

*This opinion is nonprecedential except as provided by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
A24-0276**

James A. Hoffman, M.D., et al.,
Appellants,

vs.

MMIC Insurance, Inc.,
Respondent.

**Filed October 14, 2024
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CV-23-4970

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Considered and decided by Larkin, Presiding Judge; Smith, Tracy M., Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant-surgeon challenges the district court's summary dismissal of his claims against respondent-insurer for breach of the contractual duty to defend and breach of the implied covenant of good faith and fair dealing. Because insurer had no duty to defend and because surgeon's claim for breach of the covenant of good faith and fair dealing is based on insurer's alleged breach of the duty to defend, summary judgment was appropriate. We therefore affirm.

FACTS

Appellant Dr. James A. Hoffman is a plastic surgeon who has worked in a solo practice in Minnesota since 2000.¹ His wife, Veronica Hoffman, is the practice's office manager. Respondent MMIC Insurance, Inc. issued Dr. Hoffman and his practice a "Medical Professional Liability Insurance Claims-Made and Reported" insurance policy. The policy states, in relevant part:

- We will pay **damages** an **insured** is legally required to pay as a result of a **medical incident** that happens on or after the applicable **prior acts date** and before the expiration date of this insurance.
- We will pay **legal expenses** we incur in the investigation or defense of a **claim** covered by this insurance.
- We have the right to control the defense of and retain an attorney to defend any **claim** covered by this insurance.

¹ Both Dr. Hoffman and his practice were plaintiffs in the underlying matter and are appellants in this appeal. For purposes of brevity, we generally refer to Dr. Hoffman without also mentioning his practice.

The policy defines a “medical incident” as “an adverse or unanticipated outcome resulting from **professional services** that were, or should have been, provided by an **insured** or by a person for whom the **insured** is liable.” The policy defines “professional services” as “medical care or treatment provided to a patient, a medical opinion rendered by an **insured**, decisions made that require the specialized skill, training or judgment of a health care professional, or **peer review service**.”

The policy contains coverage exclusions. A “criminal or knowingly wrongful acts” (wrongful-acts) exclusion states, “This insurance does not apply to any **claim** arising out of a criminal, willful, malicious, fraudulent, dishonest or knowingly wrongful act committed by or with the knowledge of the **insured**.” A “violation of law” exclusion states, “This insurance does not apply to any **claim** arising out of the violation of any local, state or federal statute, rule or regulation.”

According to the underlying complaint, in July 2020, Christina Ginther, a transgender woman, contacted Dr. Hoffman’s practice seeking information about a breast-augmentation procedure. Ginther spoke to Veronica, who conducted an intake interview. During the interview, Ginther revealed that she had previously scheduled an appointment with Dr. Toby Meltzer. After the call, Veronica learned that Dr. Meltzer specializes in gender-reassignment surgery. Veronica then sent the following email to Ginther referring her to the University of Minnesota:

Thank you for calling, nice talking with you! I just wanted to check with you, since you had mentioned your contact with Dr. Meltzer in Arizona. Dr. Hoffman does not do any gender reassignment surgery, including breast augmentation. If you are looking for that service here we recommend the University

of Minnesota Department of Plastic Surgery. That is a much more difficult operation and should be performed by those who specialize in that procedure. Please confirm with me or let me know if I was mistaken. We would like you to be connected to the surgeon . . . that can do the best operation for you.

In early 2021, Ginther sued Dr. Hoffman and his practice, alleging two counts of discrimination under the Minnesota Human Rights Act (MHRA). Specifically, Ginther alleged that Dr. Hoffman discriminated against her based on her sexual orientation by refusing to perform her breast augmentation. Dr. Hoffman asserted a counterclaim against Ginther for defamation.

Dr. Hoffman tendered Ginther's discrimination claims to MMIC for defense. MMIC refused to defend for two reasons: (1) there was no initial grant of coverage because Ginther's allegations did not constitute a "medical incident" or concern a "professional service" and (2) coverage was excluded under the wrongful-acts and violation-of-law policy exclusions.

The Ginther lawsuit resolved after the district court summarily dismissed Ginther's claims against Dr. Hoffman and Dr. Hoffman settled his defamation claim against Ginther. After which, Dr. Hoffman sent MMIC another letter, again alleging that Ginther's suit against Dr. Hoffman was covered under its policy. When MMIC continued to deny coverage, Dr. Hoffman sued MMIC alleging breach of the contractual duty to defend and breach of the implied covenant of good faith and fair dealing.²

² Another claim was dismissed by stipulation of the parties.

The parties filed cross-motions for summary judgment in Dr. Hoffman's suit against MMIC. In the summary-judgment proceedings, Dr. Hoffman argued that Ginther's lawsuit was based on a "medical incident," that it was therefore covered under the policy, and that no policy exclusion applied. Dr. Hoffman also argued that he presented MMIC with evidence demonstrating that Ginther's "underlying claims constituted a covered 'medical incident' under the policy to which no exclusions applied" and that MMIC acted in bad faith "[b]y ignoring the evidence in order to refuse to defend its insureds."

MMIC acknowledged that it "contracted to defend and indemnify Dr. Hoffman against claims brought by patients for injury compensation related to adverse or unforeseen results of 'medical incidents' or 'professional services.'" But MMIC argued that Ginther's discrimination lawsuit presented "no such claim" because there was no doctor-patient relationship between Dr. Hoffman and Ginther and because Dr. Hoffman never treated Ginther. Thus, MMIC asserted that Dr. Hoffman's claim based on breach of the duty to defend failed as a matter of law. MMIC also argued that the duty-to-defend claim failed as a matter of law because Ginther's lawsuit was excluded under the wrongful-acts and violation-of-law policy exclusions and because Ginther was not seeking "damages." Finally, MMIC argued that Dr. Hoffman's claim for breach of the implied covenant of good faith and fair dealing failed as a matter of law because (1) there was no duty to defend Dr. Hoffman against Ginther's lawsuit, (2) the claim "violate[d] Minnesota courts' prohibition against repackaging a 'bad faith' claim," and (3) "MMIC's coverage position was, at a minimum, plausible and honest."

The district court granted summary judgment for MMIC and denied Dr. Hoffman’s motion for summary judgment, and the court administrator entered judgment. The district court relied only on the policy exclusions³ and concluded that Ginther’s lawsuit did not trigger a duty to defend because it “arose out of alleged willful actions and violations of law that are excluded by the plain language of MMIC’s policy.” The district court also concluded that Dr. Hoffman’s claim for breach of the implied covenant of good faith and fair dealing failed because there was insufficient evidence of bad faith and because the claim was based on a purported duty to defend, and there was no such duty as a result of a policy exclusion.⁴

Dr. Hoffman appeals.

DECISION

Summary judgment shall be granted if the moving party shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01; *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017). We review de novo a district court’s grant of summary judgment to determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *Senogles*, 902 N.W.2d at 42; *Henry v. Indep. Sch. Dist. No. 625*, 988 N.W.2d 868, 880 (Minn. 2023). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *Senogles*, 902 N.W.2d at 42.

³ The district court did not consider or determine whether Ginther’s lawsuit resulted from a “medical incident” or whether Ginther’s suit alleged damages.

⁴ In denying the good-faith-and-fair-dealing claim, the district court referenced only the violation-of-law exclusion.

We need not adopt the district court’s reasoning and “may affirm a grant of summary judgment if it can be sustained on any grounds.” *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

I.

Dr. Hoffman contends that the district court erred by summarily dismissing his claim that MMIC breached its contractual duty to defend Dr. Hoffman in Ginther’s lawsuit. Dr. Hoffman argues that the district court erred in concluding that coverage was excluded under the wrongful-acts and violation-of-law policy exclusions. The district court reached its conclusion without first determining whether Ginther’s claims arose from a “medical incident” and were therefore within the scope of coverage under MMIC’s policy. Nonetheless, both parties fully addressed that issue in this appeal. Because the initial-coverage issue is dispositive, we consider it in our de novo review. *See id.*

“An insurer’s duty to defend an insured is contractual.” *Meadowbrook, Inc. v. Tower Ins. Co.*, 559 N.W.2d 411, 415 (Minn. 1997). “Such a duty to defend generally covers those claims that arguably fall within the scope of the policy.” *Id.* “In determining the existence of such a duty, a court will compare the allegations in the *complaint* in the underlying action with the relevant language in the *insurance policy*.” *Id.* Under Minnesota law, “if any part” of a cause of action asserted against the insured in the underlying complaint “arguably falls within the scope of [the policy’s] coverage,” the insurer has a duty to defend. *Ross v. Briggs & Morgan*, 540 N.W.2d 843, 847 (Minn. 1995) (quotation omitted). The Minnesota Supreme Court “has consistently stated that where the insurer has no knowledge to the contrary, it may make an initial determination of whether

or not it is obligated to defend from the facts alleged in the complaint against its insured.” *Garvis v. Emps. Mut. Cas. Co.*, 497 N.W.2d 254, 258 (Minn. 1993).

“The initial burden of demonstrating coverage rests with the insured” *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 736 (Minn. 1997). In determining whether Dr. Hoffman met that burden, we compare the relevant language in MMIC’s policy to the language in Ginther’s complaint. See *Meadowbrook, Inc.*, 559 N.W.2d at 415. In determining whether an insurer has a duty to defend, a court must focus on the *claim* against the insured and whether its elements fit within the policy. See *Ross*, 540 N.W.2d at 848. A court errs by focusing on conduct asserted to support a claim, and not on the claim itself. See *Meadowbrook, Inc.*, 559 N.W.2d at 420 (“In this case, the court of appeals mistakenly focused on some of the *conduct* being asserted to prove the *claim*.”).

The relevant policy language in this case provides:

- We will pay **damages** an **insured** is legally required to pay as a result of a **medical incident** that happens on or after the applicable **prior acts date** and before the expiration date of this insurance.

The policy defines a “medical incident” as “an adverse or unanticipated outcome resulting from **professional services** that were, or should have been, provided by an **insured** or by a person for whom the **insured** is liable.” And the policy defines “professional services” as “medical care or treatment provided to a patient, a medical opinion rendered by an **insured**, decisions made that require the specialized skill, training or judgment of a health care professional, or **peer review service**.”

Ginther’s complaint set forth claims under two sections of the MHRA: Minn. Stat. § 363A.11 (2020) and Minn. Stat. § 363A.17 (2020). These sections essentially prohibit a business from discriminating based on gender identity. During the relevant period here, the MHRA defined “sexual orientation” as “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.”⁵ Minn. Stat. § 363A.03, subd. 44 (2020). Section 363A.11, subdivision 1(a)(1), provided that it is an “unfair discriminatory practice . . . to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of . . . sexual orientation.” Similarly, section 363A.17(3) provided that it is an “unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service . . . to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person’s . . . sexual orientation.”

Ginther’s complaint alleged that:

[Dr. Hoffman’s] assertion that performing a breast augmentation for a transgender patient “is a much more difficult operation,” is untrue. [Ginther’s] primary care provider advised her that she could consult with any surgeon of her choosing. Moreover, [Ginther] consulted with two other area plastic surgeons, neither of whom specialize or are credentialed in treating transgender patients. Both of these providers were willing and able to perform a breast augmentation for [Ginther] after reviewing her medical history and learning that she is transgender. Moreover, neither of these providers told [Ginther] that performing a breast augmentation

⁵ The legislature has since added specific protections based on gender identity. *See, e.g.*, Minn. Stat. § 363A.17 (Supp. 2023).

for her would be more difficult or require specialization due to the fact that she is transgender.

Next, Ginther's complaint set forth two claims: (1) business discrimination in violation of the MHRA and (2) discrimination in the enjoyment of public accommodations in violation of the MHRA.

Dr. Hoffman asserts that Ginther's claims fall within the scope of the MMIC policy because "referring a patient to a medical specialist constitutes a 'medical incident' within the terms of the MMIC policy." He correctly notes that a doctor has a duty to refer a patient to a specialist if the patient's ailment is beyond the doctor's knowledge or technical skill. *Larsen v. Yelle*, 246 N.W.2d 841, 845 (Minn. 1976) (discussing "duty to refer a patient to a specialist for treatment"). He argues that Ginther's complaint "was, in reality, a claim based upon the medical decision of Dr. Hoffman's office that the initial request for medical services should be referred to another provider." He also argues that the MHRA claims in Ginther's complaint are a "ruse" and that Ginther actually alleged a negligent medical referral.

Dr. Hoffman's brief acknowledges that "Ginther was complaining that Dr. Hoffman should have provided her with the breast augmentation surgery." We agree. But Ginther did not claim that Dr. Hoffman failed to provide her with breast augmentation surgery based on "a medical opinion" or based on a decision that required "the specialized skill, training or judgment of a health care professional." Indeed, the above-quoted language from Ginther's complaint expressly refutes such a claim, alleging instead that Dr. Hoffman was competent to perform the surgery and refused to do so based solely on gender-identity-

based discrimination in violation of the MHRA. Nor does Ginther’s complaint allege that Dr. Hoffman negligently referred Ginther to another provider, that is, breached a medical or legal duty to refer Ginther to a specialist. Instead, Ginther’s complaint alleges that Dr. Hoffman’s referral was a discriminatory act under the MHRA, because it was based on Ginther’s transgender status.

“For purposes of determining arguable coverage, we will limit ourselves to the causes of action alleged in the complaint.” *Reinsurance Ass’n of Minn. v. Timmer*, 641 N.W.2d 302, 311 (Minn. App. 2002), *rev. denied* (Minn. May 14, 2022). We do not “determine coverage on the basis of claims that could have been made (for example, are suggested by the fact pattern) but were not.” *Id.* Here, it is clear that the allegations and claims in Ginther’s complaint were based on alleged discrimination in violation of the MHRA, and not based on a medical incident.

The fact that Dr. Hoffman has cited his medical judgment and his duty to refer a patient to a specialist as *defenses* to Ginther’s discrimination claims does not change the nature of Ginther’s claims. Dr. Hoffman argues that his referral constitutes a “medical incident” because it resulted from “professional services” such as “decisions made that require the specialized skill, training or judgment of a health care professional.” That argument inappropriately focuses on alleged conduct related to Ginther’s claims, and not on the claims themselves. In determining initial coverage, we must focus on the claims themselves, and not on related conduct. *See Meadowbrook, Inc.*, 559 N.W.2d at 420 (“In this case, the court of appeals mistakenly focused on some of the *conduct* being asserted to prove the *claim*.”). Focusing only on the claims in Ginther’s complaint—as we must—we

conclude that Ginther's claims did not allege a "medical incident" within the meaning of MMIC's policy. Instead, Ginther's claims are based on gender-identity discrimination in violation of the MHRA, and not on a covered medical incident.

Dr. Hoffman's argument that MMIC breached its contractual duty to defend fails for another reason: "the law obligates an insurer to defend only those *types of claims* for which it arguably could be found liable." *Id.* at 418. "When it can be concluded as a matter of law that there is no basis upon which an insurer may be obligated to indemnify the insured, the insurer is relieved of its duty to defend." *Woida v. N. Star Mut. Ins. Co.*, 306 N.W.2d 570, 574 (Minn. 1981).

As MMIC argues, the undisputed facts present no scenario in which MMIC may be obligated to indemnify Dr. Hoffman. Again, the policy requires MMIC to indemnify Dr. Hoffman for "damages [Dr. Hoffman] is legally required to pay as a result of a medical incident." In this case, there were two possible outcomes: (1) Dr. Hoffman would prevail in Ginther's lawsuit, such that Dr. Hoffman would not be "legally required to pay" damages and MMIC would have no duty to indemnify, or (2) Ginther would prevail in her lawsuit. In the latter scenario, coverage under MMIC's policy would be excluded under the violation-of-law exclusion. Again, that exclusion provides, "This insurance does not apply to any **claim** arising out of the violation of any local, state or federal statute, rule or regulation." The MHRA is comprised of state statutes, and Ginther's successful prosecution of her lawsuit would establish a violation of the MHRA. Thus, MMIC had no duty to defend because there was no basis on which MMIC may be obligated to indemnify Dr. Hoffman.

In sum, based on our careful comparison of the claims in Ginther’s complaint and the relevant MMIC policy language, and based on our determination—as a matter of law—that there is no basis on which MMIC may be obligated to indemnify Dr. Hoffman for damages resulting from Ginther’s lawsuit, we conclude that coverage is not available under the MMIC policy and that MMIC did not have a duty to defend. Thus, MMIC is entitled to summary judgment as a matter of law on Dr. Hoffman’s claim for breach of the duty to defend.

II.

Dr. Hoffman contends that the district court erred by summarily dismissing his claim that MMIC breached the implied covenant of good faith and fair dealing.

“Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party’s performance of the contract” or “take advantage of the failure of a condition precedent when the party itself has frustrated performance of that condition.” *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). “[I]t is the duty of the insurance company to exercise good faith toward the insured, both in the investigation under a liability policy and in the defense of the lawsuit and in the payment of its obligations under the insurance contract.” *Larson v. Anchor Cas. Co.*, 82 N.W.2d 376, 383 (Minn. 1957). But “[a] party to a contract does not act in bad faith by asserting or enforcing its legal and contractual rights.” *Sterling Cap. Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998) (quotation omitted).

Dr. Hoffman asserts that “MMIC breached its duty to defend and indemnify [him], and thus breached [the] covenant of good faith and fair dealing.” That assertion directly links the two alleged breaches as follows: because MMIC breached its duty to defend, it therefore breached the covenant of good faith and fair dealing. Indeed, Dr. Hoffman “concedes that if this [c]ourt affirms the district court’s decision on the duty to defend, it must also do so for the good faith and fair dealing claim.” Because MMIC did not breach its duty to defend, MMIC is entitled to summary judgment as a matter of law on Dr. Hoffman’s claim for breach of the implied covenant of good faith and fair dealing.

Affirmed.