



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-21-00065-CV

STATE FARM MUTUAL AUTOMOBILE INS. CO. &
STATE FARM COUNTY MUTUAL INS. CO. OF TEXAS, Appellants

V.

GREG RUMBAUGH, Appellee

On Appeal from the 4th District Court
Rusk County, Texas
Trial Court No. 2019-348

Before Morriss, C.J., Stevens and Carter,* JJ.
Opinion by Chief Justice Morriss

*Jack Carter, Justice, Retired, Sitting by Assignment

OPINION

Greg Rumbaugh sued State Farm Mutual Automobile Insurance Company (State Farm) and State Farm County Mutual Insurance Company of Texas after State Farm failed to pay personal injury protection (PIP) benefits “not later than the 30th day after the date the insurer receive[d] satisfactory proof of a claim,” as required by Section 1952.156 of the Texas Insurance Code.¹ TEX. INS. CODE ANN. § 1952.156. The sole question raised in this appeal is whether the trial court erred by resolving cross-motions for summary judgment in Rumbaugh’s favor, thereby determining that he was entitled to statutory penalties under Section 1952.157 of the Texas Insurance Code even though PIP benefits were paid before the lawsuit was filed.

“PIP coverage . . . is a form of no-fault insurance.” *Mid-Century Ins. Co. of Tex. v. Kidd*, 997 S.W.2d 265, 268 (Tex. 1999); *see* TEX. INS. CODE ANN. § 1952.155. “PIP’s limitation to medical expenses and lost wages, along with its collateral-source and no-fault features, are designed to simplify and hasten claim resolution and payment.” *Kidd*, 997 S.W.2d at 268–69. We conclude that, because Section 1952.157 provides for “a penalty of 12 percent,” among other things, if an insurer fails to pay PIP benefits “when due,” the trial court properly ruled that Rumbaugh was entitled to statutory penalties when PIP benefits were paid past Section 1952.156’s statutory deadline, even though they were paid before the lawsuit was filed. TEX. INS. CODE ANN. § 1952.157. As a result, we affirm the trial court’s judgment.

“Appellate courts review de novo the grant or denial of a motion for summary judgment.”

Banta Oilfield Servs., Inc. v. Mewbourne Oil Co., 568 S.W.3d 692, 700 (Tex. App.—Texarkana

¹Rumbaugh nonsuited all claims against State Farm Mutual Insurance Company of Texas, and those claims were dismissed by the trial court.

2018, pet. denied). “The party moving for traditional summary judgment bears the burden of showing no genuine issue of material fact exists and it is entitled to judgment as a matter of law.” *Id.* (quoting *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009)). “Where, as here, ‘both sides move for summary judgment and the trial court grants one motion and denies the other, we review the summary judgment evidence presented by both sides and determine all questions presented.’” *Id.* (quoting *Fielding*, 289 S.W.3d at 848). “After making a determination as to all of the questions presented, the appellate court must render the judgment the trial court should have rendered.” *Id.* (citing *Nash v. Beckett*, 365 S.W.3d 131, 136 (Tex. App.—Texarkana 2012, pet. denied)).

Rumbaugh’s lawsuit against State Farm, brought under Section 1952.157 of the Texas Insurance Code, sought statutory benefits, penalties, interest, and attorney fees, among other things. The parties’ cross-motions for summary judgment involved Sections 1952.156 and 1952.157 of the Texas Insurance Code. Section 1952.156, titled “Payment of benefits,” provides that, “[s]ubject to the requirements of this section and Section 1952.157, an insurer shall pay benefits under the coverage required by this subchapter periodically as claims for those benefits arise, but not later than the 30th day after the date the insurer receives satisfactory proof of a claim.” TEX. INS. CODE ANN. § 1952.156(a). Section 1952.157, titled “Action for Failure to Pay Benefits” reads:

(a) If the insurer fails to pay benefits under the coverage required by this subchapter when due, the person entitled to those benefits may bring an action in contract to recover the benefits.

(b) If the insurer is required to pay benefits described by Subsection (a), the person entitled to the benefits is entitled to recover reasonable attorney’s fees, a

penalty of 12 percent, and interest at the legal rate from the date those amounts became overdue.

TEX. INS. CODE ANN. § 1952.157.²

To simplify the case, the parties stipulated to the following key facts:

1. On or about November 7, 2017, *STATE FARM* delivered to *RUMBAUGH* a Texas personal automobile liability insurance policy which included \$2,500.00 of personal injury protection (the “Policy”).

....

3. On December 2, 2017, while the Policy was in full force and effect, *RUMBAUGH*’s son sustained bodily injuries in an automobile accident (the “Accident”) in Rusk County, Texas.

4. On March 2, 2018, *RUMBAUGH* submitted a claim (the “Claim”) for the Policy’s \$2,500.00 personal injury protection benefits (the “Benefits”) in connection with medical and other expenses incurred as a result of the accident.

5. *STATE FARM* did not dispute the claim.

6. The amounts owed under the policy for personal injury protection benefits were due April 2, 2018.

7. On April 5, 2018[,] *STATE FARM* paid the Benefits but mailed the check to an incorrect address.

8. On April 25, 2018, *STATE FARM* re-issued its check for the Benefits and mailed it to the correct address.

9. *RUMBAUGH* deposited the check for the Benefits.

10. *RUMBAUGH* is the person entitled to the Benefits.

11. *STATE FARM* did not pay the Benefits before the 30th day after the date on which it received satisfactory proof of the claim.

²“The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.” TEX. GOV’T CODE ANN. § 311.024.

12. *STATE FARM* did not pay *RUMBAUGH* the 12% penalty, interest or attorney's fees that Plaintiff contends are owed under Texas Insurance Code § 1952.157(b).

13. *STATE FARM* paid all Benefits to which *RUMBAUGH* was entitled before he filed suit.

14. *RUMBAUGH* does not seek to recover any policy benefits in this suit.

In their motions for summary judgment, both parties argued the interpretation of Section 1952.157. Specifically, State Farm argued that the twelve percent statutory penalty could be awarded only in a suit to recover PIP benefits and that, because PIP benefits were paid before Rumbaugh filed suit, the statutory penalty could not be recovered.³ The trial court disagreed with State Farm's argument. As a result, it granted Rumbaugh's motion for summary judgment and entered a final judgment ordering that Rumbaugh "recover from State Farm Mutual Automobile Insurance Company the sum of \$300.00 together with interest as prescribed by law and all costs of Court." This appeal is resolved by statutory construction.

"Statutory construction is a question of law that we review de novo." *Kilgore Indep. Sch. Dist. v. Axberg*, 572 S.W.3d 244, 257 (Tex. App.—Texarkana 2019, pet. denied) (citing *MCI Sales & Serv., Inc. v. Hinton*, 329 S.W.3d 475, 499 (Tex. 2010); *McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex. 2003)). "Our primary goal in construing a statute is to ascertain and give effect to the legislature's intent." *Id.* at 257–58 (citing *Hinton*, 329 S.W.3d at 499; *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999); *Pilgrim's Pride Corp. v. Cernat*, 205 S.W.3d 110, 117 (Tex. App.—Texarkana 2006, pet. denied)). "Where the text is clear, text is determinative of that intent." *Id.* at 258 (quoting *Entergy Gulf States, Inc. v.*

³By separate agreement, the parties resolved Rumbaugh's claim for attorney fees.

Summers, 282 S.W.3d 433, 437 (Tex. 2009)). “This is because ‘the Legislature expresses its intent by the words it enacts and declares to be the law.’” *Id.* (quoting *Bosque Disposal Sys., LLC v. Parker Cty. Appraisal Dist.*, 555 S.W.3d 92, 94 (Tex. 2018)).

“To ascertain that intent, we look first to the ‘plain and common meaning of the statute’s words.’” *Id.* (quoting *McIntyre*, 109 S.W.3d at 745 (quoting *State ex rel. State Dep’t of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002))) (citing TEX. GOV’T CODE ANN. § 311.011; *Fitzgerald*, 996 S.W.2d at 865). “We construe the statute according to its plain language if the language is unambiguous.” *Id.* (citing *McIntyre*, 109 S.W.3d at 745; *Fitzgerald*, 996 S.W.2d at 865; *Cernat*, 205 S.W.3d at 117). “This general rule applies unless enforcing the plain language of the statute as written would produce absurd results.” *Id.* (quoting *Summers*, 282 S.W.3d at 437 (citing *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278, 284 (Tex. 1999))).

“Further, in determining legislative intent, we look to the statute as a whole and not isolated portions.” *Id.* (citing *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008)). “We presume that the Legislature had a purpose for words included in the statute and that it purposefully omitted words excluded from the statute.” *Id.* (citing *In re M.N.*, 262 S.W.3d at 803; *Cernat*, 205 S.W.3d at 117). “When a statutory term is undefined, we will not find ‘a meaning that is out of harmony or inconsistent with other provisions in the statute.’” *Id.* (quoting *McIntyre*, 109 S.W.3d at 745). Instead, “we look to the meaning of the words used, or of a particular clause, within the context of the statute” and “study the language of the specific provision at issue, within the context of the statute as a whole, endeavoring to give effect to every word, clause, and sentence.” *Id.* (quoting

Ritchie v. Rupe, 443 S.W.3d 856, 867 (Tex. 2014) (citing *In re Office of Att’y Gen.*, 422 S.W.3d 623, 629 (Tex. 2013); *Fitzgerald*, 996 S.W.2d at 866)). Typically, “the words [the Legislature] chooses should be the surest guide to legislative intent.” *Id.* (quoting *Summers*, 282 S.W.3d at 437 (quoting *Fitzgerald*, 996 S.W.2d at 866)). “Only when those words are ambiguous do we ‘resort to rules of construction or extrinsic aids.’” *Id.* (quoting *Summers*, 282 S.W.3d at 437 (quoting *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007))).

State Farm argues that, because it paid all PIP benefits before the lawsuit, Rumbaugh neither sought nor obtained PIP benefits in the lawsuit and, as a result, is not entitled to statutory penalties. It further contends that “an order from [a] court requiring the insurer to pay policy benefits that it has previously failed to pay is a precondition to the imposition of the statutory penalty.” A plain reading of the relevant statutes, which we find unambiguous, leads us to disagree.

Sections 1952.156 and 1952.157 refer to each other and provide a complete picture of the Legislature’s intent. Section 1952.156(a) establishes that a person is entitled to benefits on “the date the insurer receives satisfactory proof of a claim.” TEX. INS. CODE ANN. § 1952.156(a). Section 1952.157 addresses what happens “[i]f the insurer fails to pay benefits under the coverage required by this subchapter when due.” TEX. INS. CODE ANN. § 1952.157(a). “Texas statutes have long punished insurers for delays beyond 30 days,” *State Farm Life Ins. Co. v. Martinez*, 216 S.W.3d 799, 804 (Tex. 2007), and, as applicable here, PIP benefits were required to be paid “periodically as claims for those benefits [arose], but not later than the 30th day after the date the insurer receive[d] satisfactory proof of a claim.” TEX. INS. CODE ANN.

§ 1952.156(a). State Farm stipulated that Rumbaugh was entitled to the benefits and that it did not pay PIP benefits when due. This triggered the second phrase in Section 1952.157(a), which establishes that, when the insurer fails to pay PIP benefits when due, “the person entitled to those benefits *may* bring an action in contract to recover [them],” but is not required to do so.⁴ TEX. INS. CODE ANN. §§ 1952.156(a), 1952.157(a); *see* TEX. GOV’T CODE ANN. § 311.016(1). In other words, a lawsuit is not required for a person to be entitled to the no-fault PIP benefits because a person is immediately entitled to such benefits once an insurer receives satisfactory proof of the claim.

We likewise find that a lawsuit to recover PIP benefits is not a prerequisite to the statutory penalties described by Subsection (b), which states, “If the insurer is required to pay benefits described by Subsection (a), the person entitled to the benefits is entitled to recover reasonable attorney’s fees, a penalty of 12 percent, and interest at the legal rate from the date those amounts became overdue.” TEX. INS. CODE ANN. § 1952.157(b). The phrase “[i]f the insurer is required to pay benefits described by Subsection (a)” refers to the first phrase in Subsection (a), which says that the insurer is required to pay PIP benefits when due, not the second phrase’s statement that a person entitled to benefits “may bring an action in contract.” TEX. INS. CODE ANN. § 1952.157(a)–(b). This is because PIP benefits are due and must be paid no later than thirty days after receiving satisfactory proof of a claim, as established by Section 1952.156’s language, which always is “[s]ubject to the requirements of . . . Section 1952.157,”

⁴“An insured’s claim for breach of an insurance contract ‘is distinct and independent from a claim that an insurer violated the Insurance Code.’” *Certain Underwriters at Lloyd’s, London v. Prime Nat. Res., Inc.*, 634 S.W.3d 54, 75 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (quoting *Barbara Techs. Corp. v. State Farm Lloyds*, 589 S.W.3d 806, 825 (Tex. 2019) (quoting *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489 (Tex. 2018))); *see Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 129 (Tex. 2019).

not just when a lawsuit is filed.⁵ TEX. INS. CODE ANN. § 1952.157(a). Simply put, an insurer’s obligation to pay benefits is not triggered by a lawsuit, it is triggered by the statutory deadline.⁶ See 12 STEVEN PLITT ET AL., COUCH ON INSURANCE § 171:48 (3d ed. 1997).

As a result, and as plainly stated in the second phrase of Subsection (b), “the person entitled to the benefits is entitled to recover” statutory penalties if the insurer misses the statutory deadline. See *Grain Dealers Mut. Ins. Co. v. McKee*, 911 S.W.2d 775, 782 (Tex. App.—San Antonio 1995), *rev’d on other grounds*, 943 S.W.2d 455 (Tex. 1997) (finding that 1981 version of Article 5.06-3 of Texas Insurance Code, predecessor to Section 1952.157, “entitle[d] an insured to recover a twelve percent penalty when PIP proceeds [were] not paid within thirty days”). Had the Legislature wished to state that the person entitled to *recover* benefits is entitled to recover statutory penalties, it could have easily done so. See *Tex. Dep’t of Criminal Justice v. Rangel*, 595 S.W.3d 198, 210 (Tex. 2020) (“We ‘may not impose [our] own judicial meaning on a statute by adding words not contained in the statute’s language,’ and we presume that ‘the Legislature purposefully omitted words it did not include.’” (alteration in original) (quoting *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019))). We find that the second phrase of subsection (b), by its plain wording, is not conditioned on a recovery of PIP benefits in a lawsuit and that the plain terms of the statute do not require a lawsuit to recover PIP benefits for a person to be entitled either to PIP benefits or statutory penalties. Therefore, State Farm’s

⁵Section 1952.156 also sets forth situations, not applicable here, when the insurer would not be required to pay benefits. TEX. INS. CODE ANN. § 1952.156.

⁶State Farm argues that the phrase “required to pay benefits” means that a court must require an insurer to pay benefits before statutory penalties can be awarded. Because an insurer is also required to pay benefits under Section 1952.156, we reject State Farm’s interpretation.

argument, that the statute provides for the award of a statutory penalty only in a suit to recover the benefits fails.

We conclude that Rumbaugh was entitled to statutory penalties as soon as State Farm failed to pay PIP benefits when due. As a result, we affirm the trial court's judgment.

Josh R. Morriss, III
Chief Justice

Date Submitted: December 22, 2021
Date Decided: February 15, 2022