OA 8-31-94

OA affirmed

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,015

DONALD S. ZUCKERMAN, P.A., and
DONALD S. ZUCKERMAN, individually,

Petitioners,

v.

HOFRICHTER & QUIAT, P.A., ALEX
HOFRICHTER, P.A., and ALEX
HOFRICHTER, individually,

Respondents.

_____/

PETITIONER'S INITIAL BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

INTRODUCTION

Petitioners DONALD S. ZUCKERMAN, P.A. and DONALD S. ZUCKERMAN will be referred to as they stand in this Court, as they stood in the trial court and as Zuckerman. Respondents HOFRICHTER & QUIAT, P.A., ALEX HOFRICHTER, P.A., and ALEX HOFRICHTER will be referred to and they stand in this Court, as they stood in the trial court and as Hofrichter.

"R" refers to the record on appeal; "SR" refers to the supplemental record attached to Zuckerman's motion to supplement; "T" refers to the transcript of the hearing on the motion to dissolve the writ of garnishment. Emphasis is supplied by counsel unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The Third District held here that settlement of an insured's suit against his insurer for disability insurance benefits altered the nature of the benefits and meant they were no longer exempt from garnishment under Fla.Stat. § 222.18. Donald S. Zuckerman, P.A. v. Hofrichter & Quiat, P.A., 629 So.2d 218 (Fla. 3d DCA 1993). In these proceedings, this Court will determine whether the form of payment - monthly disability benefit payments or lump sum settlement - affects the exempt nature of the payments under this statute.

Zuckerman had a disability insurance policy with Provident Life and Accident Co. (SR. 5). Provident had made disability payments to Zuckerman pursuant to the policy for some time. (T. 47-48; SR. 18). When Provident later terminated those payments and denied Zuckerman's disability claim, Zuckerman sued Provident for payment under the policy and for bad faith.[1/] (T. 51-52; SR. 1-4). That action was eventually settled when Provident paid Zuckerman a lump sum of $75,000 in exchange for a general release and surrender of the policy.[2/] (T. 29-30, 37, 42).

1/ The bad faith claim was severed and stayed pending resolution of the breach of contract claim. (SR. 35). Provident acknowledged it had made monthly disability payments under its policy, but denied any further obligation to pay Zuckerman. (SR. 18).

2/ The settlement included Zuckerman's right to future disability benefits. (T. 61). At the hearing on the motion to dissolve the writ of garnishment, Zuckerman proffered, but the court rejected, evidence that the amount of disability benefits to which he would have been entitled was approximately $125,000. (T. 37-38). At the time of the hearing, Provident's counsel had not yet (continued...)

In the meantime, Hofrichter obtained a judgment against Zuckerman in an unrelated case. Donald S. Zuckerman, P.A. v. Hofrichter & Quiat, P.A., 629 So.2d 217 (Fla. 3d DCA 1993). To collect on that judgment, Hofrichter filed a writ of garnishment against the funds from the disability case which were still in Provident's hands. (R. 4411).

Zuckerman moved to dissolve the writ of garnishment. He argued that these proceeds were exempt from garnishment under Fla.Stat. § 222.18 because they were disability payments under his policy with Provident. (R. 4427). The trial court held an evidentiary hearing. Despite its belief that this was a close question and there was no law on point (T. 95, 134, 142), the court denied the motion. It awarded $44,209.50 of the disability settlement to Hofrichter.[3/] (R. 4565-71). The court concluded that the benefits paid in settlement of Zuckerman's claim against Provident "are not 'disability' benefits within the meaning of F.S. § 222.18." (R. 4566, 4570).

The Third District affirmed. Donald S. Zuckerman, P.A., 629 So.2d 218. It reasoned that those funds were paid pursuant to the settlement agreement, not the disability insurance policy. Id. Therefore, the court held that proceeds of a settlement in an

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[2/] (...continued)
received the release from Zuckerman and so he still held the settlement check. (T. 17, 54, 64-66). Since that time, the funds have been paid to Hofrichter pursuant to the Third District's decision.

[3/] The remainder of the settlement was awarded to Zuckerman's attorneys for legal services rendered in the disability action.

action to obtain payment under a disability insurance policy were not "disability income benefits" exempt from garnishment under § 222.18.

This Court accepted jurisdiction under Art. V, § 3(b)(3), Fla. Const.

SUMMARY OF ARGUMENT

The Third District held that funds paid pursuant to settlement of a lawsuit for disability insurance benefits were not "disability income benefits" exempt from garnishment under Fla.Stat. § 222.18. The court reasoned that those benefits were paid pursuant to the settlement agreement, not a disability insurance policy.

The Third District's decision is contrary to the plain language of the exemption statute. Section 222.18 unambiguously exempts from legal process all disability income benefits, "of whatever form" due a debtor under any disability policy. The statute could not be more broadly worded or inclusive.

The court's decision also contravenes the policy behind the exemption statute to prevent debtors and their families from being deprived of the necessities of life and becoming public charges. The implication of the Third District's holding is that only disability benefits paid pursuant to uncontested claims are exempt from garnishment. If the carrier contests the claim, and the insured is forced to litigate the claim, any funds received whether by settlement or judgment are subject to garnishment by creditors. That places an unfair burden on insureds whose disability carriers dispute their claims and contravenes the policy of protecting debtors and their families from becoming destitute and public charges.

The settlement in this case requires payment of disability benefits to Zuckerman because the original insurance policy so required. The settlement merely changed the method of payment.

Those funds were disability benefits as surely as if they had been paid when Zuckerman first made his claim. The character and purpose of the payments never changed, and neither should their exempt status. This Court should quash the Third District's decision.

ARGUMENT

DISABILITY INCOME BENEFITS DUE UNDER A DISABILITY INSURANCE POLICY DO NOT LOSE THEIR § 222.18 EXEMPTION BECAUSE THEY ARE MADE IN A LUMP SUM PURSUANT TO A SETTLEMENT OF LITIGATION BROUGHT TO ENFORCE THAT DISABILITY INSURANCE POLICY.

The Third District held that funds paid pursuant to settlement of a lawsuit for disability insurance benefits were not "disability income benefits" exempt from garnishment under Fla.Stat. § 222.18.[4/] Donald S. Zuckerman, P.A. v. Hofrichter & Quiat, P.A., 629 So.2d 218 (Fla. 3d DCA 1993). The court reasoned that the settlement agreement "extinguished Zuckerman's claim under the disability policy" and therefore those funds were paid "pursuant to the agreement of settlement and compromise, not the disability insurance policy." Id.

The Third District's decision is contrary to the plain language of the exemption statute. Section 222.18 unambiguously exempts from legal process all disability income benefits, "of whatever form" due a debtor under any disability policy. The statute could not be more broadly worded or inclusive. See In re McCollam, 612 So.2d 572 (Fla. 1993)(virtually identical language

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[4/] Section 222.18 provides:

> Disability income benefits under any policy or contract of life, health, accident, or other insurance of whatever form, shall not in any case be liable to attachment, garnishment, or legal process in the state, in favor of any creditor or creditors of the recipient of such disability income benefits, unless such policy or contract of insurance was effected for the benefit of such creditor or creditors.

in §222.14 "clearly exempts all annuity contracts"). The court should not graft onto a statute any limitations the legislature has not mandated. Chaffee v. Miami Transfer Co., 288 So.2d 209, 215 (Fla. 1974). Therefore, the fact that these disability benefits were paid in settlement of an insured's contested claim for these benefits should be irrelevant.

This Court has already established the same statutory construction that Zuckerman seeks to reaffirm here. In Bank of Greenwood v. Rawls, 117 Fla. 381, 158 So. 173 (1934), an insured received funds in settlement of a disability provision in his life insurance policy in return for surrender of that policy. The insured's creditors sought to garnish those funds. They argued that the funds were not statutorily exempt "cash surrender values" of a life insurance policy because they were in settlement of the disability provision of the policy.[5/]

This Court disagreed. It interpreted language in the earlier exemption statute which stated that the cash surrender value of life insurance policies "upon whatever form" shall not in "any" case be liable for garnishment. Id. at 174-75. This Court held that cash surrender value included funds obtained by a negotiated settlement in exchange for surrender of the policy. Id. at 175. The settlement did not change the exempt nature of the proceeds.

The statutory language interpreted in Bank of Greenwood is virtually identical to the relevant statutory language in this

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5/ Before the passage of § 222.18 in 1941, disability income benefits were not exempt from garnishment, but cash surrender values of life insurance policies were.

case. Section 222.18 states that benefits of a disability insurance policy "of whatever form, shall not in any case be liable" to garnishment. The statute at issue in Bank of Greenwood, 1925 Laws of Fla., ch. 10,154, stated that cash surrender value of life insurance policies "upon whatever form" shall not in "any" case be liable for garnishment. A side-by-side comparison demonstrates the high degree of similarity:

Section 1. That the cash surrender values of life insurance policies issued upon the lives of citizens or residents of the State of Florida, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor or creditors of the person whose life is so insured, unless the insurance policy was effected for the benefit of such creditor or creditors. Ch. 710,154, Laws of Fla. (1925).	Section 1. Disability income benefits under any policy or contract of life, health, accident or other insurance of whatever form, shall not in any case be liable to attachment, garnishment, or legal process in the State of Florida, in favor of any creditor or creditors of the recipient of such disability income benefits, unless such policy or contract of insurance was effected for the benefit of such creditor or creditors. Ch. 20741, Laws of Fla. (1941).

The language and grammatical structure of these two statutes is virtually identical. They should be construed in the same way. See also In re McCollam, 612 So.2d at 573-74 (applying same analysis to § 222.14 which provides that "'proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor or any creditor'")(emphasis by the court). Thus here, as in Bank of Greenwood, the exempted policy benefits should include monies obtained in a negotiated settlement for payment under the policy.

The Third District's decision also contravenes the policy behind the exemption statute. Statutes should be construed to give effect to the policy behind their enactment. White v. Pepsico, 568 So.2d 886, 889 (Fla. 1990). Such garnishment exemptions are intended to prevent debtors and their families from being deprived of the necessities of life and from becoming public charges. Patten Package Co. v. Houser, 102 Fla. 603, 136 So. 353, 355 (1931). See also Elvin v. Public Finance Co., 196 So.2d 25 (Fla. 3d DCA 1967). For this reason, such exemptions should be liberally construed in favor of the debtor to accomplish the policy of preserving a living for the debtor and his family. Killian v. Lawson, 387 So.2d 960, 962 (Fla. 1980); Patten Package, 136 So. at 355.

Instead, the Third District strictly construed the exemption. The implication of the court's holding is that only disability benefits paid pursuant to uncontested claims are exempt from garnishment. If the carrier contests the claim, and the insured is forced to litigate it, creditors may garnish any proceeds received whether by settlement or judgment. Zuckerman did not choose to receive his disability benefits in the form of an early lump-sum payment/settlement of his claim. Indeed, Provident had made periodic disability payments to Zuckerman pursuant to the policy for some time. Provident, not Zuckerman, chose to discontinue those payments to which he was entitled. Zuckerman received his benefits in a lump sum only after he sued Provident and incurred substantial legal fees and expenses. The Third District's ruling

places an unfair burden on insureds whose disability carriers dispute their claims and contravenes the policy of protecting debtors and their families from becoming destitute and public charges.

Moreover, settlements and judgments do not exist in a vacuum. They must be construed with reference to the subject matter before the court at the time they were made. See Saucer v. Efstathion, 34 So.2d 435, 436 (Fla. 1948). Zuckerman's complaint against Provident set forth claims for breach of the disability insurance contract and related unfair claim settlement procedures under Fla.Stat. § 624.155.[6/] (SR. 1-4). Thus, the subject matter before the court at the time of the settlement was Zuckerman's entitlement to disability benefits under the policy.

The settlement required payment of disability benefits to Zuckerman because the original insurance policy so required. The settlement merely changed the method of payment. Those funds were disability benefits as surely as if they had been paid when Zuckerman first made his claim. The character and purpose of the payments never changed, and neither should their exempt status.

The Third District relied on three cases in reaching its conclusion, none of which were pertinent: J. Allen, Inc. v. Castle Floor Covering, Inc., 543 So.2d 249, 251 (Fla. 2d DCA 1989); Brinker v. Ludlow, 379 So.2d 999, 1002 (Fla. 3d DCA 1980), ap-

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[6/] Fla.Stat. § 624.155 provides a cause of action to an insured against an insurer for first party bad faith. If successful, the insured is entitled under this section to damages, costs and reasonable attorney's fees. § 624.155(3). See generally McLeod v. Continental Ins. Co., 591 So.2d 621 (Fla. 1992).

proved, 403 So.2d 969 (Fla. 1981); Salling Wiping Cloth Co. v. Sewell, Inc., 419 So.2d 112, 116-17 (La.Ct.App. 1982). These cases merely state the general, and irrelevant, rule that a cause of action merges into a judgment or settlement obtained on that action.

In J. Allen, a conflict arose over whether a subcontractor's work was acceptable. The contractor and subcontractor settled this conflict by entering into an agreement that the contractor would pay the subcontractor for the labor and materials necessary to rework the job. The subcontractor redid the job according to the job specifications but the contractor refused to pay the subcontractor for the additional work. The subcontractor sued and the contractor counterclaimed that the subcontractor had initially performed the work in an unworkmanlike manner. The Second District rejected the contractor's counterclaim because any rights and duties the parties had at the time they entered into the settlement agreement were merged into that settlement agreement. 543 So.2d at 251.

The rule announced in J. Allen has no relevance here. It does not address the nature of funds received in settlement of a claim. Instead, the rule merely states the unremarkable proposition that a party who enters into a settlement of a disputed claim cannot later attempt to litigate that claim.[7/] It does not

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[7/] The other two cases the Third District cited applied the same rule in the context of a judgment on a disputed claim and are even less relevant here. Brinker v. Ludlow, 379 So.2d at 1002; Salling Wiping Cloth Co. v. Sewell, Inc., 419 So.2d at 116-17. Thus, the (continued...)

follow that funds paid pursuant to a settlement of a case to obtain benefits under a disability policy somehow lose their character as disability benefits. In fact, to the extent the Third District's decision can be seen as only applying to settlements, it contravenes the public policy that favors settlement of disputes without litigation. See Robbie v. City of Miami, 469 So.2d 1384 (Fla. 1985).

In sum, the funds Hofrichter sought to garnish were disability benefits exempt under § 222.18. Section 222.18 unambiguously exempts from legal process all disability income benefits, "of whatever form," due a debtor under a disability policy. The settlement in this case merely changed the method of payment, not the character and purpose of the payments. The Third District's ruling places an unfair burden on insureds whose disability carriers dispute their claims. It also contravenes the policy of protecting debtors and their families from become destitute and the policy that favors settlement of disputes without litigation. Thus, the Third District's decision contravenes both the plain language and the public policy behind that statute. This Court should quash that decision.

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[7]/(...continued)
Third District apparently did not distinguish between settlements and judgments in this context.

CONCLUSION

For the foregoing reasons, Petitioner Zuckerman respectfully requests this Court to quash the decision of the Third District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 1st day of June, 1994 to: all counsel on the attached list.

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