

No. 32161 – *Michael Angelucci v. Fairmont General Hospital, Inc., v. National Association of Letter Carriers Health Benefit Plan*

FILED

July 6, 2005

Albright, Chief Justice, and Starcher, Justice, dissenting:

released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

We respectfully dissent to the decision of the majority of this Court. This Court is obligated to provide plenary review of a circuit court’s grant of summary judgment. In so doing, “the benefit of the doubt” is to be given to the nonmoving party. *Taylor v. Culloden Pub. Serv. Dist.*, 214 W.Va. 639, 644, 591 S.E.2d 197, 202 (2003). Both the circuit court and this Court “must draw any permissible inference from the underlying facts in the light most favorable to the party opposing the motion.” *Painter v. Peavy*, 192 W.Va. 189, 192, 451 S.E.2d 755, 758 (1994). “If there is any evidence in the record from any source from which a reasonable inference in the nonmovant’s favor may be drawn as to a material fact, the moving party is not entitled to a summary judgment.” *Crain v. Lightner*, 178 W.Va. 765, 769, 364 S.E.2d 778, 782 (1987).

When utilizing the appropriate standard of review, it does not appear that Fairmont General Hospital was properly granted summary judgment in this matter. A valid debt was incurred based upon Mr. Angelucci’s receipt of services in late 1997, and the hospital provided ample evidence that it made at least an initial attempt to submit Mr.

Angelucci's bills to the insurer.¹ Mr. Angelucci provided evidence that the insurer did not receive many of the bills.

It is readily apparent that a communications error had been made at some level. The mistake could potentially have been corrected by resubmission of bills or by contact between the hospital billing office and the insurer. The hospital alleges, however, that it neither had an actual contractual duty nor voluntarily assumed the obligation to directly bill the insurer or to pursue the issue of payment by the insurer. Mr. Angelucci contends that the hospital had the obligation to directly submit bills to the insurer and maintains that such obligation was created through two mechanisms: the hospital/patient contractual relationship and the hospital's voluntary assumption of the responsibility of communication and submission of bills to the insurer. Indeed, even absent an express contractual duty, Mr. Angelucci contends that the voluntary assumption of the responsibility created a continuing obligation, implied if not express, on the part of the hospital to pursue the payment issues

¹As noted in the majority opinion, subsequent to the filing of Mr. Angelucci's complaint against the hospital, the hospital filed a Third Party Complaint against Mr. Angelucci's insurer, the National Association of Letter Carriers Health Benefit Plan (hereinafter NALC), alleging that it had failed to pay the \$1,663.80 in medical bills which the hospital had submitted. The insurer was thereafter dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure based upon a federal preemption bar to the Third Party Complaint.

According to the record, the hospital was a Preferred Provider Organization within the NALC health benefits plan. The arrangement between the hospital, as medical provider, and the NALC apparently permitted the hospital to provide services to NALC plan members at reduced rates.

with the insurer. The existence and extent of the hospital's obligation to submit bills and pursue payment created a genuine issue of material fact which should have precluded a grant of summary judgment.²

When the insurer became aware of the outstanding bills, it denied payment of those bills due to the excessive passage of time. The record reflects that the hospital ultimately wrote off the outstanding bills in 1999. Despite the fact that the hospital wrote off the bills in 1999, the hospital sought payment from Mr. Angelucci in 2002 after he instituted the underlying action based upon his realization that his credit report had been detrimentally affected by the debt to the hospital.

This quandary represents a regrettable situation encountered by patients receiving medical treatment and anticipating that the medical provider will handle the

²See *City of Indianapolis v. Twin Lakes Enter., Inc.*, 568 N.E.2d 1073, 1079 (Ind. App. 1991) ("While the question of whether a certain or undisputed state of facts establishes a contract is one of law for the court, where the existence and not the validity or construction of a contract or the terms thereof is the point in issue, and the evidence is conflicting or admits of more than one inference, it is for the jury to determine whether a contract in fact exists"); *AFSCME Councils 6, 14, 65 & 96 v. Sundquist*, 338 N.W.2d 560, 567 (Minn. 1983) (Generally, whether implied contract exists and terms of contract are questions of fact to be determined jury); *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 62 n. 18, 459 S.E.2d 329, 339 n. 18 (1995) ("While the determination of what constitutes a contract under our relevant cases is a question of law, the determination of whether particular circumstances fit within the legal definition of a contract under our cases is a question of fact"); *Frost Constr. Co. v. Lobo, Inc.*, 951 P.2d 390, 394 (Wyo. 1998) (holding that whether contract has been formed, exact terms of contract, and whether there was breach of terms are questions of fact).

submission of bills to the insurer and maintain sufficient contact with the insurer to assure proper payment. It is surely the hospital's underlying notion in this case that Mr. Angelucci's reliance on the hospital in this regard was misplaced. Yet that contention leaves the patient without recourse, as Mr. Angelucci currently finds himself. The hospital and the insurer failed to resolve the payment issue, and after a sufficient passage of time³ to permit the insurer to deny payment, the patient is left with the monetary responsibility. Three years after the hospital writes off the bill, the hospital is permitted to recover the debt from the patient. There is something inherently inequitable in that result, and if the facts had been properly presented to a jury, the result may have been quite different. Neither this Court nor the lower court had a right to "try issues of fact; a determination can only be made as to whether there are issues to be tried." *Hanlon v. Chambers*, 195 W.Va. 99, 105, 464 S.E.2d 741, 747 (1995). Based upon the majority's decision in this case, a jury will not hear these facts, and the decision in favor of the hospital will stand. We respectfully dissent.

³"Any sufficiently advanced bureaucracy is indistinguishable from molasses."
Unknown author.