**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 11/24/2020 4:06:27 PM.****

MANDATE FROM CIRCUIT COURT SEVENTEENTH JUDICIAL CIRCUIT BROWARD COUNTY, FLORIDA

Case Number: CACE-19-001475
L.T. Case Number: CONO-14-000261

C & R HEALTHCARE, LLC
a/a/o SAMARIA HARASTA
Appellant,

VS.

PROGRESSIVE SELECT
INSURANCE COMPANY
Appellee,

TO THE HONORABLE JUDGES OF BROWARD COUNTY GREETINGS:

The attached opinion was rendered on SEPTEMBER 24, 2020.

YOU ARE HEREBY COMMANDED that such further proceedings are held in said cause in accordance with the decision and judgment of this court, the rule of procedure and the laws of the State of Florida.

WITNESS the Honorable Circuit Court Appellate Panel, and this seal of said court at Fort Lauderdale, Florida, on this date NOVEMBER 24, 2020.

BRENDA D. FORMAN
CLERK OF THE COURT

BY: Jacquie Shellman
DEPUTY CLERK

Copies to:
The Honorable John D. Fry
David B. Pakula, Esq.
Andrew T. Lynn, Esq.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
APPELLATE DIVISION

APPEAL NO.: CACE19-001475
CASE NUMBER: CONO14-000261

C & R HEALTHCARE, LLC
a/a/o SAMARIA HARASTA,
Appellant,

v.

PROGRESSIVE SELECT
INSURANCE COMPANY,
Appellee.

Dated: September 24, 2020.

Appeal from the County Court for the Seventeenth Judicial Circuit, Broward County; John D. Fry, Judge.

David B. Pakula, Esq., Pembroke Pines, Florida, for Appellant.

Andrew T. Lynn, Esq., of Kubicki Draper, P.A., Tampa, Florida, Appellees.

OPINION

PER CURIAM.

C & R Healthcare, LLC a/a/o Samaria Harasta ("Appellant") appeals the final summary judgment of the county court rendered in favor of Progressive Select Insurance Company ("Appellee"). Having carefully considered the briefs, the record, and the applicable law, the final summary judgment is hereby **REVERSED** as set forth below:

In the county court proceedings, Appellant commenced a breach of contract action against Appellee for unpaid personal injury protection ("PIP") benefits

pursuant to an assignment of benefits from the insured, Samaria Harasta (the "Insured"). Appellant moved for partial summary judgment on the issues of reasonableness, relatedness, and medical necessity ("RRN") and subsequently, moved for partial summary judgment seeking a determination that the Insured suffered an Emergency Medical Condition ("EMC") that would entitle Appellant to the $10,000 PIP liability policy limits. Thereafter, Appellee moved for final summary judgment on the EMC issue. A hearing was held on both parties' motions for summary judgment. Following the hearing, the county court entered final summary judgment in favor of Appellee. This appeal followed. This Court reviews the county court's determination *de novo*. *See Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

The gravamen of Appellant's complaint is that the county court erred in granting final summary judgment in favor of Appellee because the county court erroneously concluded that Florida law requires a treating physician to render an EMC. From Appellant's perspective, the county court's determination runs counter to both section 627.736(1)(a)(3), Florida Statutes, and the subject insurance policy, which only require a qualifying physician to render an EMC. In contrast, Appellee contends that the plain language of sections 627.736(1)(a)(3), (1)(a)1, and (1)(a)2, Florida Statutes, limits the rendering of an EMC to a physician that has performed initial and follow-up care and services to the Insured. Specifically, Appellee suggests that the EMC rendered by Dr. Bruce H. Berman, M.D. ("Dr. Berman") on behalf of

Appellant was invalid because Dr. Berman did not actually provide treatment to the Insured, but rather based his determination only on an initial report completed by Dr. Kevin McFarlin Usry, D.C. ("Dr. Usry"). Furthermore, Appellee maintains that Dr. Berman merely copied the statutory definition of an EMC as delineated in section 627.736, Florida Statutes.

The starting point for the court's analysis is section 627.736(1)(a)(3), Florida Statutes, which reads, in pertinent part:

> Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464 has determined that the injured person had an emergency medical condition.

Under Florida law,

> It is a fundamental principle of statutory interpretation that legislative intent is the 'polestar' that guides this Court's interpretation. *Borden v. East–European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). **The best method to determine the intent of the legislature is to "look to the actual language used in the statute." *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005). Clearly, "[w]hen the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent."** *Id.* However, where the statute is ambiguous, the court "may resort to the rules of statutory construction, which permit [the court] to examine the legislative history to aid in [the] determination regarding legislative intent." *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 367 (Fla. 2013). When construing different parts of a statute, "[i]t is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." *Knowles v. Beverly Enterprises–Florida, Inc.*, 898 So. 2d 1, 6 (Fla.

2004) (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)).

Med. Ctr. of Palm Beaches v. USAA Cas. Ins. Co., 202 So. 3d 88, 90–91 (Fla. 4th DCA 2016) (emphasis added).

Upon review of section 627.736(a)(1)(3), Florida Statutes, the plain language of the statute is clear and unambiguous: an EMC can be rendered by a qualified physician under the statute for reimbursement of care and services. While the county court and Appellee seem to challenge "how" the EMC was determined, nothing in the statute suggests that the factual or medical basis effecting this determination is open to dispute. For this reason, the county court erred in entering final summary judgment in favor of Appellee. Although Appellee argues that the peer review of its expert, Dr. Dainius Drukteinis, M.D., determined that the Insured did not have an EMC, this challenge would likely only serve to create a triable issue of fact upon remand in order to plausibly defeat Appellant's motion for partial summary judgment on the issue.

Therefore, the county court's final summary judgment is **REVERSED** and this case is **REMANDED** to the county court for further proceedings consistent with this Opinion. Appellant's Motion for Attorney's Fees is hereby **GRANTED** with the amount to be determined by the county court upon remand. Further, Appellee's Motion for Provisional Award of Appellate Attorney's Fees is hereby **DENIED**.

BOWMAN, TOWBIN-SINGER, and RODRIGUEZ JJ., concur.

C & R Healthcare, LLC v. Progressive Select Ins. Co.
CACE19-001475

* * *

Not final until disposition of timely filed motion for rehearing.

Copies to:

The Honorable John D. Fry
David B. Pakula, Esq.
Andrew T. Lynn, Esq.