

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2023-152944-CC-26

ADVANCED DIAGNOSTIC GROUP,

Plaintiff/Appellant,

vs.

PROGRESSIVE AMERICAN INSURANCE COMPANY,

Defendant/Appellee.

_____ /

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff/Appellant, ADVANCED DIAGNOSTIC GROUP, pursuant to Florida Rule of Appellate Procedure 9.110, hereby appeals the FINAL ORDER of this Court entered on October 15, 2024. See Exhibit "A." This notice of appeal is hereby timely filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was filed with the clerk of court and furnished via electronic mail to Shadae Moss, Esquire, Progressive, 4030 Crescent Park Drive, A Building/South, Suite 100, Riverview, Florida 33578, shadae_moss@progressive.com, ashley_a_llovet@progressive.com, FLPIPHC-Miami@Progressive.com, on this 8th day of November 2024.

/s/ Chad A. Barr
CHAD A. BARR, ESQ.
Florida Bar No. 0055365
CHAD BARR LAW
238 North Westmonte Drive
Suite 200
Altamonte Springs, Florida 32714
Phone: (407) 599-9036
Email: service@chadbarrlaw.com
linda@chadbarrlaw.com
chad@chadbarrlaw.com
Counsel for Plaintiff/Appellant

STATE OF FLORIDA, COUNTY OF MIAMI-DADE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

11-14 AD 20 24
JUAN FERNANDEZ-BARQUIN, Clerk of the Court and Comptroller, Miami-Dade County

Deputy Clerk



12662

EXHIBIT "A"

**IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2023-152944-CC-26

SECTION: CC02

JUDGE: Miesha S. Darrough

ADVANCED DIAGNOSTIC GROUP

Plaintiff(s) / Petitioner(s)

vs.

Progressive American Insurance Company

Defendant(s) / Respondent(s)

_____ /

ORDER OF DISMISSAL

Index #: 201189570

This MATTER came before the Court for hearing on September 26, 2024, on the Defendant's Motion to Dismiss Plaintiff's Amended Petition for Declaratory Relief. For the reasons set forth herein, the Defendant's Motion to Dismiss Plaintiff's Amended Petition for Declaratory Relief filed on 05/07/2024 is GRANTED.

This cause of action seeks a declaratory judgment where "Petitioner is in doubt as to whether Respondent possesses adequate evidence of the aforementioned purported deductible election." (See Paragraph 11 of Plaintiff's Amended Petition). Plaintiff alleged that Defendant lacked reasonable proof that was the dependent of Thomas Jones." (See Paragraph 14 of Plaintiff's Amended Petition) Plaintiff is outrage that a wife is automatically assumed to be the dependent of her husband.

Defendant moves to dismiss the petition for failure to state a cause of action. In ruling on a motion to dismiss, the court is "required to accept the factual allegations of the complaint as true and to consider those allegations and any inferences to be drawn therefrom in the light most favorable to the non-moving party." *Siegle v. Progressive Consumers, Inc.* 819 So. 2d 732, 734 (Fla. 2002) [27 Fla. L. Weekly S492a]. The Court concludes that the motion to dismiss is well-founded and the complaint has failed to allege the jurisdictional prerequisites for obtaining a declaratory judgment.

Plaintiff seeks a declaratory judgment. As such, Plaintiff claims a bona fide doubt about

their rights, status, immunities, powers or privileges. S. 86.021, Fla. Stat. (2020); People's Trust Insurance Co. v. Valentin, 305 So. 3d 324 (Fla. 3d DCA 2020) [45 Fla. L. Weekly D754b]. The requisites for declaratory relief are: 1) a bona fide, actual, present and practical need for the declaration; 2) a present ascertained or ascertainable state of facts or a present controversy about a state of facts; 3) a power, privilege, immunity or right of the party seeking relief must be dependent on the facts or the law applicable to the facts; 4) another person or persons must have an actual, present and adverse interest in the subject matter; 5) the adverse interests must be before the court; and 6) the declaration must not be merely giving legal advice. May v. Holley, 59 So. 2d 636 (Fla. 1952). The pleading must alleged facts showing a bona fide, adverse interest between the parties concerning the power, privilege, immunity or right of the pleader, the pleader's doubt and a showing the pleader is entitled to have that doubt removed. Treasure Chest Poker LLC v. Dept. of Business and Professional Regulation, etc., 238 So. 3d 338 (Fla. 2d DCA 2017) [42 Fla. L. Weekly D1478a]. These requirements are jurisdictional. *Id.*

There is no dispute that Maryellen Stanley Jones is related to the policyholder by marriage. There is no claim that she does not reside in the same household as the insured. There is no contention by the Plaintiff that Maryellen Stanley Jones is not a dependent. There is no dispute that Maryellen Stanley Jones is listed on the Policy's Declaration page as an insured person or that the deductible is to apply to her.

Plaintiff support for this case is the claim that the Defendant presumes that spouses are "dependents" as stated in section 627.739(1) and that this term has the only meaning that Plaintiff seeks to ascribe to it. This argument must fail for several reasons. There is no claim that Maryellen Stanley Jones is not a dependent within the meaning of the statute, or that she is not a dependent using the Plaintiff's definition of financial dependent. There is no bona fide need for a declaration based on present, ascertainable facts and therefore, the Court lacks jurisdiction to render declaratory relief.

The Court is persuaded by the Volusia County Court opinion, that the 5th District Court of Appeals issued a per curiam opinion affirming the County Court opinion granting Defendant's Motion to Dismiss. See South Florida Injury Centers, Inc. a/a/o Era Marshall v Progressive American Insurance Company, 29 Fla. L. Weekly Supp. 132a; South Florida Injury Centers, Inc. a/a/o Era Marshall v Progressive American Insurance Company, 5D21-630 (September 12, 2022).

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, that the Defendant's Motion to Dismiss is hereby GRANTED and this case is dismissed with prejudice.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 15th day of October, 2024.

Miesha S. Darrough

2023-152944-CC-26 10-15-2024 6:26 PM

Hon. Miesha S. Darrough

COUNTY COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: **12** (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

Electronically Served:

STEPHANIE VERA, pipsvc5@injurylawyers.com
Shadae Moss, shadae_moss@progressive.com
Shadae Moss, ashley_a_llovet@progressive.com
Shadae Moss, FLPIPHC-Miami@Progressive.com
Thomas Joseph Wenzel, pleadings@injurylawyers.com
Viviana Alvarez, viviana_alvarez@progressive.com

Physically Served: