

IN THE SUPREME COURT OF THE STATE OF NEVADA

RON L. BROWN,
Appellant,
vs.
STATE FARM FIRE AND CASUALTY
COMPANY,
Respondent.

No. 59769

FILED

OCT 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in favor of respondent on its declaratory relief action and dismissing appellant's declaratory relief action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Appellant raises several arguments challenging the district court's interpretation of an insurance contract and granting summary judgment in respondent's favor.¹ We review an interpretation of a contract and the district court's grant of summary judgment de novo. Farmers Ins. Exch. v. Neal, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003)

¹Appellant also challenges as void against public policy the provision in the insurance contract that precludes appellant from filing any legal claim against respondent before complying with all of the terms in the insurance contract. We need not resolve this issue, as the district court considered appellant's challenge to the scope of respondent's independent medical examination in the context of appellant's motion for a preliminary injunction, and thus, appellant was not precluded from having his challenge addressed under this contract provision.


(contract interpretation); Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (summary judgment).

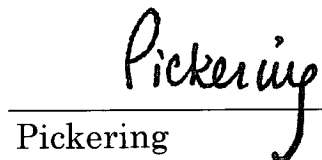
Having reviewed the briefs and appendices on appeal, we affirm the judgment of the district court. The district court did not err in ruling that the contractual provisions concerning the independent medical examination (IME) of appellant did not preclude respondent from asking the doctor conducting the IME to answer 19 questions in order for respondent to make a determination on the 2 areas for which the contract allowed respondent to conduct the IME.

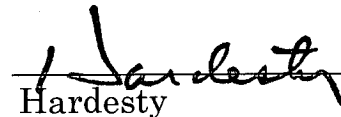
Appellant therefore violated the terms of the contract when he refused to attend the IME even after the district court addressed his challenge to the 19 questions and directed appellant to attend the IME. Appellant does not challenge the fact that complying with the IME provisions was a condition precedent to coverage under the insurance contract; he only contests the allowable scope of the IME. As a result, once appellant failed to attend the IME after the district court addressed appellant's arguments concerning the scope of the IME, the district court did not err in determining that respondent was not required to provide coverage for the accident to appellant based on appellant's violation of the insurance contract. See LVMPD v. Coregis Insurance Co., 127 Nev. ___, ___, 256 P.3d 958, 962 (2011) (explaining that an insured bears the burden of establishing that the insured complied with a condition precedent); VanHaaren v. State Farm Mut. Auto. Ins. Co., 989 F.2d 1, 6-7 (1st Cir. 1993) (holding that an IME requirement is a condition precedent and that refusal to comply with the requirement constituted an anticipatory repudiation that relieved the insurance company of its coverage obligations).

Therefore, the district court did not err in granting summary judgment in favor of respondent on its declaratory relief action and in dismissing appellant's declaratory relief action.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Rob Bare, District Judge
Phillip Aurbach, Settlement Judge
George R. Carter
Law Offices of Mitchell Posin, Chtd.
Kravitz, Schnitzer, Sloane & Johnson, Chtd.
Hall Jaffe & Clayton, LLP
Eighth District Court Clerk

²We conclude that appellant's argument that material questions of fact existed that precluded summary judgment lacks merit.

³In light of this order, we deny as moot appellant's motion to expedite this appeal.