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Virgil H. Camp v. Deseret Mutual Benefit Association : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

* * * * *

VIRGIL H. CAMP,
Plaintiff-Appellant,
vs.
DESERET MUTUAL BENEFIT
ASSOCIATION, et al.,
Defendants-Respondents

Civil No. _____

* * * * *

BRIEF OF APPELLANT

* * * * *

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT, STATE OF UTAH
JUDGE JAMES SAWAYA

* * * * *

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IN THE SUPREME COURT
OF THE STATE OF UTAH

* * * * *

VIRGIL H. CAMP,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	Civil No. 15,672
)	
DESERET MUTUAL BENEFIT)	
ASSOCIATION, et al.,)	
)	
Defendants-Respondents)	

* * * * *

STATEMENT OF THE CASE

This is an action for a breach of an insurance contract and an interpretation of certain contract provisions.

DISPOSITION IN THE LOWER COURT

The case was heard by the District Court on Cross-Motions for Summary Judgment. From a judgment in favor of the defendant, plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the judgment and judgment in his favor as a matter of law.

STATEMENT OF FACTS

The facts of this case were stipulated to by counsel at the trial of this matter. The question before the trial court was simply an interpretation of a contract provision.

On June 21, 1976, the Plaintiff's 16-year old son, Jeff Camp, was severely injured on a trampoline. He is, as a result of the accident, a quadriplegic. (Escobar Depo. at 5)

From June 21, 1976 to July 8, 1976, Jeff was in the Cottonwood Hospital. From July 8th to October 15, 1976 Jeff was in the University of Utah Medical Center in its physical rehabilitation section under the care and supervision of Dr. Pedro Escobar. (Escobar Depo. at 5 and exhibits attached thereto)

On October 15, 1976, Jeff was released to go home with his parents and family. At the time of his discharge, he was given certain prescriptions for medication, a course of physical therapy with appointments to see his physicians, (see discharge summary attached to Dr. Escobar's Deposition) and prescriptions for medical equipment: a wheelchair, a specially-equipped van, a hospital bed, a commode chair and a bath shelf (See Plaintiff's Complaint, Exhibits B, C, D, and E).

Mr. Virgil Camp, the plaintiff, obtained all of these items prescribed and recommended by the attending physician. He then submitted them to the defendant for payment pursuant to his policy of insurance. (Camp Depo. at 15-18)

The defendant insurance company paid for all of the items prescribed and recommended except for the specially-equipped van. The defendant denied payment on the ground that it was not medical equipment. (Stewart Depo. at 11). The van was equipped with special equipment prescribed and recommended by Jeff's attending physician in order to alleviate his physical impairment -- that of a quadriplegic. The van contained the following: a refrigeration system to reduce body temperature, a citizen's band radio in order to communicate with others in the event of an emergency, a hydraulic lift, which would transport the boy in his wheelchair from the ground level into the

and forward to the front of the van and a special chair for the boy to sit in as a driver, hand controls, power steering, power brakes, and other controls recommended by the manufacturer of equipment for handicapped persons. (Escobar Depo. exhibit D-1 and exhibits B, C, D, and E of Plaintiff's Complaint).

Mr. Camp pursued the matter through the defendant's internal appeal procedure and after it was finally denied by the Company at the highest level, he commenced this action, alleging a breach of his contract with the insurance company.

The simple issue before this Court is whether or not a specially-equipped van, prescribed and recommended by his attending physician, is medical equipment under the terms of the policy.

There are no contested issues of material fact and therefore Summary Judgment pursuant to Rule 56, U.R.C.P. was appropriate in this matter. It is not disputed that the plaintiff's son is a quadriplegic, nor can it be disputed that the defendant refused to pay for the van. Finally, it cannot be disputed that Dr. Escobar, the attending physician to Jeff Camp, prescribed and recommended that the specially-equipped van be obtained.

Exhibit "D" attached to plaintiff's complaint is a prescription for medical equipment. In that exhibit, Dr. Escobar prescribes a van with the appropriate special equipment. In addition, he states in that prescription that the van is medically necessary. Furthermore, in his letter (exhibit "B" attached to plaintiff's complaint), Dr. Escobar clearly recommends the purchase or rental of the van as

essential to the patient's health and well being. In his deposition, Dr. Escobar states that he prescribed the van for Jeff:

Q. May I ask just one further question. Dr. Escobar, did you prescribe for Jeff Camp a van equipped with power steering, power brakes, automatic transmission, refrigeration, hand control system and automatic wheelchair lift and a CB radio?

A. Yes. I think we went over those and mentioned the reasons why I had done that. (Deposition of Dr. Escobar at page 67)

The specially equipped van is a Type II benefit under plaintiff's insurance policy with defendant and is covered to 80% of the cost:

Benefits are payable for expenses incurred by you or your dependents resulting from bodily injury or accident on the basis of 80% of usual, reasonable and customary charges for:

MEDICAL SUPPLIES AND EQUIPMENT - charges for medical supplies and medical equipment prescribed by a physician, including oxygen; blood and other fluids to be injected into the circulatory system; artificial limbs and eyes; casts, splints, trusses, braces, orthopedic shoes, crutches, surgical dressings; and rental of special medical equipment recommended by a physician, such as a wheelchair, hospital-type bed, iron lung or oxygen equipment.

(Exhibit "A" attached to plaintiff's complaint at pages 14 and 15). (Stewart depo. at 15-16) (emphasis supplied)

The contract states that DMBA will pay 80% of the expenses incurred by the injury "resulting from bodily injury or sickness". One of the expenses detailed are expenses for medical supplies and equipment. The only requirement for coverage by the company for medical equipment is that it be prescribed or recommended by a physician and it be incurred as a result of a bodily injury or sickness.

Here the specially-equipped van was both prescribed and recommended as medical equipment for Jeff by the attending physician, Dr. Escobar. Furthermore, the expense of the van directly relates to a bodily injury incurred by the dependant of the insured. Accordingly, under the express terms of the policy, the van and its expenses are covered.

Clearly, but for the accident and the subsequent quadriplegic condition of Jeff Camp, there would have been no need for a specially-equipped van containing such necessary items for Jeff's condition, such as hydraulic lift, power steering, hand controls, air conditioning for his body, power brakes and a CB radio. Accordingly, such equipment is necessarily medical equipment, as it relates solely to Jeff's condition and injury and is attributable to his medical needs. As it was prescribed and recommended by the physician as medical equipment, the insurer must provide for 80% of its cost pursuant to the terms of the contract.

ARGUMENT

POINT I

THE SPECIALLY-EQUIPPED VAN IS COVERED BY THE EXPRESS TERMS OF THE CONTRACT

Plaintiff maintains that in order to qualify for benefits under the terms of the contract, it must show the following:

- (a) The expenses occurred as a result of a bodily injury or sickness of the insured or dependent of the insured.
- (b) That the medical equipment be prescribed or recommended by a physician.

Plaintiff has met those requirements. Jeff is the son of the plaintiff and a dependant under the terms of the policy. The expense

of the van was incurred as a result of a bodily injury. A physician has prescribed and recommended the van as medical equipment. Therefore, the defendant is liable for the cost of the van, failure to do so constitutes a breach of contract. In the absence of fraud, Dr. Escobar's statement that the van is medical equipment is controlling and the defendant cannot substitute its own judgment or the judgment of anyone else for that of Dr. Escobar.

In Amicone v. Kennecott Copper Corp., 19 U.2d 297 43, P.2d 130 (this Court faced a similar situation. There an employee maintained that he was entitled to total disability benefits under the employer's plan. The employee's physician testified that the employee qualified for total disability. The Supreme Court found for the defendant employer on the basis of the contract language which stated that the determination of total disability was to be made by a doctor designated by the corporation. (That physician stated that the employee was not totally disabled.) This Court held that where, in the opinion of the physician designated by the employer, the employee was not totally disabled, it was the duty of the employee to show bad faith, fraud, mistake or the like in order to disqualify that opinion. Furthermore, to sustain a showing of bad faith, mistake or fraud, the evidence must establish it by "more than a mere preponderance, it must be overwhelming" (Menke v. Thompson, 140 F.2d 786, 791 (8th Cir. 1940) cited with approval in the Amicone case.)

Here, the contract language states that the expense for medical equipment prescribed or recommended by a physician will be covered by the carrier. Dr. Escobar so prescribed and recommended, and therefore plaintiff has met its burden. Defendant cannot contradict the opinion

of Dr. Escobar as to whether or not someone else views the van as not being medical equipment. If the insurer desired, it could have stated that a physician of its choice would make the determination or that certain criteria be met. The defendant failed to do so and is bound by the language of the contract.

POINT II

INSURANCE CONTRACTS ARE CONSTRUED
AGAINST THE INSURER AND AMBIGUITIES
ARE RESOLVED IN FAVOR OF COVERAGE.

It is a fundamental concept of law that insurance contracts are construed in favor of the insured and against the insurer. Browning v. Equitable Life Assurance Co., 94 Utah 532, 172 P.2d 1060 (1945).

In dealing with insurance contracts there are two theories of construction: First, if the terms of the policy are unambiguous, and second, if the terms of the policy are ambiguous.

In the first instance, if the terms of the policy are clear and unambiguous, then it must be enforced. The relevant clause of defendant's contract has been set forth above. Assuming no ambiguity, the insurer must pay 80% of the cost of any item of medical equipment prescribed or recommended by a physician. In this case, the specially-equipped van was both prescribed and recommended by the attending physician, Dr. Escobar, as medical equipment necessary for the injured patient. (See Exhibits "B" and "D" of Plaintiff's Complaint). Furthermore, Dr. Escobar testified that the van was medical equipment.

Accordingly, the term medical equipment under a strict construction, must be construed as in the following case:

In that part of the contract which relates to the "covered" charges for which the defendant

ment" without precise definition. Implicit in this use of this work "equipment" is that the equipment item be diagnosed by his doctor. The air conditioning unit ordered by plaintiff's doctor for the purpose of affording plaintiff relief from his ailment is embraced in the term "equipment" and therefore plaintiff was justified in buying the air conditioning unit. Kennan v. Equitable Life Assurance Society of the United States, 299 NY Supp. 2d 880, 1969).

The Kennan case was an action to enforce the contract of insurance for payment of necessary equipment under the medical insurance policy. Here the term "equipment" is also used without precise definition except to limit it to medical equipment, a modification clearly implicit in the Kennan case as it refers to equipment ordered by the doctor to relieve an ailment or impairment. In the case at bar, the specially-equipped van was also ordered by the doctor to relieve an ailment or impairment.

In fact, the language of the contract says ". . . and rental of special medical equipment recommended by a physician such as a wheelchair, hospital bed, iron lung or oxygen equipment." Nowhere does the defendant limit it to those items but rather states that it will pay for "special medical equipment," i.e., equipment not normally required. Therefore a specially equipped van for handicapped persons is an item of special medical equipment.

There is no question that the van prescribed and recommended by Dr. Escobar for Jeff was made necessary as a result of the injury and therefore, medically necessary to relieve a physical impairment. Accordingly, if the term "medical equipment", is unambiguous it must be any equipment prescribed and recommended by a physician for the purpose of relieving an ailment or impair-

ment, and therefore defendant must extend coverage.

Alternatively, if there are two different reasonable interpretations of the term "medical equipment," there must be an ambiguity in the term "medical equipment" and the following analysis would apply:

In interpreting an insurance policy, courts have universally resolved ambiguities, if any there be, in a policy strictly against the insurer and in favor of the insured. Christensen v. Farmers Insurance Exchange, 21 U.2d 194, 196, 443 P.2d 385 (1968).

The question of ambiguity then is what is "medical equipment"?

In the deposition of Mr. Merwin U. Stewart, Vice President of Deseret Mutual Benefit Association, Mr. Stewart stated as follows:

A. All right, Mr. Stewart. It was on the 14th then or just prior to the 14th of October, 1976 that you became aware of this claim. What was the substance of your reaction to the claim by Mr. Camp?

A. I felt that the claim clearly was not an eligible . . . the claim for a fully equipped van was not an eligible claim under the policy.

Q. What was the basis for that judgment?

A. That it was not medical equipment.

Q. Why was it not medical equipment?

A. An automobile is more generally used for something other than medical. Medical equipment would generally be an item of equipment which is used primarily and almost exclusively for medical purposes and reasons.
(Deposition at page 11)

Q. Before I get onto the other items, so what are you saying then is that instead of just setting forth a prescription or a recommendation from the physician, you are requiring other items to be given to you by the insured, is that correct?

A. Right. I can think of at least two other items that would be required: one is that it be medical equipment; and two, that it be an eligible expense under the policy.
(Deposition at page 18)

Q. Because if I understand you correctly, are you telling me that if it is medically necessary and it is an eligible item of equipment, that it becomes medical equipment? Is that correct?

A. If it's specifically listed as an item of medical equipment, such as a wheelchair or a crutch, there's nothing further that is required. If it is not specifically listed, then it must clearly be an item of medical equipment.
(Deposition at page 19)

Q. Let me just direct the attention to a letter dated November 5, 1976, from you to me where you state, and I will quote, and I'll admit I am excerpting out of the paragraph, but I think it's self-explanatory. I'm reading now: "While the committee is sympathetic with the desirability for adaptation of Jeffrey to a normal life and to the recommendation of his attending therapist and physicians to retain as much independence as possible, the requested equipment is considered to be transportation rather than a device necessary to sustain life or to medically relieve a physical impairment."

Mr. Bushnell: Let's finish the other sentence.

Q. All right. "Such transportation equipment is not provided for in the medical insurance policy."
Now, are these two other additional items criteria for determining whether or not it is medical equipment, a device necessary to sustain life or to medically relieve a physical impairment? (emphasis added.)

A. They would be part of the criteria we would consider. (Deposition at pages 25 and 26) (emphasis added.)

The defendant has not only admitted that the term is ambiguous, by offering a different definition of medical equipment than plaintiff, but has placed additional criteria for determining what is medical equipment. By the fact that such additional criteria were not set forth in the contract and insurance agreement they are void and render defendant's position and reliance upon it unsupportable.

(Fassio v. Montana Physicians' Service, 553 P.2d 998 (Mont.1976)).

At best, defendant has made the term "medical equipment" a floating term to fit whatever the defendant desires to extend or not extend coverage to.

If defendant wished to set forth exactly what is medical equipment and limit it to those items, or establish criteria for determining what is medical equipment, defendant has an obligation to do so or to be held strictly to the terms of the policy:

The language of these insurance contracts are carefully chosen. This was done in the absence of the Fassios and used to carefully limit and protect the carrier, Montana Physicians' Service, against extended liability. If Montana Physicians' Service wishes to exclude or limit the risk contracted for it, then let them do so in words that leave no doubt. The law is clear that in this jurisdiction that exclusion clauses are construed narrowly against the insurer. Fassios v. Montana Physicians' Service, 553 P.2d 998, 1,000 (Montana, 1976).

In that case, as here, defendant is in the position of writing the terms of the policy. Plaintiff has had no role in drafting this document and, should defendant wish to exclude a specially-equipped van or should it desire to specifically limit the policy coverage to certain items of medical equipment or establish a criteria for eligibility of "Medical expenses", then it must do so.

In State Farm v. Jacober, 514 P.2d 953 (Cal. 1973), the California Supreme Court held that when an exclusionary clause is subject to different reasonable meanings, the insured's view prevails:

For under settled principles so long as coverage is available under any reasonable interpretation of an ambiguous clause, the insurer cannot escape liability. . . . so long as there is any other reasonable interpretation under which recovery would be permitted in the instant case if semantically permissible, (an insurance) contract will be given such construction as will fairly achieve its object of securing indemnity to the insured to the losses to which the insurance relates. Id. at 954, 959.

Here, the term "medical equipment" is subject to at least two different reasonable interpretations: the plaintiff uses it as any equipment prescribed or recommended by the physician that is required or necessary for the patient as a result of the injury or condition. This is clearly the purpose for which the policy was obtained -- to insure against any health or medical expense. But for Jeff's injury, the specially-equipped van would not be necessary. Additionally, Dr. Escobar stated that in his opinion, the van was medically necessary for Jeff. (Dr. Escobar's Deposition at Page 66 and prescription, Exhibit "D" to Plaintiff's Complaint). As the Utah Supreme Court has said:

This jurisdiction, like many others, has declared in favor of a liberal construction in favor of the insured to accomplish the purpose for which the insurance was taken out and the premiums paid. Browning, supra at 562.

Defendant, on the other hand, has viewed medical equipment as:

- (a) something necessary to sustain life, (Stewart Depo. at 26);
- (b) to medically relieve a physical impairment (Stewart Depo. at 26); or
- (c) something provided in a hospital to patients in a hospital (Stewart Depo. at 19).

Under Plaintiff's theory, a specially-equipped van would be an eligible expense. In fact, under at least one of defendant's three theories, the van would qualify. Defendant states that the item must be necessary to "medically relieve a physical impairment". The van is clearly there to relieve physical impairment, the loss of the hands, legs and other bodily functions from the neck down of Jeff Camp. It is exactly the same function as that of a wheelchair which defendant admits to cover.

In evaluating this contention, we begin with the fundamental principle that an insurer cannot escape its basic duty to insure by means of an exclusionary clause that is unclear. As we have declared time and again "any exception to the performance of the basic underlying obligation must be so stated as to clearly apprise the insured of its effects". [citations omitted]

Thus, the burden rests upon the insurer to place acceptance and exclusions in clear and unmistakable language. [citations omitted]

The exclusionary clause must be conspicuous, plain and clear. [emphasis in original]
State Farm Mutual v. Jacober, Id. at 958

Accordingly, defendant has the obligation to set forth its contract in clear and unambiguous language. If it does not, then the insurer must have the policy construed against it. In this case, as there is more than one reasonable construction of the term "medical equipment", the construction of the insured must prevail and the insurer is liable for the cost of this equipment.

CONCLUSION

We need not go into the subject of the advancement of technology and modern science. We need not deal with the question of whether or

not a van is the modern replacement of a wheelchair or where this ends if the insurance company must pay for this van.

We are simply dealing with an insurance contract. This contract must be construed according to its terms and strictly against the insurer in a light most favorable to coverage for the insured. Defendant's tortured view of the term "medical equipment" is inconsistent with that of the intent of the policy. That is, to provide coverage for the insured where, when and if it becomes necessary. Here, it does.

DATED this 2nd day of May, 1977.

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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief to Dan S. Bushnell and Bruce Findlay, of Kirton, McConkie, Boyer & Boyle, attorneys for defendants-respondents, 336 South Third East, Salt Lake City, Utah 84111, postage prepaid this 2nd day of May, 1978.