

IN THE SUPREME COURT OF THE STATE OF NEVADA

MADELENE CAPELLE,
Appellant,
vs.
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Respondent.

No. 42359

FILED

JUL 25 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in an automobile policy dispute. Eighth Judicial District Court, Clark County; David Wall, Judge.

The underlying case arose out of an automobile accident involving appellant Madelene Capelle and Georgia Olman, both insured by respondent State Farm Mutual Automobile Insurance Company. Capelle settled with Olman for the policy limits under Olman's liability coverage with State Farm. Capelle and State Farm agreed to binding arbitration on the issue of damages and Capelle's underinsured motorist claim against State Farm. After the arbitration decision was rendered, the district court entered judgment on the arbitration award.

On appeal, Capelle challenges the district court's order granting partial summary judgment to State Farm on Capelle's claims for breach of the covenant of good faith and fair dealing, violations of the Nevada unfair claims practices statute and regulations, and punitive damages.

We review orders granting summary judgment under a de novo standard.¹ Summary judgment is appropriate when a case presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.² Summary judgment may not be defeated simply by “some alleged factual dispute” but requires a “genuine” factual dispute, defined as one where a reasonable jury could return a verdict for the nonmoving party based on the evidence.³

Although Nevada law recognizes the existence of an implied covenant of good faith and fair dealing in every contract,⁴ not every breach of this covenant is a tort for which damages are recoverable. Generally, in order to establish a tort claim of bad faith for breach of the implied covenant in a case involving an insurer and insured, there must be an unreasonable denial or delay in the payment of a valid claim to which the plaintiff is legally entitled,⁵ and the insurer’s knowledge or reckless disregard of the lack of a reasonable basis for denying the claim or

¹Dermody v. City of Reno, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997).

²NRCP 56(c). Note that NRCP 56 was amended in 2004, effective January 1, 2005.

³Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986); see Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438 (1993).

⁴Pemberton v. Farmers Ins. Exchange, 109 Nev. 789, 792-93, 858 P.2d 380, 382 (1993) (citing A.C. Shaw Construction v. Washoe County, 105 Nev. 913, 914, 784 P.2d 9, 10 (1989); Ainsworth v. Combined Ins. Co., 104 Nev. 587, 592, n. 1, 763 P.2d 673, 676, n. 1 (1988)).

⁵See Guaranty Nat’l Ins. Co. v. Potter, 112 Nev. 199, 206, 912 P.2d 267, 272 (1996); Pemberton, 109 Nev. at 797, 858 P.2d at 384; United States Fidelity v. Peterson, 91 Nev. 617, 620, 540 P.2d 1070, 1071 (1975).

delaying payment.⁶ A violation of Nevada's unfair insurance practices statute, NRS 686A.310, is not a per se act of bad faith.⁷ Nor will all claims of bad faith justify an award of punitive damages.⁸ For a punitive damages award, the requisites of NRS 42.005 must be met.

Our review of the briefs and record shows that the district court did not err in granting summary judgment to State Farm. Capelle provided no evidence of a duty on State Farm's part to pre-authorize an independent medical examination ("IME") or magnetic resonance imaging ("MRI"). Additionally, Capelle failed to produce any evidence that State Farm denied coverage or did not promptly pay for all medical bills submitted to it until the policy limits were exhausted. Furthermore, the evidence shows that Capelle and her doctors were largely responsible for any confusion surrounding her claims because they provided the wrong claims number to State Farm and Capelle failed to submit medical records and claims in a timely manner to State Farm.

The evidence is also undisputed that any delays in obtaining an IME, MRI, or knee surgery were not caused by any unreasonable acts by State Farm. Instead, the evidence reveals that it was Capelle's own fear of intubation during anesthesia and possible loss of her singing voice that caused her to delay her knee surgery until approximately nineteen months after the IME. Additionally, State Farm's claim closure was not

⁶Guaranty Nat'l, 112 Nev. at 206, 912 P.2d at 272; Falline v. GNLV Corp., 107 Nev. 1004, 1009, 823 P.2d 888, 891 (1991).


⁷Hart v. Prudential Property and Casualty Ins. Co., 848 F. Supp. 900 (D. Nev. 1994); see also Pioneer Chlor Alkali Co., Inc. v. National Union Fire Ins. Co., 863 F. Supp. 1237 (D. Nev. 1994).

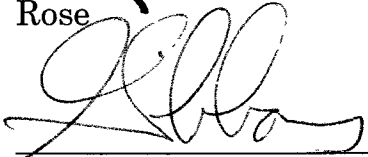
⁸See Peterson, 91 Nev. at 620-21; 540 P.2d at 1071-72.

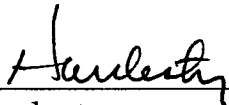
unreasonable in light of Capelle's failure to respond or submit bills to State Farm. Furthermore, State Farm's closure and prompt re-opening of the claim file had no impact on the delay in surgery, since State Farm continued to pay all bills submitted to it. And the claim closure could not have impacted Capelle's decision to delay surgery for at least nine months after the IME, since the evidence adduced below demonstrates that she did not know about the closure until that time. Additionally, the record shows that even after learning of the claim closure, Capelle told her surgeon that she was not interested in proceeding with invasive treatment at that time.

Accordingly, we conclude that the district court did not err in granting summary judgment to State Farm on Capelle's claims for breach of the covenant of good faith and fair dealing or unfair claims practices. In light of our conclusion, the district court also properly denied Capelle's request for punitive damages. Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. David Wall, District Judge
Leonard I. Gang, Settlement Judge
Fitzgibbons & Anderson
Pearson, Foley & Kurtz, P.C.
Clark County Clerk