

THOUGHT LEADERSHIP

News

## INSURER OWED NO DUTY TO DEFEND IN DOG BITE CASE SAN ANTONIO COURT OF APPEALS AFFIRMS DISMISSAL CLAIMANT'S DECLARATORY JUDGMENT

Newsbrief

30 AUG 2022

Last Wednesday, the San Antonio Court of Appeals upheld summary judgment for the insurer in an insurance coverage dispute arising from a personal injury action between roommates. *Claudia Medrano v. Jeff Tafoya, et al.*, No. 04-21-00096-CV, 2022 WL 3638233 (Tex. App.—San Antonio Aug. 24, 2022). In the underlying personal injury lawsuit, Claudia Medrano, who was bitten by her roommate Lora Vergott's dog in a home the two rented from a man named Richard Gonzalez, sued Ms. Vergott for negligence and strict liability. Mr. Gonzalez had an insurance policy with Acceptance Insurance Co. ("Acceptance"), the claims of which were managed by Innovative Risk Management ("Innovative").

After initially suing Ms. Vergott, Medrano added Acceptance, Innovative, and Innovative adjuster Jeff Tafoya to the lawsuit, seeking a declaratory judgment that Acceptance had a duty to defend Vergott under Mr. Gonzalez's insurance policy. However, Ms. Medrano never sued Mr. Gonzalez or Affinity Insurance Program Marketing, LLC, which was also a policy holder of the insurance policy.

Ms. Vergott did not file an answer to Ms. Medrano's lawsuit, and Ms. Medrano moved for a default judgment against her. After the trial court entered a default judgment against Ms. Vergott, Acceptance, Innovative, and Mr. Tafoya moved for summary judgment, claiming the declaratory judgment action against them should be dismissed for lack of subject matter jurisdiction based on a lack of standing, ripeness, and justiciable controversy. The trial court granted their motion and dismissed Ms. Medrano's claims with prejudice. On appeal, Ms. Medrano argued the trial court erred in granting summary judgment because she has standing, and her claim is ripe. In response, Acceptance, Innovative, and Mr. Tafoya claimed the case was not moot, and even if it was not moot, the trial court did not err in granting summary judgment.

The Court rejected the argument that Ms. Medrano's lawsuit was moot and disagreed with Acceptance, Innovative, and Mr. Tafoya that, because Ms. Vergott did not appeal the default judgment and any court's decision on a duty to defend would not have any practical legal effect since there was no lawsuit to defend. Instead, the Court held that cases brought under the Declaratory Judgments Act remain live even if all requests for substantive declaratory relief become moot so long as a claim for attorney's fees under the Act remained pending, which the Court held was the case with Ms. Medrano's lawsuit.

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Turning to the standing and ripeness issue, the Court rebuffed Ms. Medrano's position that the final judgment she obtained against Ms. Vergott implicated Acceptance, Innovative, and Mr. Tafoya's obligations under Mr. Martinez's policy and she therefore had standing to enforce the policy. The Court then noted, as Acceptance, Innovative, and Mr. Tafoya argued, that Texas is a no-direct-action state where a third-party claimant cannot enforce an insurance policy directly against an insured until it has been established by judgment or agreement that an insured has a legal obligation to pay damages to the injured party. Because Ms. Medrano sought a declaratory judgment action against the insurer and its agents on their duty to defend Ms. Vergott before Mr. Gonzalez's liability had been established by judgment or agreement, the trial court did not err in granting the summary judgment and dismissing Ms. Medrano's claims. Consequently, the Court affirmed the trial court's holding.

**Editor's Note:** MDJW's Appellate team had the privilege of representing Innovative Risk Management in defending the summary judgment granted in their favor and congratulates them on this significant victory!