Cite as 2011 Ark. 257

SUPREME COURT OF ARKANSAS

No. 10-1221

MEGAN BRADLEY,
APPELLANT,

VS.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
APPELLEE,

Opinion Delivered June 16, 2011

APPEAL FROM THE BENTON COUNTY CIRCUIT COURT,
NO. CIV-2009-2477-2,
HON. DAVID S. CLINGER, JUDGE,

REVERSED AND REMANDED.

JIM GUNTER, Associate Justice

This is one of three companion cases decided this week. Although the arguments on appeal are identical in each case, the facts slightly differ. Based on the analysis and reasoning explained in *Riley v. State Farm Mutual Automobile Insurance Co.*, 2011 Ark. 256, 381 S.W.3d 840, we reverse and remand.

Appellant Megan Bradley was injured in a motor vehicle accident on May 27, 2007, when her vehicle was struck by one driven by a third party. Bradley was insured at the time by Appellee State Farm Mutual Automobile Insurance Co., and the third party was insured by Farmers Insurance. On May 31, 2007, Bradley's attorney sent a letter to State Farm regarding medical pay, under-insured, or uninsured motorist coverage. Subsequently, State Farm paid $3844.39 in medical benefits to Bradley.

On July 29, 2008, State Farm sent a letter to Farmers "[i]n order to assist . . . in evaluating and processing the subrogation claim [it] was asserting." Bradley's counsel sent a

letter to State Farm on November 10, 2008, to inform it that Bradley was close to settling a liability claim with Farmers for $14,000. The letter stated that "the amounts of the settlements we have currently been able to negotiate with Farmer's Insurance on the liability claim are not sufficient for our client to be made whole." Bradley asked State Farm to release its subrogation claim, else she would petition the court to determine the validity of the subrogation claim and file a bad faith complaint against State Farm. On November 19, 2008, State Farm responded and stated that "[a]fter careful review of our file, we must respectfully deny your request that we release our subrogation claim in the amount of $3,844.39." Thereafter, Bradley's counsel asked State Farm for an explanation of the figures it used to determine that Bradley had been made whole. State Farm responded by letter dated December 8, 2008, stating that "[t]he amount of your settlement agreement clearly shows that the liability limits of the at-fault carrier were adequate enough to settle Ms. Bradley's injury claim as well as reimburse State Farm's medical payment subrogation lien." On February 16, 2009, State Farm sent two letters—one to Bradley's attorney and one to Farmers. In the letter to Bradley, State Farm made clear that it intended to seek recovery for the amounts it had paid for medical benefits pursuant to Ark. Code Ann. § 23-89-207. In the letter to Farmers, State Farm notified the third-party insurer that it was claiming subrogation and requested "your cooperation in settling this matter."

On August 13, 2009, Bradley filed a Petition for Declaratory Judgment and Complaint for Bad Faith against State Farm in Benton County Circuit Court, alleging a failure by State

Farm to establish an enforceable subrogation interest, breach of contract, and violation of the Unfair Trade Practices Act. State Farm answered on September 14, 2009, denying that it had filed a lien, but admitting that it had asserted its right to subrogation. It asked that the petition and complaint be dismissed and that it be granted its subrogation for the amounts paid pursuant to the terms of the policy.[1] Attached to the answer were several exhibits, including several of the letters referenced above.

On January 26, 2010, Bradley filed a First Amended Declaratory Action to Invalidate Lien and Complaint for Injunctive Relief, Deceptive Trade Practices, Bad Faith and Tortious Interference with a Contract. In her amended pleading, Bradley alleged that State Farm filed its lien or notice of subrogation with the third party carrier prior to paying any medical bills and without any determination that Bradley had been made whole. Bradley claimed that State Farm took "no action against [her] in a court of competent jurisdiction to ascertain whether or not [her] recovery from Farmers made [her] whole. . . . [and] State Farm's right to subrogation cannot yet exist." Bradley asserted that State Farm had the burden of proving that she had been made whole and that asserting its subrogation rights prior to that determination was premature and in violation of Arkansas law. State Farm answered, admitting that it had asserted its subrogation rights when Bradley settled with Farmers after having made a determination that Bradley had been made whole. State Farm denied that it was required to

[1]At no time was the policy attached to any pleading in this case; therefore, it is not a part of our record on appeal.

seek a judicial determination before asserting subrogation rights and argued that it was Bradley's burden to establish that she had not been made whole by the settlement to discharge its subrogation rights. In its prayer for relief, State Farm asked the circuit court to dismiss the injunctive relief claims for failure to state a claim upon which relief could be granted; to dismiss the remaining portions of the declaratory action; to grant State Farm its subrogation costs, less fees paid to Bradley's counsel; and to award it attorney's fees, costs, and any other relief to which it was entitled.

The court entered a joint order on June 7, 2010, noting that the plaintiffs had the burden to prove that they had not been made whole and that State Farm's liens were valid but not enforceable until a "made whole" determination had been made. Thereafter, the court entered a judgment on August 16, 2010, dismissing count one of Bradley's amended pleading. The court found that State Farm had a valid but unenforceable lien for sums paid to Bradley under the medical payment portion of her automobile insurance policy; that State Farm's right of subrogation arose at the time State Farm paid the medical benefits by operation of law (both equitable and statutory) and contract; and that State Farm's right of subrogation is not enforceable until a subsequent judicial determination regarding whether the insured was made whole by the settlement. The judgment included a Rule 54(b) certificate, and Bradley filed a timely notice of appeal.

Bradley argues that the circuit court erred in dismissing count one of her complaint because an insurer's right to subrogation does not arise until the insured has been made whole.

We agree, and for the reasons set forth this same day in *Riley v. State Farm Mutual Automobile Insurance Co.*, 2011 Ark. 256, 381 S.W.3d 840, we reverse and remand.

Reversed and remanded.