[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11778

Non-Argument Calendar

GOVERNMENT EMPLOYEES INSURANCE CO.,
GEICO INDEMNITY CO.,
GEICO GENERAL INSURANCE COMPANY,
GEICO CASUALTY CO.,

Plaintiffs-Appellees,

versus

THE RIGHT SPINAL CLINIC, INC.,
YUNIED MORA-JIMENEZ,
ALEXIS GARCIA-GAMEZ, L.M.T.,
LIANNY JIMENEZ-URDANIVIA,

Defendants-Appellants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:20-cv-00802-KKM-AAS

Before JORDAN, LAGOA, and ABUDU, Circuit Judges.

PER CURIAM:

The Right Spinal Clinic, Inc. ("the Clinic"), Yunied Mora-Jimenez, Alexis Garcia-Gamez, L.M.T., and Lianny Jimenez-Urdanivia (together "Defendant-Appellants") appeal the district court's final judgment entered in favor of Government Employees Insurance Co., GEICO Indemnity Co., GEICO General Insurance Co., and GEICO Casualty Co. (together "GEICO") in GEICO's suit alleging fraudulent and unlawful billing in violation of Florida law. The Defendant-Appellants argue the district court erred in several respects. After careful review, we affirm.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

In April 2020, GEICO sued the Clinic and several of its doctors, officers, and employees. Originally, GEICO named 25 defendants who it alleged engaged in fraudulent and unlawful insurance billing at the Clinic between August 2017 and January 2020. GEICO amended its complaint in August 2020, and filed a Second Amended Complaint in September 2021. GEICO's Second Amended Complaint named nine defendants: (i) the Clinic; (ii) Jimenez-Urdanivia; (iii) Mora-Jimenez; (iv) Kendrick Eugene

Duldulao, M.D.; (v) Victor Silva, M.D.; (vi) Stephen Diamantides, D.C.; (vii) Yulieta Perez Rodriguez, L.M.T.; (viii) Garcia-Gamez; and (ix) Mignelis Veliz Sosa, L.M.T. (together, "Right Spinal").

GEICO's Second Amended Complaint alleged that Right Spinal engaged in a fraudulent and unlawful scheme in several ways. First, it alleged that the Clinic itself was operating unlawfully—in violation of Florida's Clinic Act, *see* Fla. Stat. § 400.9935—because it did not have a legitimate medical director. It contended that the Clinic's medical director, Luis Merced, M.D., was a doctor in his eighties who could not have fulfilled his medical director role at the same time as he accomplished various other duties.

Second, GEICO alleged that the Clinic had billed it for "purported physical therapy services" that were performed "by completely unsupervised massage therapists" including Perez, Garcia, and Veliz, who were licensed as massage therapists, not as physical therapists. GEICO asserted that Florida law prohibited the Clinic from recovering reimbursement under Florida's Personal Injury Protection ("PIP") law for services performed by unsupervised massage therapists. It also contended that the Clinic had falsely represented that Dr. Merced either performed or supervised services done by the massage therapists so that it would be reimbursed. Moreover, it asserted that some of the Clinic's bills reflected that Dr. Merced had performed or supervised physical therapy services when he was not on location. It reiterated that the Clinic's bills were not eligible for reimbursement because they

were for services performed by "completely unsupervised massage therapists."

Third, the Second Amended Complaint alleged that the Clinic treated insured patients "to a medically unnecessary course of 'treatment' pursuant to pre-determined, fraudulent protocols designed to maximize the billing that they could submit to insurers." GEICO highlighted various bills and types of billing submitted by the Clinic which it alleged were inflated or falsified to maximize reimbursements.

GEICO also alleged that the Clinic had "submitted thousands of HCFA-1500 forms" and other claims, which it contended were false and misleading in several respects.[1] First, it alleged that, because the Clinic did not have a legitimate medical director, the forms falsely represented that the Clinic was in compliance with Florida's Clinic Act. Second, it contended that the claims misrepresented that the services provided were eligible for reimbursement because they were medically unnecessary. It also contended that the Clinic's claims for physical therapy services misrepresented the identities of the treating providers and that the services were, instead, administered by "unsupervised massage therapists." Third, it alleged that some services the Clinic billed for were not

[1] "[A] 'Health Care Financing Administration Form 1500' (HCFA 1500), identifies the treatment provided to [a] patient" and then is submitted to an insurance company for payment. *See United States v. Kuhlman*, 711 F.3d 1321, 1324 (11th Cir. 2013) (describing a false HCFA 1500 Form scheme).

performed at all. Fourth, it contended that the claims misrepresented or exaggerated the services provided.

GEICO sought several forms of relief. First, it sought a declaratory judgment stating that the Clinic had no right to receive payment for any pending bills. Second, it alleged that Jimenez-Urdanivia and Mora-Jimenez were liable under the civil Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1962(c). Third, it contended that Jimenez-Urdanivia, Mora-Jimenez, Duldulao, Silva, Diamantides, Perez Rodriguez, Garcia-Gamez, and Veliz, were liable under the RICO Act, 18 U.S.C. § 1962(d). Fourth, it asserted that all the defendants were liable under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, *et seq*. Fifth, it contended that Jimenez-Urdanivia, Mora-Jimenez, Duldulao, Silva, Diamantides, Perez Rodriguez, Garcia-Gamez, and Veliz Sosa were liable for submitting false and fraudulent insurance claims, Fla. Stat. § 817.234, which in turn violated Florida's RICO equivalent, Fla. Stat. § 772.103, *et seq*. Sixth, it alleged that all defendants were liable for common-law fraud. Seventh, it alleged that all defendants were liable for unjust enrichment.

The Defendant-Appellants denied liability in their answer to the Second Amended complaint. They later, except for Jimenez-Urdanivia, filed a motion that sought "summary judgment under Florida's Anti-SLAPP statute," Fla. Stat. § 768.295 ("Strategic Lawsuits Against Public Participation prohibited"), as well as summary judgment on the merits of GEICO's claims. They argued that

GEICO's suit was brought without factual basis to force them into giving up their rights to receive reimbursement under Florida's PIP statute. They asserted that the Clinic's billing did not contain misrepresentations; its treatments were reasonable and medically necessary; and GEICO did not suffer any damages. They contended that Dr. Merced had acted as a legitimate medical director; the physical therapy services performed at the Clinic were provided by assistants who were directly supervised by licensed doctors, including Dr. Merced; and the services provided were medically necessary and not "upcoded" to seek higher insurance reimbursement rates.

They noted that GEICO had not argued that the Clinic had concealed that licensed massage therapists had performed services at the location, and had only alleged that the Clinic had falsely represented that its licensed massage therapists were working under the supervision of licensed physicians. The Defendant-Appellants explained that it was undisputed that there was "always at least one, and often more than one, licensed medical or chiropractic physician physically present and available at the Clinic whenever physical therapy services were rendered."

GEICO also moved for summary judgment on some of its claims. GEICO asserted it was entitled to judgment because: (1) the defendants misrepresented the nature and extent of patient examinations that they billed to GEICO; (2) the defendants unlawfully billed GEICO for physical therapy services that were performed by massage therapists; (3) several defendants falsely

represented that Dr. Merced personally performed or directly supervised physical therapy services; and (4) the Clinic lacked a legitimate medical director under the Clinic Act. While GEICO had argued in its Second Amended Complaint that the licensed massage therapists at the Clinic performed work while unsupervised, it contended in its motion that "clinics like Right Spinal cannot collect PIP reimbursement for any services performed by massage therapists," irrespective of whether those massage therapists are supervised. In support of its third argument, GEICO contended the Clinic's billing was unlawful because Dr. Merced's name was included in Box 31 of HCFA-1500 forms for "virtually all" of the Clinic's physical therapy services, even though he was not on location for much of that time. Based on its four arguments, GEICO asserted that it was entitled to summary judgment on its request for declaratory judgment, and for its causes of action for unjust enrichment and violations of the FDUPTA. GEICO also opposed the defendants' motion for summary judgment on their anti-SLAPP claim.

The defendants opposed GEICO's motion for summary judgment. As relevant, they argued the Clinic had properly billed GEICO because "physical therapist services provided by assistants under the direct supervision of a licensed physician" are reimbursable even if the medical assistants hold massage therapy licenses. They argued that GEICO's assertions that Dr. Merced failed to act as a medical director lacked support and contended that GEICO's "Box 31" argument was misplaced because Dr. Merced was the physician ordering care even when he was not the supervising

physician, so the information on the claims was substantially complete and accurate. They also argued that summary judgment should be denied as to GEICO's assertions that the treatment provided at the Clinic was not reasonable, necessary, and upcoded.

In July 2022, the district court denied the defendants' summary judgment motion and granted GEICO's motion for summary judgment in part. The district court explained that, to succeed on its unjust enrichment claim, GEICO had to show it conferred a benefit on the defendants, that they voluntarily accepted and retained the benefit, and that it would be inequitable for the defendants to retain the benefit under the circumstances. The court noted that the first two elements were satisfied because GEICO had paid the Clinic a total of $2,015,882.52 between November 2017 and April 2020, and that the Clinic had retained that money. The only question, then, was whether the Clinic was entitled to receive the payments GEICO made.

The district court first considered whether Florida law prohibited reimbursement for physical therapy services performed by licensed massage therapists. The court explained that if GEICO was correct that these services were not reimbursable under Florida law, the $690,251.44 in physical therapy bills which the Clinic had submitted to GEICO were not reimbursable, satisfying the third element of GEICO's unjust enrichment claim as to those bills. After surveying the statute and Florida caselaw, the district court determined the statute excluded reimbursement for massage therapy and for licensed massage therapists, so the Clinic's physical

therapy services performed by licensed massage therapists were not reimbursable. The district court rejected the defendants' argument that physical therapy services administered by a licensed massage therapist were reimbursable when supervised by a licensed physician because, it concluded, there was no authority supporting that contention. Instead, it explained that Florida law showed that there is no "supervision exception" to the prohibition on reimbursement for massage therapy services and that, in order for such a "supervision exception" to apply, the defendants would have to show that a physician could lawfully delegate physical therapy services to a massage therapist, which the defendants had not attempted to argue. The court also remarked that such an argument would be "a challenge" under Florida law in any event. Based on these conclusions, the district court granted GEICO summary judgment on its unjust enrichment claim for the $690,251.44 it paid for the Clinic's physical therapy billing.

The district court denied GEICO's motion for summary judgment on GEICO's other claims. It rejected GEICO's argument that it was entitled to summary judgment based on the Clinic's alleged failure to have a medical director because the court would not infer based on the promulgated facts—namely, his age, his other obligations, or his failure to identify billing errors—that Dr. Merced was a sham medical director. It also rejected GEICO's argument that it was entitled to summary judgment based on alleged upcoded or medically unnecessary treatment, explaining that a jury could agree with either party's interpretation of the Clinic's billing practices. It also denied GEICO's motion for summary judgment

on its Box 31 argument, finding a question of fact over whether the alleged Box 31 errors were material.

In sum, the district court granted summary judgment to GEICO on its unjust enrichment claim as to the physical therapy services, and granted GEICO a declaratory judgment stating that it was not obligated to pay Right Spinal's pending physical therapy bills.

The district court then concluded that GEICO was entitled to summary judgment on its FDUTPA claim, explaining that GEICO needed to show a deceptive or unfair practice, causation, and actual damages. It explained that the defendants had submitted physical therapy bills that were facially valid but that they were not reimbursable because they were performed by licensed massage therapists. It then concluded that the Clinic's practice of submitting facially valid bills caused GEICO to believe that it was obligated to pay them. It also concluded that this practice harmed GEICO because GEICO paid Right Spinal for the services even though those services were not reimbursable. Finally, given its reasoning for partially granting GEICO's motion for summary judgment, the court denied the Defendant-Appellants' cross-motion and its request for relief under Florida's anti-SLAPP statute.[2]

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[2] The Defendant-Appellants do not challenge the denial of their anti-SLAPP motion on appeal, so we do not address the issue further. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (explaining that a party forfeits an issue when they fail to plainly and prominently raise it on appeal).

The Defendant-Appellants moved for reconsideration, arguing that the district court had erred. First, they argued that facts in the record showed that its licensed massage therapists were also licensed as "medical and/or chiropractic assistants." They also contended that the district court had not provided it notice that it would be considering summary judgment based on the argument that services performed by licensed massage therapists were not reimbursable regardless of their level of supervision. They contended that the district court had incorrectly concluded that a massage therapy license "universally negates any additional qualifications" that a licensed massage therapist might have, which could entitle them to perform reimbursable services. They thus argued that the district court ignored the fact that the licensed massage therapists at the Clinic held other licensures and qualifications apart from their massage therapy licenses, entitling them to reimbursement for the services they provided. They asserted that they showed a basis for reconsideration and for the denial of GEICO's motions for a declaratory judgment and summary judgment on its unjust enrichment and FDUTPA claims. Alternatively, the defendants asked to brief the legal issues on which the court had granted summary judgment, arguing that GEICO had not briefed the bases that the district court's order had relied upon.

The district court denied the defendants' motion for reconsideration and its alternative request to submit additional briefing. It determined that Right Spinal had "simply renew[ed]" its arguments at summary judgment in its motion for reconsideration and

did not identify any newly discovered evidence or manifest error of law or fact.

After the parties expressed their intent to settle the remaining claims, the district court entered an order explaining, "the best way to effectuate the immediate appeal of the Court's earlier order and settle the claims remaining for trial [wa]s to move to amend the complaint" under Fed. R. Civ. P. 15. GEICO complied with the district court's directive and filed a Third Amended Complaint in April 2023, removing several of the allegations which appeared in the Second Amended Complaint. Relevant here, GEICO sought only recovery on its unjust enrichment and FDUPTA causes of action and its request for a declaratory judgment based on its contention that Right Spinal's billing was non-reimbursable because it was for physical therapy services performed by massage therapists who, in addition, it asserted, were unsupervised.

The day after GEICO filed its amended complaint, the district court entered judgment for GEICO in the amount of $690,251.44. The defendants timely appealed.

II. STANDARDS OF REVIEW

"We review a district court's grant of summary judgment *de novo*." *Poer v. Jefferson Cnty. Comm'n*, 100 F.4th 1325, 1335 (11th Cir. 2024). "Summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)). A party who moves for summary judgment bears the burden to demonstrate the lack of genuine issues of

material fact. *Id.* "In determining whether the movant has met this burden, we must view the evidence in the light most favorable to the non-moving party" and "draw all reasonable inferences in the non-movant's favor." *Id.*

In applying these principles, we generally do not allow parties to raise arguments not raised in the district court on appeal. *Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1247 n.4 (11th Cir. 2022) (citing *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004)). We have cautioned litigants that we "cannot allow [them] to argue a different case [on appeal] from the case [they] presented to the district court." *Irving v. Mazda Motor Corp.*, 136 F.3d 764, 769 (11th Cir. 1998).

III. DISCUSSION

A. Whether Right Spinal's Massage Services were Eligible for PIP Insurance Reimbursement

On appeal, the Defendant-Appellants first contend the district court erred in concluding that massage services offered at the Clinic were not eligible for reimbursement. They concede "that the legislature intended to prohibit [licensed massage therapists] from receiving [PIP] reimbursements," but they argue that the Clinic is not a licensed massage therapist, it is an accredited health care facility. They argue that Fla. Stat. § 627.736(1)(a)(5) only bars reimbursement for massage therapists, not for facilities that provide physical therapy modalities. They argue that the district court's interpretation of the statute would lead to absurd and potentially unconstitutional results. They contend that the more

rational reading of the statutory structure is to conclude that the legislature intended "licensed massage therapist" to refer only to natural persons, not a clinic who employs licensed massage therapists.

GEICO argues that these arguments are raised for the first time on appeal and therefore we need not address them. In any event, it contends, the Defendant-Appellants are incorrect: health care clinics cannot receive PIP reimbursement for any services performed by massage therapists.

Florida's PIP law requires insurers to pay for certain medical care. *See Allstate Ins. v. Revival Chiropractic*, 385 So. 3d 107, 108-09 (Fla. 2024) (describing the statutory scheme); *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins.*, 334 So. 3d 577, 579-80 (Fla. 2021) (same). Under a section titled "medical benefits," the law provides that an insurer must pay "eighty percent of all reasonable expenses for medically necessary medical . . . services." *MRI Assocs.*, 334 So. 3d at 580 (alteration adopted) (quoting Fla. Stat. § 627.736(1)(a)).

Subparts 1 and 2 of section 627.736(a) define "medical benefits" as:

> 1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, . . . a chiropractic physician licensed under chapter 460, or an advanced practice registered nurse registered under [Fla. Stat. §] 464.0123 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. . . .

> 2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, . . . or, to the extent permitted by applicable law and under the supervision of such physician . . . [or] by a physician assistant licensed under chapter 458 or chapter 459 . . . .

Fla. Stat. § 627.736(1)(a)(1), (2).

Subpart 5 specifically states that "[m]edical benefits do not include massage therapy as defined in [Fla. Stat. §] 480.033 . . . regardless of the person, entity, or licensee providing massage therapy . . . and a licensed massage therapist . . . may not be reimbursed for medical benefits under this section." *Id.* § 627.736(1)(a)(5).

Florida courts have ruled that the statute "exclude[s] massage from the types of health care services that are eligible for PIP reimbursement." *Geico Gen. Ins. Co. v. Beacon Healthcare Ctr. Inc.*, 298 So. 3d 1235, 1238 (Fla. 3d DCA 2020). The statute also "prohibits massage therapists from receiving PIP reimbursement." *Id.* (citing Fla. Stat. § 627.736(1)(a)(5)); *see also S. Owners Ins. Co. v. Hendrickson*, 299 So. 3d 524, 525 (Fla. 5th DCA 2020) ("The plain text of section 627.736(1)(a)(5) precludes a licensed massage therapist from being reimbursed for medical benefits."). Accordingly, "a

person who is licensed as a massage therapist, but not licensed as a physical therapist" will not be reimbursed "because the plain language of the PIP statute precludes those reimbursements." *Beacon Healthcare*, 298 So. 3d at 1238-39; *see also State Farm Mut. Auto. Ins. v. Muse*, No. 20-13319, manuscript op. at 14 (11th Cir. Feb. 10, 2022) (unpublished) ("[T]he PIP statute flatly precludes reimbursement for [licensed massage therapists] providing advanced physical therapy services.").

The Defendant-Appellants' argument against this bar on reimbursement is based on the portion of the statute that states that "a licensed massage therapist . . . may not be reimbursed for medical benefits under this section," Fla. Stat. § 627.736(1)(a)(5). They interpret this section as a limitation on *who* is eligible to receive reimbursement. However, section 627.736(1(a)(5) provides, and Florida case law makes clear, "[m]edical benefits do not include massage therapy as defined in [Fla. Stat. §] 480.033 . . . regardless of the person, entity, or licensee providing massage therapy . . . ." Fla. Stat. § 627.736(1)(a)(5); *Beacon Healthcare*, 298 So. 3d at 1238. The statute excludes massage therapy from the definition of medical benefits in addition to precluding reimbursement to a licensed massage therapist. Florida caselaw also makes clear that there is no difference in outcome when a clinic submits a bill for massage therapy services rather than a licensed massage therapist. *Beacon Healthcare*, 298 So. 3d at 1238 (concluding that § 627.736(1)(a)(5) precluded reimbursement to massage therapists and to the clinic providing the services). Put another way, regardless of who submits a bill for massage therapy services, those services are not

"medical benefits," so bills for those services are not reimbursable under the PIP law.[3]

For these reasons, we affirm the district court's ruling on this issue.

B. Whether Right Spinal's Massage Services were Lawfully Provided "Incident To" a Physician's License

Second, the Defendant-Appellants argue that, because the Clinic's licensed massage therapists were working under the supervision of a physician, they were lawfully providing services "incident to" that physician's license. They contend that there was no evidence that the massage therapists in the Clinic were unsupervised. Accordingly, they argue, the sole question is whether the licensed massage therapists could provide physical therapy services incidental to the practice of a licensed physician under the physician's direct supervision. In an unpublished opinion, a panel of this Court stated that "Florida courts have determined that the plain language of Florida's No-Fault Law precludes reimbursement for physical therapy services provided by massage therapists without regard to the level of supervision." *Gov. Emp's Ins. v. Quality Diagnostic Health Care, Inc.*, No. 21-10297, manuscript op. at 11-12 (11th Cir. Nov. 5, 2021) (unpublished) (citing *Beacon Healthcare*, 298 So.

[3] To the extent that the Defendant-Appellants argue that this construction of the statute raises constitutional concerns, their contentions on this front were not presented to the district court and the district court did not address them. We thus conclude the arguments are forfeited. *Club Madonna*, 42 F.4th at 1247 n.4; *Irving*, 136 F.3d at 769.

3d at 1239). The Defendant-Appellants suggest that the *Quality Diagnostic* opinion was merely responding to, and rejecting, an argument—made by a provider who had only provided *unsupervised* massage therapy services—that the provider's services there were *indirectly* supervised by a doctor. They contend that their situation is distinguishable because GEICO never showed that the services provided at the Clinic were performed by licensed massage therapists who were unsupervised. Further, they argue that the employees of the Clinic were lawfully rendering services incident to the physician's license under direct physician supervision, regardless of whether they were licensed massage therapists.

GEICO highlights that we stated in *Quality Diagnostic* that Florida law prohibits all reimbursement for services—including physical therapy services—performed by massage therapists. Based on that contention, they argue that a clinic may not receive PIP reimbursement for any services performed by massage therapists, whether that service is conducted under the direct supervision of a physician or the massage therapist is certified as a medical assistant or chiropractic assistant. It also contends that the Defendant-Appellants' arguments conflict with the record evidence because Dr. Merced's name was listed in Box 31 of the forms it submitted and he "was not always present at Right Spinal to directly supervise" the massage therapists.[4]

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[4] GEICO urges us to affirm based on its Box 31 argument that was raised at summary judgment below. We generally can affirm on any basis supported by the record. *See Fla. Wildlife Fed'n Inc. v. United States Army Corps of Eng'rs*,

We affirm on this issue for a few reasons. Section 627.736(1)(a)(5) accomplishes two objectives: (1) it excludes massage therapy from the from the definition of "[m]edical benefits," *Beacon Healthcare*, 298 So. 3d at 1238; and (2) it precludes reimbursement for massage therapists, *see Hendrickson*, 299 So. 3d at 525. The statute's explicit exclusion of massage therapy from the definition of medical benefits eligible for reimbursement underscores our prior conclusion—that the identity of the entity *who* submits the bill for PIP reimbursement is irrelevant to whether massage therapy is a medical benefit eligible for reimbursement. The statute's exclusion of massage therapists from the type of providers that can receive reimbursement—*i.e.*, the second of these two objectives—warrants our second conclusion: massage therapists cannot be reimbursed under Florida's PIP law for the services they provide, regardless of whether they are supervised.

Generally, care provided, supervised, ordered, or provided, by a physician is reimbursable as a medical benefit. Fla. Stat. § 627.736(a). Moreover, generally, a licensed physical therapist can generally delegate certain patient care to be done "under the direct

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859 F.3d 1306, 1316 (11th Cir. 2017). However, GEICO stripped the allegations relating to the Box 31 issue from its third amended complaint after the district court denied summary judgment on that basis. The Box 31 dispute is, thus, no longer part of the case. *See Dresdner Bank AG v. M/V Olympia Voyager*, 463 F.3d 1210, 1215 (11th Cir. 2006) ("An amended pleading supersedes the former pleading; 'the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary.'" (quoting *Proctor & Gamble Def. Corp. v. Bean*, 146 F.2d 598, 601 n.7 (5th Cir. 1945))).

supervision of the licensed physical therapist . . . if the person is not a licensed physical therapist assistant." Fla. Stat. § 486.161. However, when Florida's Third District Court of Appeal addressed a situation somewhat similar to what we face here, it explained that "the PIP statute precludes reimbursement for *services provided* by a licensed massage therapist." *Beacon Healthcare*, 298 So. 3d at 1238 (emphasis added). While the *Beacon Healthcare* court noted that the services in that case were provided by "unsupervised massage therapists," we do not believe the supervision point was necessary to its holding. *See id.* at 1238-39. Instead, the court relied on the latter of the two exclusions in § 627.736(a)(5) which provides that "a licensed massage therapist . . . may not be reimbursed for medical benefits under this section." Fla. Stat, § 627.736(a)(5); *Beacon Healthcare*, 298 So. 3d at 1239. Our prior unpublished decision, where we stated that "Florida courts have determined that the plain language of Florida's No-Fault Law precludes reimbursement for physical therapy services provided by massage therapists without regard to the level of supervision," supports the same outcome. *Quality Diagnostic*, No. 21-10297, manuscript op. at 11-12 (citing *Beacon Healthcare*, 298 So. 3d at 1239). Moreover, Florida courts addressing analogous issues have come out the same way. *Hendrickson*, 299 So. 3d at 525; *Geico Gen. Ins. v. Finlay Diagnostic Ctr., Inc.*, 320 So. 3d 276 (Fla. 3rd DCA 2021) (mem.).

Therefore, we conclude that the district court did not err in concluding that the services provided by licensed massage therapists—regardless of any other qualifications they may hold and regardless of whether they are supervised by a physician—are not

reimbursable under Fla. Stat. § 627.736(a)(5). Therefore, we affirm on this issue as well.

C. Whether the District Court Erred in Granting Summary Judgment on GEICO's FDUTPA claim

Third, the Defendant-Appellants argue that the district court erred in granting GEICO summary judgment on its FDUTPA claim when it also found that there were genuine issues of material fact on the materiality and knowledge of the unlawful statements relied upon by GEICO. They note that the district court declined to determine whether Dr. Merced's name in Box 31 was a material misrepresentation. "Despite" that ruling, they argue, the district court's order on their FDUTPA claim was premised on erroneous conclusions that the Box 31 statements were false and the licensed massage therapists were not supervised. They reiterate their argument from summary judgment that the Box 31 statements were not material so they did not lead GEICO to be deceived.

GEICO responds by arguing that these arguments are forfeited, as they were raised for the first time in a motion for reconsideration. Even if we consider the arguments, GEICO asserts, Right Spinal is not entitled to relief because: (1) knowledge is not an element of a FDUTPA claim; (2) materiality is not an element of a FDUTPA claim; and (3) causation was proven by unrebutted evidence showing that GEICO paid Right Spinal for physical therapy services provided by massage therapists, did not know the bills were fraudulent or unlawful, and it was entitled to rely on Right Spinal's facially valid bills.

The elements of a FDUTPA claim are: "(1) a deceptive act or unfair trade practice; (2) causation; and (3) actual damages." *Dolphin LLC v. WCI Cmtys., Inc.*, 715 F.3d 1243, 1250 (11th Cir. 2013) (citing *Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. 2d DCA 2006)). A deceptive act is one where "there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003). To prove causation, "a plaintiff need not prove reliance on the allegedly false statement to recover damages under FDUTPA, but rather a plaintiff must simply prove that an objective reasonable person would have been deceived." *Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1283 (11th Cir. 2011); *see also Davis v. Powertel, Inc.*, 776 So. 2d 971, 973 (Fla. 1st DCA 2000) (similar).

The Defendant-Appellants focus on the first two elements of GEICO's FDUPTA claim. Yet they—like GEICO—incorrectly debate the relevance of the Box 31 issue even though GEICO removed those allegations from the case. *See Dresdner Bank AG*, 463 F.3d at 1215. If the district court's summary judgment order turned on the Box 31 dispute, it would not have survived GEICO's amendment to its complaint. Instead, the district court provided a different reason altogether for granting summary judgment on GEICO's FDUTPA: GEICO prevailed because it paid PIP bills to a clinic that violated the statutory scheme. The court reasoned that, because the Clinic submitted bills for services completed by licensed massage therapists when the law prohibited reimbursement for those services, GEICO had shown a deceptive or unfair practice

and causation. For the reasons stated above, we agree that those services were non-reimbursable. The Defendant-Appellants' arguments about Box 31 are, thus, non-responsive—they attack reasoning that the district court did not adopt. By doing so, they have abandoned any challenge to the district court's ruling on this issue. *See Sapuppo*, 739 F.3d at 681 (explaining that, when the district court bases its judgment on multiple grounds, the "appellant must convince us that every stated ground for the judgment against [the]m is incorrect").

In sum, because the Defendant-Appellants submitted requests for reimbursement for non-reimbursable services, and because they failed to challenge the actual basis upon which the district court ruled, we affirm the grant of summary judgment on this issue.[5]

[5] In their reply brief, the Defendant-Appellants raise two additional issues. First, they argue the district court should have applied the voluntary payment doctrine to bar GEICO's recovery. Second, they argue the district court erred in piercing the Clinic's corporate veil and entering judgment against Jimenez-Urdaniva, Mora-Jimenez, and Garcia-Gamez personally. Whatever the merit of these arguments, we do not consider them. First, the arguments were not presented to the district court in opposition to GEICO's motion for summary judgment. *Club Madonna*, 42 F.4th at 1247 n.4; *Irving*, 136 F.3d at 769. Second, they were presented to us for the first time in the reply brief. *See Big Top Koolers, Inc. v. Circus-Man Snacks, Inc.*, 528 F.3d 839, 844 (11th Cir. 2008).

IV. CONCLUSION

For the reasons described above, the Defendant-Appellants have not shown reversible error in the rulings of the district court. Accordingly, we affirm.

AFFIRMED.