

2006

Working RX, Inc. v. Workers Compensation Fund : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS, STATE OF UTAH

<p>WORKINGRX, INC., a Delaware corporation,</p> <p>Plaintiff/Appellants,</p> <p>v.</p> <p>WORKERS' COMPENSATION FUND, et al,</p> <p>Defendants/Appellees.</p>	<p>BRIEF OF APPELLEES</p> <p>Appellate Court Number 20061131-CA</p>
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BRIEF OF APPELLEES

APPEAL from a Final Judgment of the
Third Judicial District Court, West Jordan Department,
Salt Lake County, State of Utah
Honorable Robert W. Adkins

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JURISDICTION

This Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2a-3(2)(j)(Rep.Vol. 9 2002).

ISSUES PRESENTED FOR REVIEW

1. Did the Court below properly conclude that plaintiff had no right of action to seek to enforce a provision of the Workers' Compensation Act in the District Court?
2. Did the Court below properly determine that the plaintiff failed to state an actionable claim for unjust enrichment?

STATEMENT OF THE CASE

Plaintiff brought this action alleging that the defendants were liable to it for benefits under the Workers' Compensation Act for the reasonable value of prescriptions provided to injured employees of the employer defendants. It alleged that it had paid for such prescriptions which were obligations of the defendant employers or the Workers' Compensation Fund (WCF). The Court below granted the defendants' motion to dismiss on the ground that courts have no jurisdiction over claims arising under the Workers' Compensation Act.

SUMMARY OF ARGUMENT

There is no private right of action under the Workers' Compensation Act and the Utah Supreme Court has expressly held that district courts have no jurisdiction whatsoever to hear claims arising under the Act.

Plaintiff's complaint failed to state a claim for unjust enrichment because such a claim, as against the defendant employers, is barred by the exclusive remedy provision of the Workers' Compensation Act and as against the WCF the complaint failed to allege any facts which would entitle it to relief.

ARGUMENT

POINT I. THERE IS NO PRIVATE RIGHT OF ACTION UNDER THE WORKERS' COMPENSATION ACT PROVISION FOR WHICH PLAINTIFF CLAIMS AN ENTITLEMENT.

There is no private right of action to enforce the provisions of Utah Code Ann. §34A-2-418 (Rep.Vol. 4B 2005). The Utah Supreme Court has articulated a four part test to provide guidance in determining if statutory enactments confer private rights of action, which test was first adopted by the United States Supreme Court in Cort v. Ash, 422 U.S. 66 (1975). In Machan v. UNUM Life Ins. Co., of America, 116 P.3d 342 (Utah 2005), the Court set forth the test as follows:

(1) whether the plaintiff is a member of a class for whose special benefit the statute was enacted; (2) whether [the legislature] intended to create or deny a private remedy; (3) whether a private remedy would be consistent with the statute's underlying purposes; (4) the extent to which the cause of action is traditionally relegated to state law.

116 P.3d at 347.

Additionally, the Court noted that

in the absence of statutory language expressly indicating a legislative intent to grant a private right of action, Utah courts are reluctant to recognize an implied right.

Id. at 348.

In the present case the plaintiff satisfies none of the factors supporting a private right of action. It is axiomatic that the class of people sought to be benefitted by the Workers' Compensation Act are the working men and women of the state, not a pharmacy collection agency.

The purposes which underlies the Workers' Compensation Act are: to assure to the injured employee and his dependents an income during the period of his total disability and to provide compensation for any resulting permanent disability; to accomplish this by a simple and speedy procedure which eliminates the expense, delay and uncertainty in having to prove negligence on the part of the employer; and to thus require industry to bear the burden of the injuries suffered in it.

Wilstead v. Industrial Commission, 407 P.2d 692, 693 (Utah 1965).

The Workers' Compensation Act was not enacted to give assignees of pharmacies a cause of action for resolving disputes regarding the reasonableness of prescription billings.

Perhaps even more fatal to plaintiff's position is the fact that the Workers' Compensation Act not only doesn't expressly create a private cause of action for its enforcement, it creates an administrative remedy which is, as against employers, the exclusive remedy for any claim arising from an injury to an employee. Utah Code Ann. §34A-2-105 (Rep.Vol. 4B 2005) provides, in relevant part, that the

right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death

or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee.

(emphasis added).

Not only does the Act not authorize civil court actions to enforce its provisions, it creates a comprehensive administrative procedure for its enforcement. See Utah Code Ann. §34A-2-801, et seq. (Rep.Vol. 4B 2005). As was noted in Sauers v. Salt Lake County, 735 F.Supp. 381 (D.Utah 1990), if a statute purporting to create rights or impose duties contains an exclusive administrative remedy, then a civil action for the alleged violation of those rights or duties is barred.

As a civil action is wholly inconsistent with the Workers' Compensation Act's underlying purpose, plaintiffs fail the third prong of the Cort v. Ash test. The final portion of the test is also failed because disputes about matters governed by the Workers' Compensation Act have historically been resolved through administrative, and not judicial, processes.

Defendants are aware of no case where Utah's courts have implied a private right of action pursuant to a statute that did not expressly provide for one but are aware of numerous cases wherein the courts have refused to find such a right. See, for example, Huckner v. Kennard, 99 P.3d 842 (Utah 2004); Miller v. Weaver, 66 P.3d 592 (Utah 2003); Young v. Salt Lake City School District, 52 P.3d 1230 (Utah 2002); and Broadbent v. Cache County School District Board of Education, 910 P.2d 1274 (Utah App. 1996).

In Broadbent, supra, this Court reiterated what is the overriding theme of the Utah cases rejecting contentions that Utah statutes impliedly created private rights of action: "the courts of this state are not generally in the habit of implying a private right of action based upon state law, absent some specific direction from the Legislature." 910 P.2d at 1278.

The plaintiff's argument regarding its purported right to enforce the provisions of Utah's Workers' Compensation Act in the courts of this state fails to address the primary issue posed by the courts when analyzing a claim to a private right of action: did the legislature intend such an action be available?

In the absence of language expressly granting a private right of action in the statute itself, the courts of this state are reluctant to imply a right of action based on state law. This reluctance is particularly strong when the legislature has already designated a method of resolution through an administrative agency . . .

Miller v. Weaver, 66 P.3d 592, 598-99 (Utah 2003) (citations omitted).

The legislature has established that the Labor Commission is the forum for enforcement of the Workers' Compensation Act and that the right to recover compensation in that forum "shall be in place of any and all other civil liability whatsoever, at common law or otherwise" Utah Code Ann. §34A-2-105(1) (Rep. Vol. 4B 2005).

The mere fact that a statute imposes legal duties does not mean that those duties give rise to a right of action in court to enforce compliance with the statute. See, e.g., Youren v. Tintic School District, 86 P.3d 771 (Utah App. 2004); Milliner v. Elnor Fox & Co., 529 P.2d 806 (Utah 1974).

Plaintiff has cited no authority in support of its argument that the Workers' Compensation Act creates a private right of action for its enforcement in a court and there is none.

Lest there be any question on this point, the Utah Supreme Court has specifically held that Courts cannot consider claims arising under the Workers' Compensation Act. In Sheppick v. Albertson's, Inc., 922 P.2d 769 (Utah 1996), the Court made clear that

[a]lthough the Act does not specifically state that no Court may award benefits provided by the Act, that is its clear import. District courts have no jurisdiction whatsoever over cases that fall within the purview of the Workers' Compensation Act.

922 P.2d at 773 (emphasis added).

Plaintiff's reliance on IHC v. Industrial Commission, 657 P.2d 1289 (Utah 1982),

is completely misplaced for two reasons. First, that case did not involve an attempt to enforce the provisions of the Act but rather was an action by a health care provider seeking a declaratory judgment that the Industrial Commission had no power to regulate the fees charged by hospitals for services provided to patients in actions by providers against patients.

Second, the holding of the IHC case was changed by statute when the Legislature specifically deprived health care providers of the right to seek payment for medical services from injured workers. The present version of this statute is as follows:

The responsibility for compensation and the payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be:

- (a) on the employer and the employer's insurance carrier; and
- (b) not on the employee.

Utah Code Ann. §34-A-401(2) (Rep.Vol. 4B 2005).

The plaintiff's allegation that the defendants owe it duties pursuant to a provision of the Utah Workers' Compensation Act fails to state a claim upon which relief can be granted by a Court.

POINT II. PLAINTIFF HAS NO CLAIM FOR UNJUST ENRICHMENT.

Working RX, Inc.'s second asserted cause of action sought recovery of money it paid to the pharmacies, under the theory of unjust enrichment. Such a theory is unavailable to a plaintiff who has voluntarily paid an obligation it did not owe. The law is clear that a "person who voluntarily and officiously pays another's debts is not entitled

to reimbursement." Estate of Cleveland v. Gorden, 837 S.W.2d 68, 70 (Tenn.App. 1992).

An equitable claim for unjust enrichment is simply not available to one who voluntarily pays the debt of someone else because "equity will not aid a volunteer." Farm Bureau Mutual Auto Ins. Co. v. Buckeye Casualty Co., 67 N.E.2d 906, 911 (Ohio 1946). As stated by the Court in Chinchurreta v. Evergreen Management, Inc., 790 P.2d 372 (Id. App. 1989),

It is well settled that a person cannot - by way of set-off, counterclaim or direct action- recover money which he or she "has voluntarily paid with full knowledge of all the facts, and without fraud, duress or extortion, although no obligation to make such payment existed." This rule, which at first blush seems harsh, exists to protect persons who have had unsolicited "benefits" thrust upon them.

790 P.2d at 374 (citations omitted).

As stated in the Restatement of Restitution §2 (1937), "A person who officiously confers a benefit upon another is not entitled to restitution therefor."

As noted by the Alabama Supreme Court,

claims based on breach of contract, unjust enrichment, and money had and received are precluded by proof that the plaintiff voluntarily paid what he or she is seeking to recover.

Stone v. Mellon Mortgage Co., 771 S.2d 451, 456 (Ala. 2000).

Utah law has long recognized that a mere volunteer who pays the debt of another does not thereby acquire an equitable claim for reimbursement. As noted in Bingham v. Walker Bros., 283 P. 1055, 1064 (Utah 1929), the equitable

doctrine of subrogation is not applied for the mere stranger or volunteer, who has paid the debt of another, without any assignment or agreement for subrogation, being under no legal obligation to make payment, and not being compelled to do so for the preservation of any rights in property of his own.

As stated more recently by this Court,

[t]he rule is well settled that a person cannot recover back money which he has voluntarily paid with full knowledge of all of the facts, without fraud, duress, or extortion in some form.

Southern Title Guar. Co. v. Bethers, 761 P.2d 951, 955 (Utah App. 1988) (citations omitted).

In Bethers, this Court also noted that

[t]he mere fact that a third person benefits from a contract between two others does not make such third person liable in quasi-contract, unjust enrichment, or restitution. There must be some misleading act, request for services, or the like, to support an action.

Id. at 954.

Clearly, the plaintiff has no equitable claim by virtue of having paid a bill allegedly owed by the defendants. If, however, plaintiff is actually claiming to be seeking to enforce the legal rights of the assignor pharmacy, then its claim is barred because the pharmacy has no legal rights against the defendants which are enforceable in the courts for the reasons set forth in Point I. above.

The out of state cases cited by the plaintiff have no application to the instant action. They deal with the obligation of an HMO to pay the reasonable value of

emergency services for its medicaid eligible members whose providers are required, by federal law, to give treatment. The defendants' obligations to the providers in these cases were established by their contracts with the State or by statute. They did not arise under a statute containing an exclusive remedy provision and did not involve services provided by a volunteer.

In the instant case, arising under the Utah Workers' Compensation Act, it is manifest that, as against the defendant employers, the obligations of the employers are defined by the Act and such obligations "shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to . . . any other person whomsoever . . ." Utah Code Ann. §34A-2-105(l) (Rep.Vol. 4B 1995). This provision expressly prohibits any allegedly "equitable" relief against the employers.

With regard to the defendant WCF, plaintiff hasn't alleged any purported benefit which has been conferred upon the Fund. The WCF owes no contractual or common law duties to the employees of its insured employers. Savage v. Educators Ins. Co., 908 P.2d 862, 866 (Utah 1995). Accordingly, the provision of services to injured employees does not relieve the WCF of any contractual or common law duty it would otherwise owe to the injured workers.

To the extent that the pharmacy would have a statutory claim against the Fund arising under the Workers' Compensation Act, such a claim is within the exclusive jurisdiction of the Labor Commission. As the Utah Supreme Court has expressly held,

"District Courts have no jurisdiction whatsoever over cases that fall within the purview of the Workers' Compensation Act." Sheppick v. Albertson's, Inc., 922 P.2d 769, 773 (Utah 1996) (emphasis added).

Plaintiff attempts to assert that despite this unambiguous language, it must have a claim at law because, otherwise, the pharmacy would have no rights to pursue a claim in the Labor Commission. This assertion is both inaccurate and irrelevant.

Pursuant to Utah Code Ann. §34A-1-105(1) (Rep.Vol. 4B 2005), the Labor Commission is vested with rule making authority. Utah Code Ann. §34A-1-304 (Rep.Vol. 4B 2005) gives the Commission explicit authority to make rules "governing adjudicative procedures" The Commission has exercised this authority in adopting the procedure whereby a pharmacy could have its claim for prescription fees resolved. Rule R612-2-24 of the Utah Administrative Code (2005) provides the legal remedy for resolving disputes about medical payment. The Rule provides as follows:

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;
2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to reevaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for reevaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination of the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;
2. The payor's initial payment of that bill;
3. The provider's request for re-evaluation and supporting documentation; and
4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days of receipt of a written request

from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

This is the legal mechanism by which a pharmacy's claim can be resolved in the Commission.

Plaintiff claims, however, that this Rule is beyond the delegated authority of the Labor Commission. It is not, but even if plaintiff's assignor wasn't afforded a remedy in the Commission, this fact wouldn't change the result in this case. The Utah Supreme Court has expressly held that the exclusive remedy of the Workers' Compensation Act bars civil actions in court even if the party filing such actions has no remedy in the Labor Commission.

For example, in Morill v. J.M Constr. Co., 635 P.2d 88 (Utah 1981), our Supreme Court held that the heir of a deceased worker could not maintain a wrongful death action even though that heir was not a dependent of the worker and, therefore, had no rights under the Workers' Compensation Act which could be asserted in the Commission.

The plaintiff's attempt to characterize its second claim against the defendant WCF as an unjust enrichment claim is nothing more than an effort to enforce the provisions of the Workers' Compensation Act in court, which it cannot do.

CONCLUSION

Plaintiff's attempt to enforce the Workers' Compensation Act in the District Court was properly dismissed as there is no jurisdiction in the courts for such an action.

Plaintiff's claim for unjust enrichment against the defendant employers is barred by the exclusive remedy provision of the Workers' Compensation Act, which is in lieu of all other civil liability whatsoever. Plaintiff's claim for unjust enrichment as against the Workers' Compensation Fund fails to allege any facts giving rise to an equitable entitlement as against the Fund and, accordingly, the order of the District Court should be affirmed.

DATED this 14th day of May, 2007.

PRINCE, YEATES & GELDZAHLER

By M. David Eckersley
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MAILING CERTIFICATE

I hereby certify that on the 14th day of May, 2007, I caused two true and correct copies of the foregoing **Brief of Appellees** to be mailed, first-class postage prepaid thereon, to the following:

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