

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-001864-MR

JONAS SOSA, SR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DENISE CLAYTON, JUDGE  
ACTION NO. 04-CI-007784

STATE FARM INSURANCE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND HENRY, JUDGES.

COMBS, CHIEF JUDGE: Jonas Sosa, Sr., (Sosa) appeals *pro se* from an order of the Jefferson Circuit Court granting summary judgment in favor of State Farm Insurance (State Farm). Sosa had alleged that State Farm acted in bad faith during settlement negotiations of his personal injury claim against its insured. The trial court held that when Sosa voluntarily dismissed his underlying personal injury claim against the alleged tortfeasor, he lost any right to have State Farm settle his bad faith claim. We agree and affirm the trial court.

The underlying personal injury claim arose from a car accident that occurred on September 16, 2002. At the time of the accident, Sosa was sitting inside his parked car in the parking lot of a pharmacy. Barbara Satterly (Satterly), who was insured by State Farm, struck the right rear bumper of his car with her Toyota 4-Runner as she attempted to make her way out of the parking lot. Satterly contacted State Farm and advised them of the accident, but she stated that she did not believe that Sosa's car had been damaged as she estimated her speed at the time of impact as less than one mile per hour. State Farm contacted Sosa the following day, and he made no mention of any personal injury.

In April 2003, Sosa advised State Farm that he was receiving treatment for a shoulder injury sustained in the accident. A letter dated July 7, 2003, from State Farm to Sosa indicates that liability for the accident was not disputed initially. However, the letter requested a recorded statement from Sosa to establish the cause of the shoulder injury. Sosa filed a *pro se* complaint against Satterly and State Farm on September 14, 2004, in which he alleged personal injury as well as violations of Kentucky's Unfair Claims Settlement Practices Act (UCSPA), no-fault laws, and insurance code.

State Farm filed a motion to bifurcate the bad faith claim from the personal injury claim. Over Sosa's objection,

the trial court granted the motion and stayed discovery on the bad faith claim pending the outcome of the underlying personal injury claim. At this stage of the proceedings, a special judge was appointed to handle all cases on the trial court's dockets due to a health problem of the presiding judge.

On June 6, 2005, Sosa filed a motion to dismiss the underlying personal injury claim against Satterly. In his motion, he stated that since her liability was clear, it was unnecessary to involve her further. In addition, he noted that dismissal of the personal injury claim against Satterly would free the parties to proceed with litigation on the bad faith claim against State Farm. After his motion was granted, Sosa attempted to proceed on the bad faith claim. State Farm filed a motion to dismiss, arguing that Sosa's dismissal of the underlying personal injury claim rendered moot any evaluation of its settlement negotiations. On August 25, 2005, the court entered an order treating State Farm's motion as a request for summary judgment -- which it granted. This appeal followed.

Sosa's brief presents numerous arguments which essentially revolve around claims that the trial court discriminated against his *pro se* status, depriving him of due process by improperly granting summary judgment. We shall address only the issues of deprivation of due process and the

standard for granting summary judgment. The other issues asserted simply have no legal merit susceptible of analysis.

It is a well-established precedent in Kentucky that summary judgment may be granted only "when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant.'" Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 483 (Ky. 1991), quoting Paintsville Hospital Co. v. Rose, 683 S.W.2d 255 (Ky. 1985). In its order granting summary judgment, the trial court correctly recited as follows:

As a result of [Sosa's] decision to dismiss the claims against [Satterly], State Farm has no obligation to make payment under any policy of insurance. As State Farm is not obligated to make payment, it cannot be found liable for bad faith.

An insurer's obligation to pay a claim under the terms of its policy is an essential element of a bad faith claim. Wittmer v. Jones, 864 S.W.2d 885 (Ky. 1993). "Absent a contractual obligation, there simply is no bad faith cause of action, either at common law or by statute." Kentucky Nat. Ins. Co. v. Shaffer, 155 S.W.3d 738, 742 (Ky.App. 2004). In filing his voluntary motion to dismiss the claim against Satterly, it is evident that Sosa totally misunderstood the legal ramifications of his action. Nonetheless, his misapprehension

of the law is not an issue of material fact which would enable him to present his case to a jury.

Sosa contends that the trial court deprived him of due process because he had no opportunity to respond to State Farm's motion to dismiss. Local rules of practice in the Jefferson Circuit Court allow a twenty-day period for a response. It is true that the court entered its order only ten days after State Farm's motion. However, Sosa has not cited any authority to support his argument that this early entry of a final order amounted to deprivation of due process. Even though Sosa argues that he was in the process of preparing a response to State Farm's motion when the order granting summary judgment was entered, there are no legal or factual grounds which he could have presented that could have changed the outcome in his favor. When he requested dismissal of the personal injury claim against Satterly, any right that he may have had to recover from State Farm was immediately and completely extinguished.

We affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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