
IN THE SUPREME COURT OF FLORIDA
S. Ct. Case No.: SC05-693

COLLEEN M. STEADMAN,

Petitioner,

vs.

LIBERTY MUTUAL INSURANCE COMPANY
and NORMA J. PEELE,

Respondents.

ON REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL
CASE NO. 2D04-1428

RESPONDENTS BRIEF ON JURISDICTION

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INTRODUCTION

Petitioner Colleen Steadman seeks to invoke this Court's conflict jurisdiction over a decision by the Second District that her claim is barred by worker's compensation immunity. The Second District's decision, however, discloses no grounds supporting this Court's jurisdiction. The legal principles recited by the court below are well settled and are aligned with the holding of this Court's recent decision in *Aguilera v. Inservices, Inc.*, 2005 WL 1403993, 30 Fla. L. Weekly S440 (Fla. June 16, 2005). The Second District ruled, just as this Court ruled in *Inservices*, that a delay in the payment of a worker's compensation claim cannot be turned into an independent tort merely by characterizing the alleged delay as outrageous, intentional, or in bad faith. There being no conflict, the request to invoke this Court's conflict jurisdiction must be denied.

STATEMENT OF THE CASE AND FACTS

The Second District's short statement of the facts reveals that Colleen Steadman ("Steadman") filed suit against her employer's worker's compensation carrier, Liberty Mutual Insurance Company and Liberty claims handler Norma J. Peele (collectively "Liberty") for intentional infliction of emotional distress. As noted by the Second District, Steadman's lawsuit is based upon a delay in payment of benefits by Liberty. Steadman sought authorization and reimbursement for a bilateral lung transplant through Liberty. The benefits she sought were either

denied or discontinued based on Liberty's determination that some of Steadman's requests related to a preexisting medical condition.

After the denial of benefits, Steadman filed a petition for benefits with a judge of compensation claims ("JCC") pursuant to Chapter 440, Florida Statutes. The JCC approved denial of some benefits but also ordered Liberty to pay for the surgery and some other items associated with the operation. Steadman alleges that Liberty failed to comply with the JCC's order promptly because she did not receive her operation until nine months later.

Following surgery, Steadman sued Liberty in Hillsborough County Circuit Court for intentional infliction of emotional distress for their alleged delay in authorizing the lung surgery and for denying other medical expenses. Liberty moved to dismiss the case with prejudice, arguing that Steadman's sole avenue of relief was through Chapter 440, Florida Statutes (the "Worker's Compensation Act"). Section 440.11 provides that "the liability of a [worker's compensation] carrier to an employee, or to anyone entitled to bring suit in the name of the employee shall be provided in this chapter, *which shall be exclusive and in place of all other liability.*" *Id.* (emphasis added). Liberty argued that, because Steadman's intentional distress claim arose solely from defendant's delay in the payment of benefits, Steadman's only avenue of relief was through the Worker's Compensation Act.

The trial court held that Liberty was not entitled to statutory immunity under §440.11 as a matter of law. The Second District reversed. *Liberty Mutual Insurance Co. v. Steadman*, 895 So. 2d 434, 435 (Fla. 2d DCA 2005) (A. 1-4).¹ In so doing, the court recognized the well settled "exception to workers' compensation immunity in cases that involve intentional torts." *See* A. 3 (*citing Turner v. PCR, Inc.*, 754 So. 2d 683, 686 (Fla. 2000)). However, the court noted that the exception to immunity applies only where the tort occurs independently of the insurance company's handling of the insured's claim. *Id.* The Second DCA found that "Ms. Steadman's claim is based entirely on Liberty Mutual's delay in paying the benefits awarded to her by the JCC." *Id.* at 436. For that reason, the court held that "this claim does not fall within any exception to the statutory immunity afforded the carrier by the Act." *Id.* The Second DCA therefore reversed and remanded with instructions for the trial court to dismiss Steadman's complaint. *Id.*

Steadman now seeks to invoke this Court's conflict jurisdiction.

¹ References to ("A.") are to the Second District's opinion attached as an Appendix to Steadman's jurisdictional brief.

SUMMARY OF THE ARGUMENT

The decision of the Second District Court of Appeal is not in conflict with the decision of any other court in the State. The legal propositions cited by the court below are consistent with this Court's precedent and the decisions of other District Courts of Appeal. Nor do the facts revealed by the opinion create any misapplication conflict. This Court, therefore, lacks jurisdiction over this case. Fla. Const. Art. V § 3(b)(3).

ARGUMENT

The Second District's decision does nothing more than recite black letter propositions of law that are consistent with the precedent of this Court and the other District Courts of Appeal. The court's legal discussion appears on page 3 in which the court accurately states four propositions of law. First, citing this Court's decision in *Turner*, 754 So. 2d at 686, the court recognized that there is no immunity for intentional torts inflicted on insureds by insurance companies (A. 3). This is black letter law not challenged by Steadman. Second, the court recognized that a circuit court has no jurisdiction over an action against a compensation carrier for injuries covered by the Act. *Id.* Once again, this is black letter law that is not in dispute.

Third, the court recognized that "a compensation carrier is not immune from wrongdoing that occurs independently of its handling of claims." *Id.* (*citing*

Inservices, Inc. v. Aguilera, 837 So. 2d 464, 466 (Fla. 3d DCA 2003)). Although this Court recently reversed the holding in the *Inservices* case, the black letter proposition to which the Second DCA cited is still good law. As *Turner* already had recognized, there is no immunity for intentional conduct. *Inservices* was reversed because it went on to hold, erroneously, that a compensation carrier was immune from all claims arising out of any wrongdoing occurring as part of the claims process. *The Second District did not so hold.*

Instead, the Second District's key holding is the Fourth and final legal proposition cited in the case. The Second District ruled that the exclusive remedy for a delay in benefits is under the Act. Mere delay in the payment of benefits is not actionable, no matter whether that delay is characterized as outrageous or intentional or fraudulent. This holding is consistent with every District Court of Appeal to consider the issue and is consistent with this Court's recent *Inservices* opinion.

This Court's *Inservices* opinion was clear on this point and perfectly consistent with this case: "Today we do not alter and recognize the continued viability of the cases holding that the mere delay of payments or simple bad faith in handling workers' compensation claims are not actionable torts, and that employees are not permitted to transform such simple delays into actionable torts cognizable in circuit court." *Inservices*, 2005 WL 1403993 at *5. Citing the some of the same

cases cited by the Second District below, this Court noted that delays in payment and simple bad faith claims handling fall within the Act's immunity and a plaintiff cannot transform a mere delay in payments into an actionable tort "simply by calling that delay outrageous, fraudulent, deceitful, or intentional infliction of emotional distress." *Id.* (citing *Sheraton Key Largo v. Roca*, 710 So. 2d 1017, 1017 (Fla. 3d DCA 1998)); *Assoc. Indus. Of Fla. Prop. & Cas. Trust v. Smith*, 633 So. 2d 543, 544 (Fla. 5th DCA 1994); *Old Republic Ins. Co. v. Whitworth*, 442 So. 2d 1078, 1079 (Fla. 3d DCA 1983).

Nor is there any misapplication conflict. The facts discussed by the Second District's opinion below disclose nothing more than a delay in the payment of benefits by failing to promptly follow the ruling of the JCC (A. 2). The opinion contains none of the sort of facts contained in *Inservice* that prompted this Court to rule that an independent tort had been successfully alleged in that case.²

Put simply, the Second District's opinion states nothing more than that Steadman's claim is for delay in payment and that claims for mere delay in payment are immune under the act, no matter how the plaintiff characterizes the delay. This holding creates no conflict as this Court has recently confirmed in

² *Inservices*, for example, contains allegations that the carrier urged the claimant to lie to his counsel and deceive his attorney. Even worse, the carrier required the claimant to undergo unnecessary and contraindicated painful tests and then used the claimant's refusal to submit to these painful procedures as a basis to deny critical surgical treatment. *Inservices*, 2005 WL 140 3993 at *2.

Inservices. The law cited by the Second District as well as the application of that black letter law is consistent with other decisions addressing these issues. There is no conflict and this Court lacks jurisdiction to review the Second District's decision.

CONCLUSION

For the foregoing reasons, this court should deny the petition for discretionary review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail on this _____ day of July, 2005 to: **Matthew D. Valdes, P.A.**, 1920 N. Orange Ave., Orlando, Florida 32804.

Attorney

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Respondent certifies that this Brief on Jurisdiction is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

Attorney

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