1969

Myrl Wells v. Blue Shield of Utah : Brief of Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

MYRL WELLS,
Plaintiff and Respondent,

—vs.—

BLUE SHIELD OF UTAH,
Defendant and Appellant.

Case No. 11871

BRIEF OF RESPONDENT

Appealed from the District Court of Box Elder County, State of Utah
The Honorable Lewis Jones, *Judge*

D. GARY CHRISTIAN
J. DENNIS FREDERICK
KIPP AND CHRISTIAN
520 Boston Building
Salt Lake City, Utah 8411
Attorneys for Plaintiff and Respondent

ALBERT R. BOWEN
RAY, QUINNEY & NEBEKER
400 Deseret Building
Salt Lake City, Utah 8411
Attorneys for Defendant and Appellant

TABLE OF CONTENTS

CASES CITED:

TABLE OF CONTENTS (continued)

IN THE SUPREME COURT OF THE STATE OF UTAH

MYRL WELLS,
Plaintiff and Respondent,
—vs.—
BLUE SHIELD OF UTAH,
Defendant and Appellant.

Case No. 11871

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Action by plaintiff to recover benefits claimed under a medical prepayment contract issued by defendant.

RELIEF SOUGHT ON APPEAL

The Plaintiff and Respondent seeks affirmation of the judgment in Plaintiff/Respondent's favor and an Order directing the Defendant/Appellant to pay costs of this appeal.

STATEMENT OF FACTS

The case came before the court on August 12, 1969, on a Motion for Summary Judgment filed by defendant and for trial. Defendant's Motion for Summary Judg-

ment was denied (TR 23). Submitted with said motion and received in evidence by the court was the medical pre-payment contract issued by defendant (Exhibit "A" TR 24). On motion of the plaintiff, plaintiff's deposition was also received in evidence. Portions of this deposition were read in the record.

Upon the denial of defendant's Motion for Summary Judgment plaintiff made an oral Motion for Summary Judgment based upon the pleadings and the evidence inasmuch as no further evidence was required for determination of the case; the defendant stipulated that said motion might be considered immediately without notice. The court granted the motion of the plaintiff and ordered that judgment be entered in favor of plaintiff for $780.00 plus costs (TR 23).

Proposed Findings of Fact and Conclusions of Law were signed and entered by the court on or about August 26, 1969. Thereafter defendant filed a motion under rules 52B, 59A and 59E to amend the findings of fact, conclusions of law and judgment, or in the alternative for a new trial. Defendant's motion to amend was heard on September 9, 1969. The court granted defendant's motion to amend the conclusions of law and judgment (TR 34, 35 and 36).

On April 16, 1968, plaintiff was injured in an accident at his home in Corinne, Utah, while he was attempting to repair a damaged fuel tank. He was using a jack on the inside of this tank, when it slipped while under pressure and the handle struck plaintiff in the mouth

(pl.'s depo. p. 3-4, TR 4-5). This accident broke plaintiff's jaw, knocked out three teeth and broke several other teeth, and forced his teeth into the back of his mouth (pl.'s depo. p. 4 and 5, TR 4).

After the accident, plaintiff was taken by his wife to the office of Dr. H. J. Griffin, D.D.S. where he received emergency treatment and was then referred to Dr. White, an oral surgeon, in Tremonton, Utah, for hospitalization and treatment of the fractured jaw (TR 5, 6, 7). Plaintiff was under Dr. White's care for about seven weeks until the fracture healed (pl.'s depo. p. 7). After his discharge by Dr. White, plaintiff returned to Dr. Griffin for the dental repairs made necessary as a result of the accident (TR 6-7). Dr. Griffin performed only dental services for the plaintiff (TR 8). Plaintiff submitted to defendant the bill of Dr. White for oral surgical services performed in the treatment of the fracture which defendant paid (TR 7, pl.'s depo. p. 7). When the dental bill of Dr. Griffin was submitted to the defendant, payment was denied on the ground that the contract issued by the defendant to the plaintiff excluded payment for dental services and because Dr. Griffin was not a "participating or nonparticipating physician" within the terms of the prepayment medical contract held by the plaintiff.

There is no dispute regarding the occurrence of the accident which plaintiff sustained on April 16, 1968, nor is there any dispute that at the time of said accident plaintiff was a subscriber to the contract issued by defendant to plaintiff, upon which this suit was brought, or that said contract was in good standing and in full force and effect on the day of the accident (TR 9).

Plaintiff had obtained this contract from defendant through the Farmers' Union of which he was a member and the contract was solicited by an agent of defendant. Plaintiff/Respondent testified that there were no discussions about the exclusion of benefits from the contract which he could recall (TR 11). Plaintiff had no recollection of any representations concerning the contract made by defendant's agent (pl.'s depo. p. 18-19) and after the contract was delivered to plaintiff, he never read it in any detail (pl.'s depo., p 20).

ARGUMENT

POINT I

THE CONTRACT BETWEEN THE PARTIES DOES BY ITS TERMS ENTITLE THE PLAINTIFF TO THE BENEFITS SUED FOR IN HIS COMPLAINT AND THE CONCLUSIONS OF LAW AND THE JUDGMENT OF THE TRIAL COURT ARE SUPPORTED BY THE FINDINGS AND THE EVIDENCE.

The pertinent provisions of the contract in question, a copy of which is a part of this Court's record and designated Defendant's Exhibit "A", read as follows:

> "THIS CONTRACT . . . entitles the subscriber and family and dependants . . . to have, on or after the date membership becomes effective hereunder, *services from the participating physician of their choice.*" (Emphasis supplied)

Aricle I, Definitions of Terms, subsection E, reads as follows:

> " 'Participating Physician' shall mean any doctor licensed as a physician and surgeon to practice

medicine in *all its branches* . . . ." (Emphasis supplied)

Article II, Services Provided, subsection A(1), reads as follows:

> "The following services . . . shall be available to the member . . . when rendered by a participating physician. . . .:
>
> Surgical services rendered by a participating physician in the treatment of disease, illness or injury. The term 'Surgical Services' shall mean: cutting, suturing and operative procedures; treatment of fractures and dislocations or orthopedic casting; operative and major diagnostic endoscopic procedures; therapeutic surgical injections and therapeutic surgical aspirations; destruction of lesions by electrical means; biopsies of internal organs."

Article III, Limitations and Exclusions, subsection B(7) reads as follows:

> "The services provided by this contract shall not include the following:
>
> * * *
>
> 7. Physician services for extraction of teeth or other dental processes."

Dorland's Illustrated Medical Dictionary, 23rd Edition 1958 defines the following terms:

> Medicine: "The art or science of healing diseases; especially the healing of diseases by the administration of internal remedies."
>
> Dentistry: "That department of the healing arts which is concerned with the teeth, oral cavity,

and associated parts, including the diagnosis and treatment of their diseases and the restoration of defective and missing tissue."

Physician: "An authorized practitioner of medicine."

It is the position of the Plaintiff/Respondent that the term "medicine in all its branches" as provided in the contract prepared and written by the Defendant/Appellant includes Dentistry and related surgical repair of oral injuries such as those sustained in the case at hand. Dentistry is a department of the healing arts and deals with diagnosis and treatment of diseases and is included within the definition of medicine.

The Defendant/Appellant argues that a "Dentist" is not a "Physician" wihin the definition of Article I of the policy in question; however, Article III, subparagraph B(7) specifically excludes "Physician" services rendered for extraction of teeth or other dental processes.

The authors of the contract in question refer to dental services as "Physician services for extraction of teeth. . . .", thereby admitting that a Dentist is an authorized practitioner of medicine and included within the Clause E, Article I definition of a participating physician practicing medicine in "all its branches."

POINT II

THE CONTRACT BETWEEN THE PARTIES IS AMBIGUOUS AND THEREFORE TO BE CONSTRUED LIBERALLY IN FAVOR OF THE PLAINTIFF.

As stated above, on the one hand, Defendant/Appellant argues that a "Dentist" is not included within the

definition of "Physician" within the terms of the contract; and on the other hand, argues that "Physician Services for extraction of teeth or other dental processes," are excluded from coverage in the contract. It is apparent on its face that this contradictory use of the term "Physician" constitutes an ambiguity.

The contract definition of "Participating Physician" is any doctor licensed as a "*physician and surgeon* to practice medicine *in all its branches.*" (Emphasis supplied.) The term "physician and surgeon" constitutes another ambiguity; does the term "and" apply in the conjunctive or disjunctive; that is, are services covered which are solely the result of surgical procedures? Or, are services rendered by a general practicing physician as well as those rendered by a surgeon covered?

The unanimous holding of most all courts as well as the Utah Supreme Court, is that insurance contracts must be liberally construed in favor of a policy holder or beneficiary thereof, wherever possible, and strictly construed against the insurer in order to afford the protection which the insured was endeavoring to secure when he applied for the insurance. *Richards v. Standard Acc. Ins. Co.,* 200 Pac. 1017, 58 Ut. 622 (1921); *Colovos vs. Home Life Ins. Co. of N.Y.,* 28 P.2d 607, 83 Ut. 401 (1934); *Gibson vs. Equitable Life Ass. Soc. of U.S.,* 36 P.2d 105, 84 Ut. 452 (1934); *Browning vs. Equitable Life Ass. Soc. of U.S.,* 72 P.2d 1060, 94 Ut. 532, rehearing denied 80 P.2d 348, 94 Ut. 570 (1937); *Tucker vs. N.Y. Life Ins. Co.,* 155 P.2d 173, 107 Ut. 478; *Stout vs. Washington Fire and Marine Inc. Co.,* 385 P.2d 608, 14 Ut. 2d 414.

The Courts will protect the insured against obscurantism in the contract which conveys one meaning to lawyers and another to the layman. Appleman, Insurance Law and Practice, Vol. 13, Sec. 7401, et seq.

When literal construction of an insurance policy would lead to manifest injustice to the insured and liberal but still reasonable construction thereof would prevent injustice by not requiring an impossibility, such liberal construction should be adopted. *Fidelity and Gas Co. of N.Y. vs. Groth,* 53 N.Y. Supp. 2d 623, affirmed 62 N.Y. Supp. 2d 816, 270 App. Div. 976. The modern tendency is toward a stricter accountability of insurers to insureds. *Giam Balvov vs. Phoenix Ins. Co. of Hartford Conn.,* 36 N.Y. Supp. 2d 598, 178 Misc. 887. When members of the public purchase policies of insurance, they are entitled to a broad measure of protection necessary to fulfill their reasonable expectations and said insurance should not be subjected to technical encumbrances or hidden pitfalls and their policies should be construed liberally in their favor. *Fidelity & Gas Co. of N.Y. vs. Carll and Ramagosa, Inc.* (DCNJ 1965) 243 Fed. Supp. 481, dismissed (C.A.) 365 Fed. 2d 303.

The Courts have traditionally felt that since the language of insurance policies is selected by one of the parties alone, that the language employed by that party should be construed against it. Thus, if the meaning of the words employed is doubtful or uncertain, or if for any reason an ambiguity exists either in the policy as a whole or in portions thereof, the insured should have the benefit of a favorable construction in such instance. Appleman, Insurance Law and Practice, Supra.

It is submitted that when a layman purchases a health and accident insurance policy, he presumes that said insurance will cover personal injury sustained due to any and all accidents. The insured in the record testified that all of the repairs done to his jaw and teeth were a direct result of the injury he sustained through the accident testified to. The Plaintiff in fact testified that he was unaware that dental services were excluded from the contract.

CONCLUSION

From a reading of the pertinent provisions of the contract in question, one can readily see the ambiguities which are created by the express language and the seemingly inconsistent intentions set forth therein. The Plaintiff/Respondent presumed, as do all laymen, that any and all injuries resulting from accidents would be covered by his accident policy. To allow the Defendant-Appellant to avoid paying a legitimate charge for dental services incident to accidental injury through obscurantism would lead to manifest injustice and fly in the face of the almost universal policy of the courts to liberally construe insurance contracts in favor of the beneficiary thereunder, wherever possible to afford the protection to the insured which he was endeavoring to secure when he applied for the insurance.

Respectfully submitted,

KIPP AND CHRISTIAN
D. Gary Christian
J. Dennis Frederick
Attorneys for Plaintiff/ Respondent