

**IN THE COUNTY COURT
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL DIVISION
CASE NUMBER: 15-002127 COCE 50**

**FOUNTAINS THERAPY CENTER, INC.
(a/a/o Wykesha Harris),**

Plaintiff,

vs.

**PROGRESSIVE AMERICAN
INSURANCE COMPANY,**

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY FINAL JUDGMENT,
DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT,
AND DENYING PLAINTIFF'S MOTION TO STRIKE PARAGRAPH 7 OF
DEFENDANT'S AFFIDAVIT OF LITIGATION SPECIALIST**

THIS CAUSE having come before the Court upon Defendant's Motion for Summary Final Judgment, Plaintiff's Cross-Motion for Partial Summary Judgment, and Plaintiff's Motion to Strike Paragraph 7 of Defendant's Affidavit of Litigation Specialist, and the Court having heard arguments from counsel at hearing on August 3, 2017, and the Court being otherwise fully advised in the premises, it is hereby **ORDERED and ADJUDGED** as follows:

Plaintiff, Fountains Therapy Center, seeks recovery of Personal Injury Protection ("PIP") benefits from Defendant, Progressive American Insurance Company ("Progressive"), for treatment rendered to Wykesha Harris following an automobile accident that took place on December 23, 2009. Plaintiff asserted that Wykesha Harris was entitled to PIP benefits under a policy of insurance issued by Progressive to Antwan Daniels. The subject accident took place in a vehicle owned by Antwan Daniels and insured by Progressive. Wykesha Harris was a passenger in said vehicle.

Progressive denied coverage for the claim submitted by Plaintiff because Wykesha Harris was the registered owner of two vehicles on the date of the accident, a 2002 Chevrolet Impala and a 1997 Mazda 626. Florida Statutes §627.736 (4)(e) provides:

- e) the insurer of the owner of a motor vehicle shall pay PIP benefits for:
 - 4) accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle...provided the injured person is not himself or herself
 - a) the owner of a motor vehicle with respect to which security is required under 627.730-627.7405 or
 - b) entitled to PIP benefits from the insurer of the owner of such a motor vehicle

Progressive's policy incorporates the statute and excludes coverage based on a provision that states that "coverage under this Part II(A) does not apply to bodily injury...sustained by any person, other than you, if such person is the owner of a motor vehicle with respect to which security is required under the Florida Motor Vehicle No Fault Law".

Defendant attached to its Motion a copy of the Florida Department of Highway Safety and Motor Vehicles registration for the 1997 Mazda 626 indicating that Wykesha Harris was the registered owner on the date of the subject accident. Further, Wykesha Harris testified in deposition that she was the registered owner of both the 1997 Mazda 626 and 2002 Chevrolet Impala on the date of the subject accident, and also completed affidavits indicating same, which were attached as exhibits to the deposition as well as Plaintiff's Motion.

Plaintiff argued that Wykesha Harris was not required to have insurance on both the 2002 Chevrolet Impala and 1997 Mazda 626 because said vehicles were not operable. Defendant responded that Harris was required to maintain insurance on both vehicles, as they were operated on the roads of the state, registered to Wykesha Harris on the date of the accident, and nonetheless operable. Defendant relies on the case of Mediview, Inc. (a/a/o Louibert Castor) v. Progressive Select Ins. Co., 25 Fla. L. Weekly Supp. 199a (17th Jud. Cir. 2017) in which the

Court held that in consideration of Florida Statutes §627.733(1)(a) and §320.02(1), the owner must maintain PIP coverage on the vehicles “continuously” throughout the registration period if the vehicle is “operated” on the road during the registration period. *See also Six Doctors Medical Center a/a/o Liliana Lopes v. Progressive American Ins. Co.*, 16 Fla. L. Weekly Supp. 349b (17th Jud. Cir. 2009). The Court finds that because Wykesha Harris operated the 2002 Chevrolet Impala during the registration period, she was required to have maintained security on said vehicle. As a result, she was not entitled to receive PIP benefits from Progressive.

With respect to Plaintiff’s argument as to the operability of the 2002 Chevrolet Impala, Defendant relies on deposition testimony from Wykesha Harris that she could drive the 2002 Chevrolet Impala if she wanted to, despite repairs that were needed to the head gasket. She also testified that it was in running condition when she bought it prior to the subject accident, and when she sold it after the date of the subject accident. The vehicle was not permanently inoperable, was never placed in storage, and there was also no testimony from an expert witness supporting Plaintiff’s contention that said vehicle was inoperable. *See Rosalind Hillery v. Lyndon Property Ins. Co.*, 10 Fla. L. Weekly Supp. 656a (19th Jud. Cir. 2003) and *Reidy v. Metropolitan Casualty Ins. Co.*, 13 Fla. L. Weekly Supp. 1076a (15th Jud. Cir. 2006).

Wykesha Harris also testified in deposition that she paid a mechanic \$1,000 for the repair to the head gasket. She testified that after the vehicle was returned, she believed that the mechanic did not completely repair the vehicle. However, she could not describe what the additional problems were, and Plaintiff did not present any additional evidence nor expert testimony as to what specific repairs may have been needed. Notwithstanding the above, said testimony displays her clear intent and determined action to repair the vehicle. In addition, the fact that she decided to delay repair for a certain length of time based on financial considerations did not display an intention to abandon or no longer maintain her vehicle for its usual purpose.

As a result, she did not relinquish her statutory requirement to maintain security on the vehicle. See Radiology Regional Center a/a/o Raul Blanco v. State Farm Mut. Auto. Ins. Co., 22 Fla. L. Weekly Supp. 1111d (20th Jud Cir. 2015); Tapscott v. State Farm Mut. Auto Ins. Co., 330 So. 2d 475 (Fla 1st DCA 1976); and Reidy v. Metropolitan Casualty Ins. Co., 13 Fla. L. Weekly Supp. 1076a (15th Jud. Cir. 2006).

Plaintiff also raised its Motion to Strike Paragraph 7 of Defendant's Affidavit of Litigation Specialist, Lacy Pisani. In paragraph 7, she testified that "during the coverage investigation, Progressive took a recorded statement from Norris Jackson who stated that he purchased the 2002 Chevy Impala from Wykesha Harris in running condition shortly after the accident at issue." Plaintiff sought to strike this testimony arguing that it was inadmissible hearsay. Defendant relied on the case of Apple Medical Center, LLC a/a/o Fausette Petit-Homme v. Progressive Select Ins. Co., 25 Fla. L. Weekly Supp. 97a (11th Jud. Cir. 2016), which supports the conclusion that the information contained in paragraph 7 is admissible as it is based on her personal knowledge of the claim. Accordingly, Plaintiff's Motion to Strike Paragraph 7 of Defendant's Affidavit of Litigation Specialist is denied.

As to the 1997 Mazda 626, Wykesha Harris testified in deposition that she could drive it, and that she had maintained registration on the vehicle while she had planned to have transmission problems repaired. As such, she was required to have maintained security on said vehicle, and she was not entitled to receive PIP benefits from Progressive as a result.

Plaintiff also contended that Wykesha Harris was not the beneficial owner of the 1997 Mazda 626 and therefore was not required to maintain security on said vehicle. However, Defendant relies on the holding of the Florida Supreme Court in Christensen v. Bowen, 140 So. 3d 498 (Fl. Sup. Ct. 2014), that vehicle ownership is determined through legal title, as the rights and responsibilities of owners of motor vehicles are both assigned and dependent upon the

existence of legal title. Legal title is a clear and simple method of determining ownership, and ownership can only be disproven by objective evidence of a conditional sale or incomplete faulty transfer. *Id.* As such, because the 1997 Mazda 626 was registered and titled to Wykesha Harris on the date of the subject accident, she was the owner of said vehicle, which required security.

Therefore, the Court finds that there is no genuine issue of a material fact that Wykesha Harris was not entitled to PIP coverage under the policy of insurance issued by Progressive to Antwan Daniels, as she was subject to an exclusion under the policy and Florida Statutes §627.736(4)(e) based on her ownership of two registered vehicles on the date of the accident which were required to be insured. Defendant is therefore entitled to summary judgment as a matter of law. Defendant's Motion for Final Summary Judgment is GRANTED. Plaintiff's Cross-Motion for Partial Summary Judgment is DENIED. The Plaintiff shall take nothing in this action, and Defendant shall go hence without day. The Court reserves on the issue of attorney's fees and costs.

DONE AND ORDERED in Chambers at Broward County Main Courthouse, Broward, Florida, on this 31 day of August, 2017.



Honorable Kim Theresa Mollica

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