

1992

Burns Chiropractic Clinic v. Allstate Insurance Company : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

BURNS CHIROPRACTIC CLINIC,	:	BRIEF OF APPELLANT
Plaintiff-Appellant,	:	
vs.	:	Appellate Court
ALLSTATE INSURANCE COMPANY,	:	Case No. 920282
Defendant-Appellee	:	

BRIEF OF APPELLANT

- - - - -

APPEAL FROM ORDER OF THE THIRD
CIRCUIT COURT OF SALT LAKE COUNTY
GRANTING DEFENDANT/APPELLEE'S MOTION
TO DISMISS HELD BEFORE THE HONORABLE
SHEILA K. MCCLEVE, JUDGE, PRESIDING.

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FILED

JUL 23 1992

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
JURISDICTION AND NATURE OF PROCEEDINGS.....	1
STATEMENT OF ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	2
STATEMENT OF ARGUMENT.....	3
ARGUMENT:	
POINT I: PLAINTIFF'S COMPLAINT DOES STATE A CAUSE OF ACTION.....	3
POINT II: TRIAL COURT DID HAVE SUBJECT MATTER JURISDICTION.....	4
POINT III: ASSIGNMENTS OF MEDICAL BENEFITS FOR AUTOMOBILE PERSONAL INJURY PROTECTION.....	4
POINT IV: FAILURE TO SUBMIT TO AN ARBITRATION PANEL IS NOT GROUNDS FOR DISMISSAL OF A COMPLAINT.....	5
CONCLUSION.....	6
CERTIFICATE OF MAILING.....	iii
ADDENDUM.....	iv-vii

TABLE OF AUTHORITIES
CASES CITED

Page

<u>Ammerman v. Farmers</u> , 450 P.2nd 460 (Utah 1969).....	4
<u>State Farm v. Farmers</u> , 450 P.2nd 458 (Utah 1969).....	4

STATUTORY PROVISIONS

Utah Code Ann. § 78-4-7 (1988).....	4
Utah Code Ann. § 31A-22-307 (2)(d) (1990).....	5

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a dismissal of a Complaint filed against an insurer of Plaintiff's patient in an attempt to collect for unpaid medical bills. Defendant's Motion to Dismiss for Failure to State a Claim was granted in the Third Circuit Court. This Court has jurisdiction to hear the appeal under Rule 4(a) Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES

1. Did Plaintiff's Complaint fail to state a cause of action.
2. Did the Third Circuit Court have subject matter jurisdiction.
3. Does failure to submit reasonableness of medical expenses to an arbitration panel give grounds for dismissal of a Complaint.

4. Are benefits of an automobile personal injury protection insurance assignable.

The standard for review on all issues is whether there is any genuine issue as to material fact, and, if there is not, is appellee entitled to judgment as a matter of law.

STATEMENT OF THE CASE

Plaintiff, a health-care provider, filed a Complaint against an insurer of a patient in an attempt to collect for unpaid medical bills. Defendant moved the Court to Dismiss for Failure to State a Claim and supported the Motion with Affidavits.

The Circuit Court granted the Defendant's Motion to Dismiss the Complaint.

STATEMENT OF FACTS

Plaintiff alleged it provided health-care services to a patient for which it had not been paid. (R-1&2)

Plaintiff alleged it received an assignment from its patient, Kelly Bailey to receive payment directly from his insurance company, Defendant Allstate. (R-2)

The Assignment was submitted into the record (R-24).

Defendant moved to Dismiss (R-5).

Plaintiff's patient's policy with Defendant was submitted into the record (R-20).

The Trial Court granted Defendant's Motion to Dismiss (See addendum).

Defendant's Motion to Dismiss should not have been granted
as:

1. Plaintiff's Complaint did state a cause of action as assignments of insurance medical benefits are enforceable;
2. The Circuit Court had subject matter jurisdiction; not pleading time and place of delivery of assignment does not deprive the Court of subject matter jurisdiction.
3. Not submitting the reasonableness of medical expenses to an arbitration panel is not grounds for dismissal of a complaint.

DETAIL OF ARGUMENT

PLAINTIFF'S COMPLAINT DOES STATE
A CAUSE OF ACTION.

Plaintiff's Complaint is really quite simple. Plaintiff, a health-care provider, alleges an agreement with Kelly Bailey, one of its patients, whereby services were rendered and payment is due. (See R-1&2 paragraphs 3 and 8).

Plaintiff then alleged that Defendant insured Plaintiff's patient and agreed to pay for health-care services. (R-1 paragraph 4).

Plaintiff then alleged that its patient assigned it the right to receive payment from the Defendant. (R-2 paragraphs 6 and 7).

The Complaint states a cause of action based on a contract and an assignment of health-care benefits.

TRIAL COURT DID HAVE SUBJECT MATTER
JURISDICTION.

Defendant moved to dismiss for lack of subject matter jurisdiction (R-5) and the Salt Lake City Circuit Court granted the Motion partially on that basis. (See pages 1 and 2 of the Order addendum). Yet Plaintiff's Complaint falls clearly within the subject matter jurisdiction of the Circuit Courts as set forth in § 78-4-7 Utah Code Ann. (1988) The Court points out that the Complaint fails to allege date and delivery of assignment, yet the undersigned could find no case law that such deficiencies - if they are such - deprive a Court of subject matter jurisdiction. Those matters are clearly discoverable or maybe the subject of a Motion for a more Definite Statement, but are not grounds to dismiss for lack of subject matter jurisdiction.

ASSIGNMENTS OF MEDICAL BENEFITS OF
AUTOMOBILE PERSONAL INJURY PROTECTION
INSURANCE ARE ENFORCEABLE.

There is no question that assignments of the benefits of medical insurance are generally enforceable. See State Farm v. Farmers, 450 P.2nd 458 (Utah 1969), and Ammerman v. Farmers, 450 P.2nd 460 (Utah 1969). The lower court granted dismissal on the

basis that policy specifically prohibits assignment of benefits. (Order, Addendum). Such a ruling is erroneous. Ibid. The policy itself states (R-20).

"Payments will be made to or on behalf of an injured person..." (emphasis added) (page 9 of policy).

Such language surely contemplates payments to a health-care provider. Finally the policy states:

"No one may sue us under this coverage unless there has been full compliance with all the policy terms." (R-20)

No one has ever suggested that Plaintiff's patient and assignor has not complied with all policy terms.

Defendant has stated that Plaintiff wants payment for unreasonable and unnecessary medical expenses, but such is not the case. Plaintiff has never requested such. Plaintiff believes its bills are reasonable for services that were necessary. Defendant disputes such, but such a dispute would raise an issue of fact, not entitling Defendant to summary disposition

FAILURE TO SUBMIT TO AN ARBITRATION PANEL IS
NOT GROUNDS FOR DISMISSAL OF A COMPLAINT

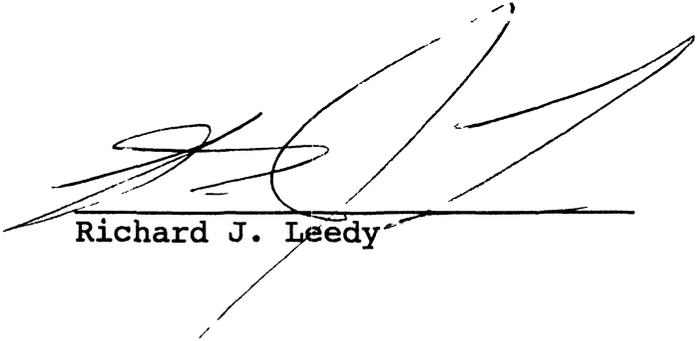
Defendant has argued and the lower Court ruled that Plaintiff's Complaint should be dismissed as it failed to invoke arbitration to determine reasonableness of medical expenses after Defendant requested such. (See R-5 and Order Addendum). Yet the

statute does not dictate dismissal § 31A-22-307 (2)(d) Utah Code Ann.(1990) It merely states that the matter may be referred by the Court to arbitration.

CONCLUSION

Plaintiff's Complaint states a cause of action. There is subject matter jurisdiction in the Circuit Court. Assignments of insurance benefits to pay health-care providers are enforceable and it is not grounds to dismiss a Complaint on the basis that the Plaintiff failed to submit to Arbitration. Based on the foregoing, the Plaintiff requests this Court to reverse the Trial Court's Order of Dismissal, remand this case to the Trial Court and require the Defendant to answer.

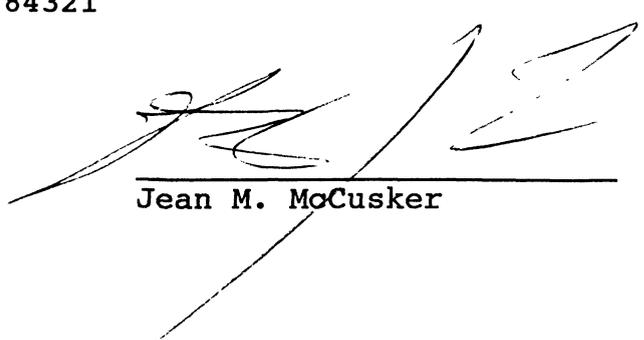
RESPECTFULLY submitted this 23 day of July,
1992.


Richard J. Leedy

CERTIFICATE OF MAILING

I CERTIFY that on 23 day of July, 1992, I caused a true and correct copy of the foregoing instrument to be mailed by way of U.S. Mail, sent first-class, postage prepaid addressed to the following:

Jan P. Malmberg
PERRY, MALMBERG & PERRY
Attorney for Defendant-Appellee
Allstate Insurance Company
29 West 100 North
P.O. Box 364
Logan, Utah 84321



Jean M. McCusker

ADDENDUM

Utah Code Ann. § 78-4-7 (1988) provides:

"The circuit court has civil jurisdiction, both law and equity, in all matters if the sum claimed is less than \$10,000, exclusive of court costs, except:

(1) in actions to determine the title to real property, but not excluding actions to foreclose mechanics liens;

(2) in actions of divorce, child custody, and paternity;

(3) in actions under the Utah Uniform Probate code;

(4) in actions seeking remedies in the form of extraordinary writs; and

(5) in all other actions where, by statute, jurisdiction is exclusively vested in the district court or other trial or appellate court."

Utah Code Ann. § 31A-22-307 (2)(d) (1990) specifically states:

"In disputed cases, a court on its ownmotion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or expenses."

ADDENDUM CONTINUED

Third Circuit Court Order

THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

BURNS CHIROPRACTIC CLINIC)	ORDER
)	
Plaintiff,)	Case No. 920001213
)	
v)	Judge Sheila K. McCleve
)	
ALLSTATE INSURANCE COMPANY)	
)	
Defendant.)	

Defendant's motion to dismiss Plaintiff's complaint is granted.

The contract language between Defendant Allstate and insured Kelly Bailey allows an insured to assign his reimbursement benefit for payment of reasonable and necessary medical expenses. It does not allow an assignee such as Burns Chiropractic Clinic to acquire or unilaterally assert greater rights than those for which the insured contracted. The contract language limits the insured to direct the manner of payment of benefits. The contract does not confer a broad power of general assignment. Plaintiff Burns Chiropractic Clinic is no less bound by the terms of the contract than the insured can be.

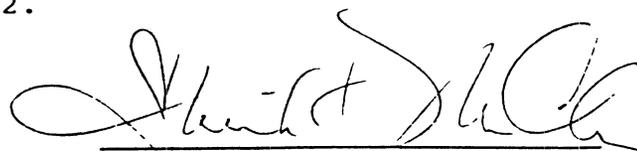
Further, the Plaintiff has failed to specify facts in the complaint that would establish subject matter jurisdiction. As Defendant argues, the alleged assignment is silent as to execution, delivery and place and the notary certificate is

blank. The failure of Plaintiff to attempt to establish jurisdiction, particularly in light of Plaintiff's untimely filings of response memorandum and letter, is without excuse.

In addition, Plaintiff does not appear to dispute the availability of a medical panel which could resolve this matter pursuant to statute. And finally, this entire question has previously been brought before Second Circuit by the same Plaintiff against the same Defendant by way of a different insured and resolved in favor of the Defendant.

In view of all of the foregoing, it appears this action is without merit and has not been brought in good faith. Accordingly, pursuant to Section 78-27-56 UCA, and based upon cost to defend as provided by Defendant's affidavits, Defendant is awarded \$400 in attorney's fees. Defendant's motion is granted and Plaintiff's case is dismissed.

Dated this 2nd day of April, 1992.

A handwritten signature in cursive script, appearing to read "Michael J. ...", written over a horizontal line.

CIRCUIT COURT JUDGE