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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-427

Filed 19 December 2023

Gaston County, No. 20CVS1700

DELLA LOPEZ, FRED LOPEZ, SHELLA GILL and PAUL IMRIE, Plaintiffs,

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Defendant.

Appeal by plaintiffs from order entered 21 December 2022 by Judge Lisa C. Bell in Gaston County Superior Court. Heard in the Court of Appeals 15 November 2023.

*Hamilton Stephens Steele & Martin, PLLC, by Daniel J. Finegan and M. Aaron Lay, for plaintiffs-appellants.*

*Longleaf Law Partners, by Benjamin L. Worley, for defendant-appellee.*

FLOOD, Judge.

Della Lopez, Fred Lopez, Shella Gill, and Paul Imrie (collectively “Plaintiffs”) appeal from the trial court’s 21 December 2022 Order, arguing the trial court erred by granting summary judgment in favor of The Prudential Insurance Company of

America (“Prudential”) and abused its discretion by denying Plaintiffs’ Motion to Compel. For the reasons that follow, we find no error or abuse of discretion.

**I. Factual and Procedural Background**

On 11 April 2007, Marsh @WorksSolutions (“Marsh”) sent a letter (the “Marsh Letter”) to Sherry Hill (“Sherry”) offering her the option to purchase a life insurance policy (the “Policy”) in the amount of \$54,000. The Policy had previously been maintained through Time-Warner Affiliated Companies, Sherry’s husband’s employer. Following her husband’s death, Sherry elected to purchase the Policy and continued to make the premium payments. To effectuate purchase of the Policy, Sherry completed and signed an Optional Group Universal Life Enrollment Form (the “Beneficiary Designation”) on 25 April 2007, naming her half-sister, Diana Imrie (“Diana”), as her sole beneficiary and Diana’s children as contingent beneficiaries.

Prior to January 2008, Marsh served as the program manager and custodian of records for Time-Warner, while Prudential was the program carrier. On 1 January 2008, Prudential became the custodian of records for Time-Warner, and Marsh subsequently transferred all of its records to Prudential, including the Beneficiary Designation. On 7 January 2008, Prudential received a copy of the Beneficiary Designation and scanned it into their Content Management Workflow System (“CMWS”). Prudential did not enter the information into the “LINX” system, where Prudential tracks the status of beneficiaries.

After her husband’s death in 2007, Sherry moved in with Diana and her then-

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husband Paul Imrie (“Paul”) in North Carolina. Diana and Paul divorced in December 2014, and Sherry continued to live with Diana in North Carolina until March 2016. In March 2016, Sherry asked one of her other half-sisters, Della Lopez (“Della”), if Sherry could relocate to Atlanta, Georgia, and live with Della. After Della agreed to allow Sherry to come live with her, Sherry’s half-brother, Fred Lopez (“Fred”), helped Sherry move from North Carolina to Georgia.

After Sherry moved to Atlanta, she went to a Wells Fargo bank to open a new checking account. While at Wells Fargo, Sherry determined that \$70,000 she believed to have been in her savings account had been removed. According to Della, Sherry believed Diana took the money because Diana was a joint signatory on the account and had access to the funds. Following this discovery, Sherry wanted to cancel the Policy with Prudential because she could no longer make the monthly payments, and “Diana was the sole beneficiary.”

On 17 March 2016, Sherry requested Della call Prudential and cancel the Policy on her behalf. Della, however, did not notify the Prudential representative that she was acting on behalf of Sherry, but instead introduced herself as “Sherry Hill.” During this “cancelation call” with Prudential, Della provided Sherry’s policy number, social security number, an updated address, and she requested the cancelation of the Policy. The Prudential representative advised Della she would send a “Cancel Coverage Form” via email. The representative did not explicitly state this form needed to be completed and returned to Prudential for the cancelation to be

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effectuated. Della did not complete and return this form. Without the return of this form, the cancelation of the Policy did not go into effect.

On 17 March 2016, Sherry attempted to commit suicide by overdosing on her heart medication. On 22 March 2016, Sherry died due to complications from her suicide attempt.

On 19 April 2016, Prudential sent a letter to Diana's address for the "Family of Sherry Hill," notifying them that Sherry had an insurance policy, but Prudential's records indicated there was no beneficiary on file. The letter further explained that if there was no beneficiary, the Policy would be paid "in order of preference: (1) surviving spouse; (2) surviving child(ren) in equal shares; (3) surviving parents in equal shares; (4) surviving siblings in equal shares; and (5) the estate." Sherry's only surviving family members were her surviving half-siblings—Diana, Della, Fred, and Shella Gill ("Shella").

On 10 May 2016, Diana emailed Prudential with a copy of the Beneficiary Designation form Sherry had signed in April 2007. After Prudential received the Beneficiary Designation from Diana, Steven Schweers ("Schweers"), a senior client services specialist for Prudential, was asked to verify whether the Beneficiary Designation should be accepted by Prudential. Schweers confirmed it matched the information in CMWS and concluded the Beneficiary Designation was valid. Schweers believed the original letter stating there was no beneficiary on file was sent in error after the representative who sent it neglected to check both CMWS and LINX

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to verify the existence of a beneficiary. Had the representative only checked LINX, the system would have indicated there was no beneficiary on file. Following Schweers's confirmation that the Beneficiary Designation was valid, Prudential paid Diana \$54,000, the full amount of the Policy.

On 5 May 2017, after Paul and Della learned Prudential paid the Policy to Diana, they sent an email to Prudential notifying them of the allegedly fraudulent insurance claim made by Diana. The email alleged Diana was aware the Policy had been canceled and therefore fraudulently claimed she was the beneficiary of the purportedly canceled Policy. Paul and Della requested a recording of the cancellation call to prove Sherry had canceled the Policy. On 19 May 2017, Prudential sent Della a recording of the cancellation call.

On 18 August 2017, Paul and Della sent a second email to Prudential, again claiming Diana committed insurance fraud by claiming to be the beneficiary of the Policy because they claimed to have told Diana on multiple occasions that Sherry canceled the Policy. Included with this email was a transcript of the cancellation call Della and Paul had transcribed from the cancellation call recording sent by Prudential. The transcript reflected that Della called Prudential acting as Sherry and requested to cancel the Policy. At no time during this call did Della inform the Prudential representative that her real name was Della Lopez, and she was calling on behalf of Sherry.

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As a result of Paul and Della's multiple emails and the transcription of the cancelation call, the matter was referred to Prudential's Corporate Investigations Division ("CID"). It is Prudential's internal procedure to refer any suspected fraud to CID, and per Prudential's procedures, it is fraudulent for someone to represent themselves as anyone other than who they are.

CID Investigator Peter Friscia ("Friscia") was assigned to investigate any alleged fraud regarding the payment of the Policy to Diana and the cancelation call made by Della. Following interviews with Della, Paul, and Diana, Friscia concluded there was no evidence to substantiate any fraud by Diana, but Della's impersonation of Sherry did constitute fraud. Friscia further concluded Paul "aided and abetted" Della by assisting her in canceling the Policy through researching the Policy and providing the contact information for Prudential so Della could make the cancelation call.

Based on Friscia's report, Prudential referred the case to the Georgia Department of Insurance (the "GDOI") for further investigation. It was Prudential's belief that it was required to report any suspected fraud to the GDOI. Any referral of suspected fraud is made through the National Association of Insurance Commissioners' Online Fraud Reporting System ("OFRS"). Prudential's referral stated that Della was suspected of committing insurance fraud due to her impersonation of Sherry on the cancelation call. The referral further stated Paul "aided and abetted" Della in her attempt to cancel the Policy.

On 13 May 2020, following the referral to the GDOI, Plaintiffs filed a Complaint in Gaston County District Court. In their first cause of action, Della, Fred, and Shella (the “Sibling-Plaintiffs”) requested a declaratory judgment as to their rights under the Policy. The second and third causes of action included claims for abuse of process as to Della and Paul, and Unfair and Deceptive Trade Practices (“UDTP”) as to all Plaintiffs. In the Complaint, the Sibling-Plaintiffs alleged Prudential was required to pay out the Policy to the surviving siblings in equal shares, and the payout to Diana was wrongful because she was not the beneficiary on file. The Complaint further alleged Prudential referred Della and Paul to the GDOI to “discredit and intimidate [Della and Paul] and cover up [Prudential’s] own malfeasance” in failing to investigate the proper beneficiary of the Policy.

On 15 June 2022, Prudential filed a Motion for Partial Summary Judgment as to the claims of Della and Paul. On 15 September 2022, Prudential filed a Motion for Partial Summary Judgment as to Fred and Shella’s request for declaratory judgment and claims for UDPT. On 24 October 2022, Plaintiffs filed a Motion to Compel all documents requested in Plaintiffs’ first set of discovery requests.

On 21 December 2022, Judge Bell granted both of Prudential’s partial motions for summary judgment and denied the motion to compel as moot. On 18 January 2023, Plaintiffs filed notice of appeal to this Court.

## **II. Jurisdiction**

This Court has jurisdiction to hear this appeal from a final judgment of a

superior court pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021).

### **III. Analysis**

Plaintiffs present two issues on appeal: whether the trial court erred by (A) granting summary judgment in favor of Prudential as to all claims asserted by Plaintiffs and (B) denying Plaintiffs' Motion to Compel. We address each issue in turn.

#### **A. Summary Judgment**

“Our standard of review of an appeal from summary judgment is de novo[.]” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). Summary judgment is only proper when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” N.C. R. Civ. P. 56(c). “As a general principle, summary judgment is a drastic remedy which must be used cautiously so that no party is deprived of trial on a disputed factual issue.” *Johnson v. Trs. of Durham Tech. Cmty. Coll.*, 139 N.C. App. 676, 681, 535 S.E.2d 357, 361 (2000). When considering a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. *See id.* at 683, 535 S.E.2d at 362. A motion for summary judgment should be denied “when there is more than a scintilla [of evidence] to support [a] plaintiff's prima facie case. Where the question of granting [summary judgment] is a close one, the better practice is for the trial judge to reserve his decision on the motion and

submit the case to the jury.” *Edwards v. West*, 128 N.C. App. 570, 573, 495 S.E.2d 920, 923 (1998).

1. Validity of the Beneficiary Designation

First, the Sibling-Plaintiffs argue the trial court erred in granting Prudential’s Motion for Summary Judgment on the Sibling-Plaintiffs’ claim for declaratory judgment because there “was a genuine controversy” with regard to their rights in the Policy based on the alleged invalidity of the Beneficiary Designation. We disagree.

“The purpose of the Declaratory Judgment[] Act is, to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 287, 134 S.E.2d 654, 657 (1964) (citation and internal quotation marks omitted). “While the Declaratory Judgment Act should be liberally construed[, it] applies ‘only when the pleadings and evidence disclose the existence of a genuine controversy between the parties to the action, arising out of conflicting contentions as to their respective legal rights and liabilities under a . . . contract . . . .’” *Integon Nat’l Ins. Co. v. Helping Hands Specialized Transp., Inc.*, 233 N.C. App. 652, 658, 758 S.E.2d 27, 32 (2014) (citation omitted). A declaratory judgment, therefore, is only “appropriate when it will ‘alleviat[e] uncertainty in the interpretation of [a] written instrument[.]’” *Id.* at 658, 758 S.E.2d at 32 (alterations in original) (citation omitted).

The Sibling-Plaintiffs first argue Prudential’s initial position that there was no

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beneficiary on file and their “sudden discovery” of the Beneficiary Designation in the midst of litigation creates a genuine issue as to the validity of their discovery. This argument, however, is unsupported by the evidence.

Aside from the Sibling-Plaintiffs’ unsupported allegation of a coverup by Prudential, there is no uncertainty as to the respective legal rights of the parties in the Policy. The evidence in the Record shows Diana submitted a Beneficiary Designation, signed by Sherry, noting Diana as the sole beneficiary of the Policy. After a review of CMWS, Prudential confirmed the information in the Beneficiary Designation and concluded the claim by Diana was valid. The Record further shows the initial letter sent by Prudential—claiming there was no beneficiary on file—was sent in error because the Prudential representative assigned to Sherry’s case likely did not check CMWS and LINX to confirm whether the Policy had a beneficiary. This theory is supported by Prudential’s system, which shows it received and scanned the signed Beneficiary Designation on 13 February 2008.

Moreover, the Sibling-Plaintiffs’ own evidence shows they likewise believed Diana was the beneficiary of the Policy. In a letter sent by Paul and Della to Prudential, they stated they believed Diana was the beneficiary: “. . . Diana Imrie[,] who we understand had been the [l]ife [i]nsurance beneficiary on Sherry’s policy . . . .” The letter again confirmed Paul and Della believed Sherry wanted to cancel the Policy “as she no longer had money to pay for it and ‘*Diana was the sole beneficiary.*’” (emphasis added). The letter went so far as to put quotations around the statement

that “Diana was the sole beneficiary.” Lastly, Shella stated in her deposition that Sherry had told her she wanted to cancel the Policy because “[Sherry] didn’t want Diana to get her money.”

Thus, the Sibling-Plaintiffs have failed to show Prudential’s initial error in the lack of beneficiary on file creates an “existence of a genuine controversy” as to the Sibling-Plaintiffs’ rights under the Policy because the evidence shows Diana was the beneficiary of the Policy. *See Helping Hands Specialized Transp., Inc.*, 233 N.C. App. at 658, 758 S.E.2d at 32.

The Sibling-Plaintiffs next contend Della never stated she believed Sherry signed the Beneficiary Designation. While Della may have stated she did not believe Sherry signed the Beneficiary Designation, Della did not dispute that the signature appeared to be Sherry’s. Della further stated that she did not have any reasons to believe that the Beneficiary Designation was not prepared by Sherry. Della’s belief does not create a genuine dispute as there is no evidence indicating the signature was not Sherry’s.

The Sibling-Plaintiffs’ final contention is that there is a genuine dispute as to the continuity of the policy carried by Marsh and the policy carried through Prudential because the policy numbers were different. According to the Sibling-Plaintiffs, there was no indication the designation form attached to the Marsh Letter would apply to the new policy number created by Prudential after January 2008. This argument is as confusing as it is misguided, as the Marsh Letter clearly identifies

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Prudential as the program carrier. Additionally, in the upper right-hand corner of the Beneficiary Designation, the header reads “The Prudential Insurance Company of America.” There is no evidence any policies managed by Marsh were altered in any way when Prudential became the records custodian in January 2008. There is, however, evidence to the contrary. Joseph Bianco, a process manager for Prudential, stated in his affidavit: “It is my understanding that [] [the Sibling-]Plaintiffs have disputed whether the terms and conditions of [Sherry’s] insurance coverage changed in 2008, when Prudential took over for Marsh[] as program manager and administrator. The terms and conditions of [Sherry’s] insurance coverage did not change in any substantial way.” Thus, the change in records custodian from Marsh to Prudential did not alter the Policy in any meaningful way, and the Beneficiary Designation, therefore, remained valid.

In sum, the Sibling-Plaintiffs have failed to show the existence of a genuine issue of material fact as to the validity of the Beneficiary Designation because the overwhelming evidence, taken in the light most favorable to the Sibling-Plaintiffs, shows Diana was the rightful beneficiary of the Policy. *See Johnson*, 139 N.C. App. at 681, 535 S.E.2d at 361.

2. Abuse of Process

Second, Della and Paul argue the trial court erred in granting summary judgment in favor of Prudential as to Della and Paul’s claim for abuse of process. Specifically, Della and Paul argue Prudential’s referral of the alleged fraud to the

GDOI and OFRS should be deemed a “legal process” under North Carolina law.

“[A]buse of process is the misuse of *legal process* for an ulterior purpose. It consists in the malicious misuse or misapplication of that process *after issuance* to accomplish some purpose not warranted or commanded by the writ.” *Chidnese v. Chidnese*, 210 N.C. App. 299, 310, 708 S.E.2d 725, 734 (2011) (alteration in original) (first emphasis added). The threshold requirement for an abuse of process claim, therefore, is that the complained of activity meets the requirements of a “process” as defined by our law. The term “process,” as it pertains to the legal sense, is “a summons, mandate, or writ that serves as the means to bring a defendant into court to answer in a judicial action or in a suit in litigation.” *State v. Graham*, 309 N.C. 587, 590, 308 S.E.2d 311, 314 (1983) (citation and internal quotation marks omitted).

Della and Paul rely on *Saxon v. Smith*, 125 N.C. App. 163, 479 S.E.2d 788 (1997) to liken the referral to the GDOI and OFRS to that of a report made to a police department because “[e]ach situation triggers a review by a body with authority to conduct criminal investigations and bring charges.” This comparison, however, is misguided.

In *Saxon*, the defendant made a complaint to the Henrico County, Virginia police department claiming the plaintiff was “armed and dangerous.” *Id.* at 166, 479 S.E.2d at 790. This complaint led to the immediate filing of an arrest warrant for the plaintiff. *Id.* at 166, 479 S.E.2d at 790. The plaintiff subsequently filed a complaint against the defendant alleging, *inter alia*, abuse of process for the falsely made police

report. *Id.* at 167, 479 S.E.2d at 790. The defendant filed a motion to dismiss for lack of personal jurisdiction, which the trial court denied, and the defendant appealed. *Id.* at 167, 479 S.E.2d at 790. This Court concluded the plaintiff's detailed allegations of the defendant's "initiation" of the criminal proceedings was sufficient to overcome the defendant's personal jurisdiction challenge. *Id.* at 172, 479 S.E.2d at 793.

Turning to the case at hand, *Saxon* is distinguishable because Friscia's referral of suspected fraud did not initiate criminal proceedings. Friscia testified in his deposition that he did not have the ability to bring criminal charges on anyone's behalf. When asked whose decision it was to bring criminal charges, he answered, "[t]he law enforcement that was referred the referral to [sic]," *i.e.*, the GDOI. Any future criminal proceedings were not triggered upon Friscia's referral, but upon the independent investigations of the GDOI.

Thus, Prudential's referral was not a "legal process" under North Carolina law because issuance of the referral did not require Della and Paul to go to a "court to answer in a judicial action or in a suit in litigation," or "initiate" criminal proceedings. *See Graham*, 309 N.C. at 590, 308 S.E.2d at 314; *see also Saxon*, 125 N.C. App. at 172, 479 S.E.2d at 793.

### 3. Unfair and Deceptive Trade Practices

Finally, Plaintiffs argue Prudential engaged in UDTP by failing to "effectuate prompt, fair, and equitable settlement of the pay out of [Sherry]'s Policy" and in "engaging in a deceptive and punitive course of conduct against [Della and Paul.]"

Plaintiffs further argue an abuse of process can also be indicative of UDTP. Because we have already concluded Prudential properly paid the Policy to the listed beneficiary—Diana—and Della and Paul cannot show an abuse of process claim, the trial court did not err in granting Prudential summary judgment on this claim, and we therefore do not reach the merits of this argument.

### **B. Motion to Compel**

Plaintiffs' final assignment of error is that the trial court erred in granting Prudential's Motion for Summary Judgment prior to acting on Plaintiffs' Motion to Compel, and subsequently denying the Motion to Compel as moot. We disagree.

A trial court's denial of a motion to compel is reviewed under an abuse of discretion standard. *Estate of Ray v. Forgy*, 245 N.C. App. 430, 436, 783 S.E.2d 1, 6 (2016). "To demonstrate an abuse of discretion, *the appellant* must show that the trial court's ruling was manifestly unsupported by reason, or could not be the product of a reasoned decision." *Wachovia Bank v. Clean River Corp.*, 178 N.C. App. 528, 531, 631 S.E.2d 879, 882 (2006) (citation omitted). A trial court's decision on a matter committed to its discretion shall be accorded great deference. *Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006).

As an initial matter, we recognize that "[i]t is ordinarily error for a trial court to rule on a summary judgment motion without addressing a pending motion to compel discovery that 'might lead to the production of evidence relevant to the motion . . . and the party seeking discovery has not been dilatory in doing so.'" *Hamby v.*

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*Profile Prods., LLC*, 197 N.C. App. 99, 112, 676 S.E.2d 594, 603 (2009) (second alteration in original) (citation omitted). In this case, however, the transcript reflects that the trial court considered the Motion to Compel at the summary judgment hearing. The trial court heard from both Plaintiffs and Prudential on the matter. The trial court did not rule on the motion for summary judgment before addressing the motion to compel, but instead ruled on them simultaneously. We therefore proceed with our abuse of discretion review.

On appeal, Plaintiffs cite no case law in arguing the trial court abused its discretion, and their argument is subject to dismissal for this error alone. *See Consol. Elec. Distrib., Inc. v., Dorsey*, 170 N.C. App. 684, 686, 613 S.E.2d 518, 520 (2005) (“A party’s assignment of error is deemed abandoned in the absence of citation to supporting authority.”). Instead, Plaintiffs include a list of all the documents they allege were either not provided by Prudential or were provided after depositions had already been taken. Plaintiffs fail to make any arguments, however, demonstrating how those documents were expected to create a genuine dispute of material fact such that summary judgment should have been denied.

At the summary judgment hearing, Prudential’s counsel represented to the trial court that all the requested documents had been produced except for any documents related to Prudential’s Americans with Disability Act (“ADA”) policies, which Prudential specifically objected to producing because there was no evidence an ADA violation occurred. In response, Plaintiffs argued Prudential had previously

claimed “we’ve given you everything, there is nothing more” in reference to document requests, only for Prudential to later find additional discoverable documents and turn them over to Plaintiffs. Plaintiffs seemingly requested the trial court infer that Prudential had lied about not having documents before and would therefore do so again. Following Plaintiffs’ argument, Prudential again represented they had produced all documents. To support this, Prudential offered to provide a written affidavit representing to the trial court that all requested documents that were not objected to had been produced. It does not appear from the Record that the trial court found this necessary.

Based on the trial court’s consideration of the motion to compel, the denial of the motion cannot be said to be an abuse of discretion. The overwhelming evidence presented to the trial court demonstrated the Beneficiary Designation was valid, and Diana was the sole beneficiary of the Policy. Plaintiffs did not meet their burden of demonstrating how any other evidence would refute this conclusion. Plaintiffs, therefore, have failed to meet the high threshold of showing that the trial court abused its discretion. *See Wachovia Bank*, 178 N.C. App. at 531, 631 S.E.2d at 882.

Thus, the trial court did not abuse its discretion in denying Plaintiffs’ Motion to Compel.

#### **IV. Conclusion**

For the aforementioned reasons, we conclude the trial court did not err in granting summary judgment in favor of Prudential on all claims, nor did it abuse its

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discretion in denying Plaintiffs' Motion to Compel. Thus, we affirm the Order of the trial court.

AFFIRMED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).