constitutes a "nursing home." Appellant does not dispute that the facilities from the decedent's two denied insurance claims did not qualify as nursing homes under the policy's definition. While the plain language of the policy indicates that services received in other nursing facilities may also be covered, it requires that a policy advisor pre-certify those facilities

as "substantially compliant" with the nursing home definition. The parties agree that neither of the two facilities were pre-certified as covered under the policy. Thus the district court properly determined as a matter of law that the policy did not cover the two facilities for which appellant sought reimbursement.

Although appellant argues that respondent breached the insurance policy, its duties to act as a fiduciary and to act in good faith, and its statutory duties under NRS Chapter 686A, by delaying claim payments, taking Medicare offsets, and denying benefits in bad faith without a reasonable basis, he did not set forth any specific facts to support those allegations. Wood, 121 Nev. at 731, 121 P.3d at 1030-31. While a finding of a breach of contract is not a necessary element in an action for violating NRS 686A.310, appellant also failed to provide specific facts to support this claim and thus summary judgment was appropriate.

Appellant also argues that the district court improperly adopted the findings of facts and conclusions of law prepared by respondent. While certain federal courts have "frowned upon" and criticized courts for adopting the verbatim orders and findings of facts prepared by prevailing parties, particularly where unsupported by evidence or the record, the practice has not been found erroneous or improper. See, e.g., Anderson v. Bessemer City, 470 U.S. 564, 572 (1985); Wyler Summit v. Turner Broadcasting System, 235 F.3d 1184, 1196 (9th Cir. 2000). In this case, the findings of fact and conclusions of law are supported by the record and are not clearly erroneous as to the material facts or claims. See Anderson, 470 U.S. at 572. Further, this court has observed that NRCP 52(b) protects parties by providing the opportunity to object to and amend such documents. See Foley v. Morse & Mowbray, 109

Nev. 116, 123-24, 848 P.2d 519, 524 (1993) (citing Foster v. Bank of America, 77 Nev. 365, 365 P.2d 313 (1961)). Here, appellant did not avail himself of this opportunity within the time provided in NRCP 52(b). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Timothy C. Williams, District Judge
Lansford W. Levitt, Settlement Judge
Law Offices of Steven J. Parsons
Gordon & Silver, Ltd.
Joseph S. Kistler
The Wolf Law Firm
Eighth District Court Clerk