

IN THE COUNTY COURT OF THE  
FOURTH JUDICIAL CIRCUIT IN AND  
FOR DUVAL COUNTY, FLORIDA

CASE NO: 16-2016-SC-000833  
DIVISION: CC-M

DODD CHIROPRACTIC CLINIC, P.A.  
a/a/o Tracy Davis,

Plaintiff,

v.

USAA CASUALTY INSURANCE  
COMPANY,

Defendant.

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**AMENDED ORDER CLARIFYING THE COURT'S MARCH 4, 2020 ORDER  
GRANTING DEFENDANT'S MOTION TO TAX FEES AND COSTS**

THIS CAUSE came before the Court on Plaintiff's Motion for Rehearing/Reconsideration of this Court's March 4, 2020 Order Granting Defendant's Motion to Tax Fees and Costs, and having hearing arguments of counsel on May 19, 2020, the Court maintains its previous ruling but only amends its March 4, 2020 Order to include an additional finding of fact.

THIS CAUSE came before the Court on January 15, 2020, upon hearing Defendant's motion to tax attorney's fees and costs with regard to its Motion for Sanctions Pursuant to Florida Statute §57.105. Counsel for both parties appeared before the Court. After having heard arguments of counsel, considered all Motions and Responses, and being otherwise duly advised in the premises, the Court finds as follows:

On May 2, 2012, the assignor was involved in a motor vehicle accident. Defendant reviewed and adjusted Plaintiff's bills in accordance with the policy of insurance and the no-fault statute, however, duplicate payments were made in error. This resulted in Plaintiff being

paid in full and overpaid. Defendant later received a purported pre-suit demand from Plaintiff. Prior to service of its purported pre-suit demand, Plaintiff was paid in full and, in fact, paid more than was due and owing. Despite this, Plaintiff filed suit.

Defendant asserted in its responsive pleadings that Plaintiff was paid in full, such that no amounts were due and owing. Defendant filed a properly served 57.105 Motion for Sanctions. In its motion, Defendant stated that Plaintiff had been paid in full and moved for this Court to tax attorney's fees and costs to Plaintiff.

This Court finds that Defendant's Motion for Sanctions regarding Plaintiff being paid in full, was filed properly and timely. This Motion served to put Plaintiff on notice that sanctions would be sought if it did not dismiss. Plaintiff did not timely dismiss the case; instead Plaintiff argued that a second motion regarding entitlement to attorney's fees must be filed pursuant to Fla. R. Civ. P. 1.525 in order for Defendant to prevail. This Court disagrees.

The plain language of the §57.105 is explicit that at any time during the preceding the court must award damages, to include attorney's fees, if the moving party prevails. Section 57.105(1-2) explicitly states:

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation.—

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

(2) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

This Court's reading of the §57.105 is contrary to Plaintiff's argument that there is a specific time frame for the filing such a motion. This Court reading of the §57.105 is that such motions can be filed at any time in any civil mater.

Furthermore, The Florida Supreme Court has analyzed the text of Fla. R. Civ. P. 1.525 in order to decide "whether the time requirement of rule 1.525 established only a narrow window of thirty days following the judgment in which to serve the motion for fees and costs or whether, instead, it prescribed only the latest point at which the motion may be served." *Barco v. Sch. Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1119-20 (Fla. 2008). Based upon the Florida Supreme Court's that ruling in *Barco*, the Defendant's 57.105 motion would still be considered timely served and filed.

Defendant served its 57.105 Motion for Sanctions on August 11, 2017 and filed the motion on March 28, 2018. In its motion, Defendant moved for this court to tax attorney's fees and costs. Defendant's filing of its motion to tax attorney's fees and costs is timely because it was filed prior Plaintiff's dismissal.

This Court also makes the following finds of fact:

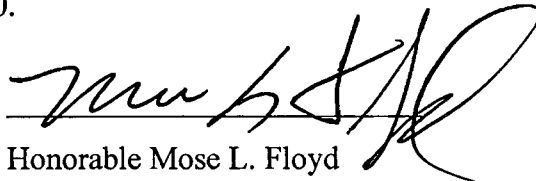
1. Plaintiff was in fact paid full prior to the commencement of this action

2. Plaintiff knew or should have known that it was paid in full prior to the commencement of this action, as Defendant asserted in its initial pleadings. It is not necessary for this Court to reach a specific conclusion as to whether the Defendant was aware of the specific means by which Plaintiff was considered paid in full. It is Plaintiff who lodged the complaint and it is Plaintiff who is responsible for ensuring that the case was supported by the facts.
3. At the time Defendant served its 57.105, Plaintiff knew or should have known that its claim for penalty, postage and interest was not supported by necessary material facts and would not be supported by application of then existing law.
4. Plaintiff knew or should have known that its claim for additional benefits was not supported by fact or law. All the facts and evidence needed to determine that Plaintiff had been paid in full under the theory of recoupment was available to Plaintiff at the outset of this case. When recoupment was raised in this case by Defendant, Plaintiff incorrectly argued that the defense was not applicable to this case. Nonetheless, Plaintiff later dismissed the claim against the Defendant.
5. Viewed in total, this Court considers Plaintiff's actions frivolous. However, for the inception of this case, the Court must allow that error of oversight may have led to a faulty filing. However, over the course of the four (4) year life span on this case, and this Court's recognition that recoupment is applicable in a PIP claim, this Court has reached the conclusion that the Plaintiff misconstrued facts and aspects of the applicable law. Plaintiff knew or should have known that this case should have been dismissed long before arriving at the eve of a hearing on Defendant's Motion for Summary Judgment.

6. Accordingly, this Court finds that Plaintiff's action was frivolous upon the service of Defendant's 57.105 motion of sanctions. Defendant attached to its §57.105 motion all documents necessary for Plaintiff to determine that the action was frivolous. Also, the frivolous nature of the Plaintiff's claim became clearly evident upon Defendant's corporate representative's testimony at deposition on August 24, 2017. This deposition revealed that double payments of bills related to the Plaintiff's treatment in this case resulted in full payment of Defendant's monetary obligations to the Plaintiff.
7. Plaintiff's claim was devoid of merit both on the facts and the law, such that the claim was untenable.

Based on the foregoing, it is **ORDERED** and **ADJUDGED** that Defendant's Motion to Tax Fees and Costs is **GRANTED**. This Court reserves jurisdiction to determine the amount and allocation of the award of attorneys' fees and costs to be awarded to the Defendant.

DONE AND ORDERED in Chambers in Jacksonville, Duval County, Florida, this  
26<sup>th</sup> day of May, 2020.

  
Honorable Mose L. Floyd

Copies furnished to:  
Christina M. Saad, Esq. and James C. Rinaman, III, Esq., Attorneys for Defendant  
Crystal L. Eiffert, Esq., Attorney for Plaintiff