

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1133**

Gillespie Law Offices, LLP,
Appellant,

vs.

State Farm Mutual Automobile Insurance Company,
Respondent,
Woodlands Chiropractic, P.A.,
Third-Party Defendant.

**Filed March 22, 2021
Reversed and remanded
Florey, Judge**

Stearns County District Court
File No. 73-CV-19-6831

Patrick R. Gillespie, Michael P. Gillespie, Gillespie Law Offices, LLP, Rogers, Minnesota
(for appellant)

Angela C. Shackleford, Patrick J. Rohl, LaBore, Giuliani, Shackleford, Klehr & Jensen-
Lea, Ltd., Hopkins, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

Appellant law firm represented respondent's insured in connection with injuries sustained in a car accident. Appellant now challenges the district court's grant of summary judgment to respondent on appellant's attorney-lien claim under Minn. Stat. § 481.13, subd. 1(a)(1) (2020), on no-fault medical benefits paid by respondent to third-party-

defendant chiropractor. Appellant argues that the district court erred in denying the lien because (1) appellant commenced arbitration; (2) appellant acquired an attorney lien in the proceeding; and (3) appellant did not waive the lien when it withdrew the arbitration claim for medical benefits after respondent paid the chiropractor. Because we determine that genuine issues of material fact exist as to whether the payment of the no-fault medical benefits by respondent fell within the scope of appellant's representation, we reverse the grant of summary judgment and remand for further proceedings consistent with this opinion.

FACTS

Gillespie Law Offices, LLP (appellant) represented a client seeking no-fault benefits following a motor-vehicle accident. The retainer agreement stated that appellant would represent client for "all claims arising from an incident that occurred on or about 2/28/18." The retainer further stated that appellant's fee would be "one-third (33%) of any amount recovered as a result of Negotiation, Arbitration or Mediation." Appellant notified respondent State Farm Mutual Automobile Insurance Company (respondent) of its representation, and respondent acknowledged receipt of notice.

In June 2018, appellant served respondent with a petition for no-fault arbitration, claiming \$10,000 in medical expenses. The itemized statement attached to the petition included a total of \$10,821.18 in medical expenses. Respondent denied the petition because it had not formally denied benefits in the case and because the claimant had failed to provide it with reasonable proof of loss and/or amount of loss realized as required by statute. Respondent also stated that it would "object to [appellant's] claim at arbitration to

the extent that it exceeds the \$10,000 jurisdictional limit at the time of filing and/or is not itemized or supported within 30 days of filing the Petition[.]”

Prior to arbitration, respondent paid the policy maximum of \$20,000 for medical expenses to the chiropractic clinic that provided the insured’s medical care. In December 2018, appellant amended the arbitration petition to include \$3,872.94 for medical expenses plus wage loss of \$2,238.85, totaling \$6,111.79. Appellant advised respondent via email that the medical expenses could be “disregarded” as the medical benefits “ha[d] been exhausted.”¹

In August 2019, appellant served a complaint on respondent, seeking payment of attorney fees based on a statutory lien pursuant to Minn. Stat. § 481.13 (2020). Respondent answered and filed a third-party action against the chiropractic clinic, asserting an unjust-enrichment claim. The parties filed cross-motions for summary judgment. Appellant argued that by filing a petition for no-fault arbitration, a cause of action was commenced against respondent, and therefore, an attorney lien was perfected for the medical payments sought in the petition pursuant to Minn. Stat. § 481.13.

The district court denied appellant’s motion and granted summary judgment to respondent, noting “[t]he medical expense claim never proceeded to arbitration. In other words, the [district court] questions if the medical expense claim involved the ‘employ’ of [appellant].” The district court concluded that “[appellant] waived the claim for medical expenses prior to arbitration and thereby, also waived legal fees associated with any

¹ A no-fault arbitrator found in favor of the insured and awarded her \$5,689.95 in lost wages.

medical expenses.” The district court also granted the chiropractic clinic summary judgment on respondent’s unjust-enrichment claim.²

This appeal follows.

D E C I S I O N

“On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law. We view the evidence in the light most favorable to the party against whom summary judgment was granted. We review de novo whether a genuine issue of material fact exists.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted).

I. The arbitration proceeding commenced.

Appellant argues that it “filed and served a Petition for No Fault Arbitration, the required procedure to obtain satisfaction of [c]lient’s no fault claim pursuant to Minnesota Statutes” and that “[t]his action ‘commenced’ the arbitration action.”

Minn. Stat. § 65B.525 subd. 1 (2020), provides “for the mandatory submission to binding arbitration of all cases at issue where the claim at the commencement of arbitration is in an amount of \$10,000 or less against any insured’s reparation obligor for no-fault benefits.” Minn. R. No-Fault Arb. 5(c) provides “[a]rbitration is commenced by the filing of the signed form, together with the required filing fee, with the arbitration organization.”

² Respondent did not file a cross appeal challenging the district court’s grant of summary judgment to the chiropractic clinic.

Here, the record shows that appellant requested exactly \$10,000 dollars in medical damages in the original petition for arbitration. While the itemized medical expenses attached to the petition are for an amount over \$10,000, a claimant may reduce his or her claim in order to obtain arbitration. *See Brown v. Allstate Ins. Co.*, 481 N.W.2d 17, 19 (Minn. 1992) (holding that the term “claim” is simply referring to the amount that the claimant is asking for, and claimant may reduce her claim to go to arbitration). Moreover, the record supports appellant’s contention that it “commenced” the arbitration by filing a signed petition for no-fault arbitration on behalf of the insured with the arbitration organization. Because appellant complied with the rules governing no-fault arbitration, we conclude the arbitration proceeding commenced when the arbitration petition was filed.

II. Appellant acquired an attorney lien upon the cause of action.

Appellant next argues that it obtained a lien under Minn. Stat. § 481.13 when it filed and served the initial arbitration petition.

An attorney lien claim is governed by Minn. Stat. § 481.13. The statute provides:

- (a) An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding, and (2) upon the interest of the attorney’s client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding.

Minn. Stat. § 481.13, subd. 1(a). The statute provides for two types of liens: liens on causes of action and liens on judgments. “Cause-of-action liens ordinarily arise upon the

commencement of the action. *Williams v. Dow Chemical Co.*, 415 N.W.2d 20, 25 (Minn. App. 1987).

Here, the district court noted, without specifically finding, its doubt that “the medical expense claim involved the ‘employ’ of [appellant],” given the requirement of Minn. Stat. § 481.13, subd. 1. We disagree. Because appellant commenced arbitration and notified respondent, appellant acquired a cause-of-action attorney lien in the arbitration.

III. Genuine issues of material fact exist as to whether respondent’s payment to the chiropractor fell within appellant’s scope of representation.

Appellant argues that it is entitled under Minn. Stat. § 481.13 to assert a lien on the \$20,000 paid by respondent to the chiropractic clinic for client’s medical expenses because “[p]ayment of an underlying claim and/or dismissal of a claim does not discharge an attorney’s lien for services.”

We must first consider the scope of appellant’s representation of the client. Generally, the scope of an attorney’s representation of a client begins with the retainer agreement. *Dorsey & Whitney, LLP v. Grossman*, 749 N.W.2d 409, 418 (Minn. App. 2008), and the terms of the fee provision of a retainer agreement set the value of the attorney lien. *Thomas A. Foster & Assocs., Ltd. v. Paulson*, 699 N.W.2d 1, 5 (Minn. App. 2005).

Here, the terms of the retainer agreement stated that appellant would represent client in “all claims arising from an incident that occurred on or about 2/28/18.” The fee provision provided that appellant was entitled to “one-third (33%) of any amount recovered as a result of Negotiation, Arbitration or Mediation.”

The district court concluded that appellant had waived the insured's claim for medical expense benefits and therefore waived its lien for attorney fees when it amended the claim in an email to respondent and said that "[t]he medical can be disregarded as it has been exhausted." We disagree.

While parties have a right to settle their dispute without the plaintiff's lawyer's consent, "such a settlement cannot defeat the lawyer's statutory interest in the client's cause of action." *Williams*, 415 N.W.2d at 27; *see also Thomas A. Foster*, 699 N.W.2d at 5 (stating that an attorney lien, as an equitable lien, "protects against a successful party receiving a judgment secured by an attorney's services without paying for those services"). The entry of judgment on the underlying cause of action has no effect on the lien's validity. *Williams*, 415 N.W.2d at 26. Rather, the defendant is charged with notice of the existence of the lien and "must therefore include that claim in the settlement." *Id.* at 27.

Here, the impact appellant's email had on its attorney lien on the medical expenses is unclear. The circumstances in this case—namely, that the retainer agreement gave appellant a lien against the amount recovered in the arbitration proceeding; that arbitration had commenced and respondent was notified; that \$10,000 in medical expenses were claimed in the original arbitration petition; that \$20,000 in medical expenses were paid by respondent after arbitration had been commenced and after appellant acquired its lien; that appellant amended its arbitration petition and told respondent that the medical claim could be disregarded as medical benefits had been exhausted; and that respondent paid the insured's medical expenses before arbitration concluded and without appellant's knowledge or consent—lead us to conclude that there is a genuine issue of material fact as

to whether the payment of the medical-expense claim by respondent fell within appellant's scope of representation of the insured. This question precludes summary judgment on this issue. Therefore, we reverse and remand to the district court for further proceedings consistent with this opinion.³

Reversed and remanded.

³ Because neither party cites or briefs the applicability of Minn. Stat. § 65B.57 (2020), we do not address that statute.