

NOT FOR PUBLICATION

NO. 25528

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

LEN RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 JUN 15 AM 9:29

FILED

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED,
Respondent Appellant-Appellee, v. SHEUNG HO,
Claimant Appellee-Appellant, and WAYNE C. METCALF, III,
Insurance Commissioner, STATE OF HAWAI'I, DEPARTMENT OF
COMMERCE AND CONSUMER AFFAIRS, Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 02-1-1058)

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Foley and Fujise, JJ.)

In this secondary appeal, Claimant-Appellee-Appellant Sheung Ho (Ho) appeals the November 15, 2002 judgment that the Circuit Court of the First Circuit (circuit court) entered in an agency appeal, Civil No. 02-1-1058-04,¹ in favor of Respondent-Appellant-Appellee The Hawaiian Insurance & Guaranty Company, Limited (HIG) and against Ho and Appellee-Appellee Insurance Commissioner (the Commissioner), State of Hawai'i Department of Commerce and Consumer Affairs (the DCCA).

I.

The circuit court's November 15, 2002 judgment was predicated upon its October 9, 2002 order, which, in paragraph 1, reversed an April 1, 2002 final order the Commissioner handed

¹ The Honorable Eden Elizabeth Hifo presided.

NOT FOR PUBLICATION

down in favor of Ho in MVI 94-391, an administrative proceeding Ho had initiated in the DCCA's Office of Administrative Hearings, Insurance Division, to contest HIG's June 15, 1994 partial denial of motor vehicle insurance medical benefits.

In his April 1, 2002 final order, the Commissioner decided:

Where the focus of the dispute is the extent of medical coverage for accident-related injuries (based upon issues such as causation or apportionment) rather than the cost/legitimacy of medical care, a claimant is a real party in interest because he or she has a direct personal interest in establishing such coverage - without which he or she would be individually obligated to pay for such care.

However, in paragraph 2 of its October 9, 2002 order, the circuit court held that Ho "does not have standing (is not the real party in interest) pursuant to Wilson v. AIG Hawaii Ins. Co., 89 [Hawai'i] 45[, 968 P.2d 647] (1998), to bring claims for payment on behalf of his providers of medical services," and accordingly dismissed Ho's claims in MVI 94-391, with prejudice.

The circuit court explained:

3. The standing/real party in interest issue as set forth in #2 above was the only issue to be determined on remand from the Circuit Court, and the Commissioner's [April 1, 2002] Final Order violated res judicata principles because the [circuit court's October 30, 1998] remand order was final and appealable but not appealed and the [remand] order bound [Ho] on all bases except the issue set forth in #2 above.

In the fourth and final paragraph of its October 9, 2002 order, the circuit court determined that "no parties herein are entitled to attorneys' fees and costs."

The Commissioner's April 1, 2002 final order was entered after and upon remand proceedings required by the circuit

NOT FOR PUBLICATION

court's October 30, 1998 order and judgment in a prior agency appeal, Civil No. 97-1197-03.² The circuit court's October 30, 1998 order and judgment reversed a prior final order by the Commissioner, entered on February 18, 1997 in the original proceedings in MVI 94-391, and remanded for specified further proceedings.

In his February 18, 1997 final order, the Commissioner decided that HIG's June 15, 1994 partial denial of motor vehicle insurance medical benefits was "procedurally improper and invalid" with respect to the "prospective apportionment denial" then still at issue, and thereupon awarded attorney's fees and costs to Ho. However, in its October 30, 1998 order, the circuit court concluded and ordered, in pertinent part, as follows:

In accordance with the decision in Pearson v. Government Employees Insurance Company, Office of Administrative Hearings No. MVI-94-354-C, (7/11/96), (affirmed by order (8/14/97) in First Circuit Civil No. 96-3057-07), the court finds and concludes that the Hearings Officer's conclusion that Claimant-Appellee Sheung Ho had standing is incorrect and clearly erroneous in view of the whole record ([Hawaii Revised Statutes] § 91-14(g)).

IT IS THEREFORE ORDERED as follows:

1. The Commissioner's Final Order, filed February 18, 1997, is reversed and the matter remanded to the Insurance Commissioner for trial de novo to determine whether Claimant-Appellee Sheung Ho has standing to bring a claim on behalf of his providers of medical services[.]

II.

After a painstaking review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we first

² The Honorable Kevin S.C. Chang presided.

decide that, paragraph 3 of the circuit court's October 9, 2002 order notwithstanding, we will review the circuit court's October 30, 1998 order and judgment in Civil No. 97-1197-03. Jordan v. Hamada, 64 Haw. 446, 449, 643 P.2d 70, 72 (1982) ("a remand order such as that involved in the present case does not terminate the administrative proceedings, but is instead only one stage of a single process which may continue to include a second agency hearing and appeal therefrom" (citations omitted)).

Nevertheless, we ultimately agree with the circuit court that Ho was not the real party in interest in MVI 94-391, see Medeiros v. Maui Land & Pineapple Co., 66 Haw. 290, 293, 660 P.2d 1316, 1319 (1983) ("we have repeatedly held that where a trial court has reached a correct conclusion, its decision will not be disturbed on the ground that the reasons it gave for its actions were erroneous" (brackets, citations and internal quotation marks omitted)), and we hold accordingly, regardless of whether the underlying issue be, in the Commissioner's words, "the extent of medical coverage for accident-related injuries (based upon issues such as causation or apportionment)[,]" see Gamata v. Allstate Ins. Co., 90 Hawai'i 213, 223-24, 978 P.2d 179, 189-90 (App. 1999) (in a case in which the insurer denied motor vehicle insurance medical benefits for treatment of conditions the insurer deemed not attributable to the car accident, Wilson, supra, dictated that the provider, and not the insured, was "the real party in interest with respect to the

NOT FOR PUBLICATION

subject charges"), or "the cost/legitimacy of medical care[.]"
See Wilson, 89 Hawai'i at 50, 968 P.2d 652 (in a case in which
the insurer denied, as neither reasonable nor appropriate, motor
vehicle insurance medical benefits for surgery purported to treat
a herniated disc sustained in a car accident, the insured was
"not a real party in interest with respect to her claim against
[the insurer] for no-fault benefits to satisfy her provider's
unpaid bill").

III.

Therefore,

IT IS HEREBY ORDERED that the circuit court's
November 15, 2002 judgment in Civil No. 02-1-1058-04, and its
October 30, 1998 judgment in Civil No. 97-1197-03, are affirmed.

DATED: Honolulu, Hawai'i, June 15, 2005.

On the briefs:

Ken T. Kuniyuki
(Kuniyuki & Chang), for
claimant appellee-appellant.

Gregory K. Markham and
Jeffrey S. Masatsugu
(Chee and Markham), for
respondent appellant-appellee.

Deborah Day Emerson,
David A. Webber and
James F. Nagle,
Deputy Attorneys General,
State of Hawai'i,
for appellee-appellee.

Acting Chief Judge



Daniel R. Foley
Associate Judge



Aewa Oshu Fujino
Associate Judge