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Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000735-DG

NEURODIAGNOSTICS, PSC,
D/B/A LEXINGTON DIAGNOSTIC
CENTER — APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT
v. HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 05-XX-0001

KENTUCKY FARM BUREAU MUTUAL
INSURANCE COMPANY — APPELLEE

AND

NO. 2005-CA-001583-DG

NEURODIAGNOSTICS, PSC,
D/B/A LEXINGTON DIAGNOSTIC
CENTER — APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT
v. HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 05-XX-00009

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI AND SCHRODER, JUDGES; MILLER,[1] SPECIAL JUDGE.

GUIDUGLI, JUDGE: This matter is before us upon an order granting discretionary review. The Fayette Circuit Court affirmed the Fayette District Court's order granting State Farm Mutual Automobile Insurance Company and Kentucky Farm Bureau Mutual Insurance Company's motions to dismiss. Because the Fayette Circuit Court correctly determined that Lexington Diagnostic Center did not have standing to assert its claims, we affirm.

STATE FARM APPEAL

The facts of this case are undisputed. Donald Hughes (Hughes) was involved in a motor vehicle accident on March 6, 2003. Hughes had an automobile policy issued by State Farm Mutual Automobile Insurance Company (State Farm), which contained the statutory minimum of $10,000.00 in personal injury protection (PIP) benefits. As a result of the motor vehicle accident, State Farm mailed Hughes an application for no-fault benefits along with a medical authorization form on April 3, 2003. Hughes failed to respond to State Farm's request to fill out the application and the medical authorization form.

[1] Retired Judge John D. Miller, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

On April 7, 2003, Hughes received medical treatment from Lexington Diagnostic Center (LDC). LDC performed an MRI of the cervical spine and an MRI of the lumbar spine, costing a total of $2,394.00. Before LDC performed the MRIs, Hughes signed an "Agreement to Pay and Assignment of Benefits," form which contained the following language:

> If this is a motor vehicle claim, I hereby direct my reparation obligor (my motor vehicle insurance company) State Farm to pay LDC for today's services, pursuant to KRS 304.39-241. Initial here. (initials)
>
> I irrevocably assign LDC, its successors and assigns, all benefits payable to me (or the patient) from my insurance, workers' compensation, auto insurance and/or attorney for today's services. This assignment does not release me from my responsibility to pay LDC as I have agreed.

Prior to providing the services on April 7, 2003, LDC spoke with an employee of State Farm and was told that there was an open PIP claim for Hughes with funds available. After providing Hughes with its medical services, LDC sent State Farm an invoice along with Hughes' "Agreement to Pay and Assignment of Benefits" form on April 8, 2003. After receiving this information from LDC, State Farm once again sent Hughes a letter requesting him to complete the application for benefits and the medical authorization form. Hughes again failed to respond to this request as well as to another request made on May 13, 2003.

Upon receiving information that Hughes was being represented by an attorney, Ephraim Helton (Helton), to represent him in an injury claim against the driver of the other vehicle involved in the car accident, State Farm sent Helton a letter dated June 11, 2003. Additionally, State Farm sent another application and requested that Helton's client, Hughes, complete the application for benefits and medical authorization necessary to process a claim for automobile no-fault benefits. Helton responded to State Farm in a letter dated July, 7, 2003, which included the completed no-fault application form by Hughes. In the letter, Helton directed State Farm to initially portion Hughes' PIP benefits to satisfy his lost wages and use the remaining PIP benefits to pay his outstanding medical expenses. LDC was not included in this directive.

Although the July 7, 2003, letter did not contain the names of the medical providers, a letter dated August 5, 2003, directed State Farm to use Hughes' PIP benefits to pay another medical provider, Dr. Tillie, for surgery and the remainder to be paid to Hughes' lost wages. Again, LDC was not included in this directive or any directive provided by Hughes or his attorney.

As a result, State Farm notified LDC of Hughes' directive and subsequently sent the outstanding medical bills to Helton for further handling. After not receiving payment from

State Farm, LDC brought this action against State Farm on February 12, 2004. Claiming that LDC did not have standing to assert its claim, State Farm filed a motion to dismiss. The Fayette District Court granted State Farm's motion to dismiss. On appeal, the Fayette Circuit Court affirmed the order of the Fayette District Court. This appeal followed.

FARM BUREAU APPEAL

Similar to the previous case, Jennifer McCord (McCord) was involved in a motor vehicle accident on July 15, 2001, while riding as a passenger in a vehicle operated by Tracey Burke (Burke). Because Burke did not have insurance to cover the vehicle involved in the accident, PIP benefits were sought under Kentucky Farm Bureau Mutual Insurance Company's (Farm Bureau) insurance policy with McCord's grandmother, whom McCord was living with at the time of the accident. McCord was treated at the University of Kentucky Hospital Emergency Department on the date of the accident. Additionally, McCord sought further medical attention from St. Joseph Emergency Department on July 17, 2001, after complaining of neck, chest wall, and low back pain.

McCord did not seek any further treatment for the alleged injuries resulting from the accident until fifteen months later on October 17, 2002, when she saw Dr. Patrick Campbell (Dr. Campbell) with Skinner Chiropractic. After Dr.

Campbell ordered an MRI on McCord's spine, McCord went to Lexington Diagnostic Center (LDC). LDC performed an MRI of McCord's lumbar spine on December 6, 2002, and an MRI of her cervical spine on January 30, 2003. These procedures resulted in a $2,394.00 medical bill. LDC submitted McCord's medical bill to Farm Bureau pursuant to an "Agreement to Pay and Assignment of Benefits" that was executed by McCord prior to receiving her MRIs.[2]

After Farm Bureau did not pay LDC for McCord's medical treatment, LDC filed suit on February 19, 2004, seeking the outstanding payment of $2,394.00, plus interest and attorney's fees. LDC claimed that McCord "assigned" her medical claims to it; therefore, LDC was entitled to payment. Farm Bureau filed a motion to dismiss asserting that the assignment was not valid and thus LDC lacked standing to assert its claim. The motion to dismiss was granted by the Fayette District Court and affirmed by the Fayette Circuit Court. This appeal followed.

Legal Analysis

On appeal, LDC contends that the Fayette Circuit Court incorrectly determined that LDC lacked standing to bring an action against State Farm and Farm Bureau. LDC argues that as an assignee, it had standing to bring an action against State

[2] The "Agreement to Pay and Assignment of Benefits" form signed by McCord provided the same language used in the "Agreement to Pay and Assignment of Benefits" form in the State Farm case.

Farm and Farm Bureau pursuant to the "Agreement to Pay and the Assignment of Benefits" form signed by both Hughes and McCord. Specifically, LDC contends that Hughes and McCord assigned their PIP benefits to LDC, thus giving LDC standing to bring action against State Farm and Farm Bureau. We disagree.

Because this case involves the assignability of an insurance policy, we must determine whether Kentucky's General Assembly intended to provide insureds with the right to assign his or her rights to benefits under KRS 304.39-241. Because the interpretation of a statute is a matter of law, our review of the interpretation of KRS 304.39-241 is *de novo* without deference to the interpretation adopted by the lower court. *Wheeler & Clevenger Oil Co., Inc. v. Washburn*, 127 S.W.3d 609, 612 (Ky. 2004). Additionally, in interpreting a statute, we have a duty to ascertain and to give effect to the intent of the General Assembly. *Commonwealth v. Harrelson*, 14 S.W.3d 541, 546 (Ky. 2000). Thus, "[w]e are not at liberty to add or subtract from the legislative enactment or discover meaning not reasonably ascertainable from the language used." *Id.* Therefore, "a [s]tatute should be construed, if possible, so that no part is meaningless or ineffectual." *Keeton v. City of Ashland*, 883 S.W.2d 894, 896 (Ky.App. 1994) (quoting *Brooks v. Meyers*, 279 S.W.2d 764, 766 (Ky. 1955)).

Prior to 1998, under the Motor Vehicle Reparations Act, insurers were statutorily permitted to assign benefits for future payments pursuant to KRS 304.39-240, "Assignment of Benefits."[3] However, 304.39-240 was repealed in 1998 and KRS 304.39-241, entitled "Insured's direction of payment of benefits among the different elements of loss," was enacted. KRS 304.39-241 provides that:

> An insured may direct the payment of benefits among the different elements of loss, if the direction is provided in writing to the reparation obligor. A reparation obligor shall honor the written direction of benefits provided by an insured on a prospective basis.

When looking at the intent of Kentucky's General Assembly, we conclude that the purpose and intent of KRS 304.39-241 differs greatly from that of KRS 304.39-240. First, the change in the title of "Assignment of Benefits" to "Insured's direction of payment of benefits among the different elements of loss" is evident that the General Assembly did not contemplate that KRS 304.39-241 would provide for assignments. Furthermore,

[3] KRS 304.39-240, provided that:

> An assignment of or agreement to assign any right to benefits under this subtitle for loss accruing in the future is unenforceable except as to benefits for:
>
> (a) Work loss to secure payment of alimony, maintenance, or child support; or
>
> (b) Medical expense to the extent the benefits are for the cost of products, services, or accommodations provided or to be provided by the assignee.

the assignment language that was provided in KRS 304.39-240 was deleted from the statute. The language used in KRS 304.39-241 states that "an insured may direct the payment of benefits among the different elements of loss." Because the assignment language was omitted and replaced with the ability of the insured to "direct the payment of benefits," there was no legislative intent to give a medical provider a mechanism by which to bring a direct action based on an assignment. Therefore, the assignment made to LDC pursuant to the "Agreement to Pay and Assignment of Benefits" form is invalid. Accordingly, the circuit court correctly determined that LDC lacked standing to assert its claims against State Farm and Farm Bureau based on the "Agreement to Pay and Assignment of Benefits Form."

Furthermore, LDC incorrectly relies on *Phoenix Healthcare of Kentucky, L.L.C. v. Kentucky Farm Bureau Mutual Insurance Co.*, 120 S.W.3d 726 (Ky.App. 2003), to assert that a medical provider can bring a direct action against an insurer based on an assignment. While *Phoenix Healthcare* involved a patient who assigned her rights to receive PIP benefits to a medical provider who performed an MRI after the patient was involved in an automobile accident, it did not address whether the assignment was valid. *Id.* The issue presented in *Phoenix Healthcare* was whether the Motor Vehicle Reparations Act

provided the exclusive remedy for an insurer's late payment or whether punitive damages could be provided under the Unfair Claims Settlement Practices Act. *Id.* Thus, LDC's reliance upon *Phoenix Healthcare* is misplaced.

Furthermore, in the State Farm case, LDC contends that the circuit court incorrectly determined that State Farm had no obligation to pay LDC pursuant to KRS 304.39-210. Specifically, LDC asserts that the "Agreement to Pay and Assignment of Benefits" form it supplied to State Farm was "reasonable proof" of the fact that a medical expense had been incurred and the amount of the loss, and thus State Farm was obligated to pay LDC as soon as it received the bill in April 2003. Therefore, LDC contends that State Farm's payment is overdue and in violation of KRS 304.39-210(1). We disagree.

KRS 304.39-241 provides that "[a]n insured may direct the payment of benefits among the different elements of loss, if the direction is provided in writing to the reparation obligor." KRS 304.39-210(1) further provides that, "[m]edical expense benefits may be paid by the reparation obligor directly to persons supplying products, services, or accommodations to the claimant, if the claimant so designates." Additionally, KRS 304.39-210(1) states that, "[b]enefits are overdue if not paid within thirty (30) days after the reparations obligor receives reasonable proof of the fact and amount of loss

realized . . . .” Thus, the question becomes whether State Farm received “reasonable proof of the fact and amount of loss realized” when LDC sent State Farm an invoice with the “Agreement to Pay and Assignment of Benefits” form. We believe that these forms did not constitute “reasonable proof.”

As correctly determined by the circuit court, “reasonable proof of the fact and amount of loss realized” was not provided until Hughes submitted his PIP application. Because State Farm had not received Hughes’ PIP application and medical authorization form when LDC sent its invoice, State Farm neither had an obligation nor the authority to pay LDC’s claim. Furthermore, State Farm never received a directive from Hughes to distribute his PIP benefits to LDC. Additionally, if State Farm had paid LDC’s bill prior to Hughes submitting his PIP application and without the specific direction from Hughes, State Farm would have risked being sued by Hughes. Accordingly, without receiving the directive provided by Hughes through the PIP application and medical authorization form, State Farm had no duty or obligation to pay LDC’s claim. Thus, the Fayette Circuit Court correctly determined that LDC had no standing to assert its claim against State Farm.

For the foregoing reasons, we affirm the orders of the Fayette Circuit Court.

ALL CONCUR.

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