IN THE SUPREME COURT OF THE STATE OF NEVADA

TERESA THOMPSON,
Appellant,
vs.
PROGRESSIVE INSURANCE COMPANY,
Respondent.

No. 57657

FILED

JAN 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an insurance matter. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant challenges the district court's summary judgment on the ground that she presented evidence sufficient to create a question of fact as to each element of (1) her breach-of-contract claim and (2) her bad-faith[1] claim.

We review summary judgments de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). If the party opposing summary judgment will bear the burden of persuasion at trial, the moving party can show that summary judgment is proper by "pointing out that there is an absence of evidence to support the nonmoving party's case." Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (quotation and alteration omitted).

[1]"A violation of the covenant [of good faith and fair dealing] gives rise to a bad-faith tort claim." Allstate Insurance Co. v. Miller, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009).

Summary judgment was appropriate on the breach-of-contract claim

While the underlying lawsuit was pending, respondent tendered the $15,000 policy limit to appellant. Respondent then moved for summary judgment, contending that its only contractual duty to appellant was to indemnify her and that, by tendering the $15,000 policy limit, this duty was discharged.

Appellant opposed the motion, contending that respondent breached the contract by failing to timely tender the policy limits. Appellant failed, however, to identify any provision in the insurance policy that required respondent to abide by a particular time frame, and she has likewise failed to do so on appeal. Because appellant did not present evidence that could create a question of fact as to respondent's failure to abide by the insurance policy's terms, we affirm the district court's summary judgment of appellant's breach-of-contract claim.

Summary judgment was appropriate on the bad-faith claim

Appellant contends that respondent made pretextual demands for information and purposely delayed the claims-adjustment process in an effort to get appellant to settle her claim for less than its reasonable value. This, according to appellant, amounted to bad faith. See Allstate Insurance Co. v. Miller, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009) ("This court has defined bad faith as [(1)] an actual or implied awareness of [(2)] the absence of a reasonable basis for denying benefits . . . ." (quotation omitted)); Guaranty Nat'l Ins. Co. v. Potter, 112 Nev. 199, 206, 912 P.2d 267, 272 (1996) ("Bad faith is established where the insurer [(1)] acts unreasonably and [(2)] with knowledge that there is no reasonable basis for its conduct.").

Appellant points to three demands for information and three intervening periods of inactivity that, according to her, constitute evidence sufficient to create a question of fact on the issue of respondent's bad faith. We disagree. Although appellant is entitled to reasonable inferences arising from the evidence, she is not entitled to ignore undisputed facts that are unfavorable to her. Wood, 121 Nev. at 732, 121 P.3d at 1031 ("While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts . . . ." (quotation omitted)). Here, when the undisputed facts are considered, no inference of bad faith can be drawn from any of respondent's three demands for information.

As for respondent's demand for a medical record authorization, the record on appeal demonstrates that the claims adjuster making the request was a different adjuster from the one involved in appellant's previous claim. Thus, it is purely speculative that the claims adjuster in this case knew that a different adjuster had already obtained appellant's medical records and simply decided to re-ask appellant for another authorization in an attempt to pressure appellant into a low settlement. Id. (indicating that a party seeking to avoid summary judgment may not build a case on speculation).

Likewise, respondent's demand that appellant provide affidavits from her clients to substantiate appellant's lost wages came after appellant submitted five letters from her clients that conflicted with each other in terms of when appellant was unable to work. In a claim for lost wages, it is reasonable for the insurer to seek verification of the

claimant's work schedule and pay rate. Thus, it is purely speculative that respondent's request for these affidavits was pretextual.[2] Id.

Finally, respondent's demand that appellant verify the nonexistence of other insurance came after appellant submitted a sworn affidavit in which she attested to facts that conflicted with records that respondent obtained from the DMV. In respondent's first correspondence with appellant, respondent informed appellant that any coverage she would potentially have under her father's policy would be in excess of any coverage appellant might have under her own policy, and it was reasonable for respondent to seek verification that appellant did not have such coverage when DMV records indicated as much. Thus, it is purely speculative that respondent's request for appellant's insurance information was pretextual. Id.

Given these undisputed facts, the only remaining evidence to suggest respondent's bad faith is the intervening periods of inactivity. Although the record does not make clear the reasons for these periods of inactivity, the record does demonstrate that there was little, if any, follow-up from appellant's counsel during these same periods. Because there is no factual basis for attributing these periods of inactivity solely to

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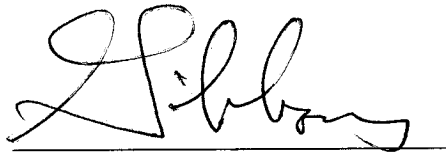
[2]Appellant contends that it was unnecessary for respondent to evaluate her claim for lost wages because her medical bills "clearly exceed[ed]" the $15,000 policy limits at issue in this case and the $20,000 she had already received from her previous claim. If appellant believed this to be the case, she could have told respondent that she was not seeking to recover her lost wages. The record indicates, however, that appellant's incurred medical bills were far less than $35,000 at the time respondent requested the affidavits.

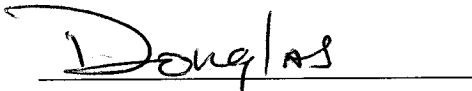
respondent, it would be purely speculative to infer that respondent was purposely delaying the claims-adjustment process. Id.

In sum, appellant's proffered evidence does not sufficiently create a question of fact as to whether respondent knew it lacked a reasonable basis for its conduct. Guaranty Nat'l Ins. Co., 112 Nev. at 206, 912 P.2d at 272. Summary judgment was therefore appropriate.[3] Cuzze, 123 Nev. at 602-03, 172 P.3d at 134. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas

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[3]Because appellant did not argue on appeal that summary judgment was improper on her unfair-claim-practices cause of action, we affirm in this regard. Moreover, appellant cannot pursue a "claim" for punitive damages because punitive damages are a remedy, not a cause of action. 22 Am. Jur. 2d Damages § 551 (2003) ("[A]s a rule, there is no cause of action for punitive damages itself; a punitive-damages claim is not a separate or independent cause of action." (footnotes omitted)). Thus, without a viable underlying cause of action, no legal basis exists for appellant to seek punitive damages. Wolf v. Bonanza Investment Co., 77 Nev. 138, 143, 360 P.2d 360, 362 (1961) ("[I]n the absence of a judgment for actual damages, there [cannot be] a valid judgment for exemplary damages.").

cc: Hon. Robert W. Lane, District Judge
Janet Trost, Settlement Judge
Stovall & Associates
Prince & Keating, LLP
Nye County Clerk