

Commonwealth Of Kentucky

Court of Appeals

NO. 2015-CA-001601-MR

FIRST STOP URGENT CARE CENTER, PSC;
AND FIRST YOU MEDICAL
CENTER, PLLC

APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 13-CI-005118

UNIVERSITY HEALTH CARE, INC.
D/B/A PASSPORT HEALTH PLAN
AND PASSPORT ADVANTAGE

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, MAZE, AND STUMBO, JUDGES.

MAZE, JUDGE: First Stop Urgent Care Center, PSC., and First You Medical Center, PLLC (collectively, “First Stop”), appeal from a summary judgment entered by the Jefferson Circuit Court dismissing its claims against University

Health Care, Inc. d/b/a Passport Health Plan and Passport Advantage (Passport).

This Court heard oral arguments in this case on Wednesday, March 15 at the Powell County Courthouse in Stanton, Kentucky.¹ First Stop argues that there were genuine issues of material fact whether it violated the terms of its Provider Agreements with Passport and whether those violations warranted Passport's termination of those Agreements. We agree with the trial court that the admitted actions by First Stop's principal constituted clear violations of the Provider Agreements. Therefore, the trial court properly granted summary judgment to Passport, and we affirm.

For purposes of this appeal, the following facts are relevant. Kamlesh C. Dave, M.D. (Dr. Dave) is the sole incorporator, director, officer, and owner of First Stop Urgent Care Center, PSC (First Stop). He is also the sole organizer and member of First You Medical Center, PLLC (First You). Passport is a Health Maintenance Organization (HMO) that administers Kentucky's Medicaid program under a contract with the Commonwealth. Passport enters into Provider Agreements with physicians and groups to provide medical services to Passport insureds. The Medicaid recipients assigned to receive health care services through Passport are entitled to the benefits and protections described in the Provider Agreements.

¹ On behalf of the Kentucky Court of Appeals, we would like to express our appreciation to the Hon. Frank A. Fletcher, Chief Circuit Judge, the Hon. Kenneth R. Profitt, Chief District Judge, Circuit Court Clerk Patty Wells, Powell County Sheriff Danny Rogers, and to all the personnel at the Powell County Courthouse.

Passport entered into a separate Provider Agreements with First Stop and First You. Dr. Dave signed the Provider Agreements in his capacities as president and director of each entity. Dr. Dave is also president of several other corporations, two of which had contracts with Passport. Finally, Dr. Dave is the majority owner of Innovative Health Care, LLC, d/b/a First Stop Anesthetic and Recovery Center (IHC). Among other things, IHC provides Suboxone treatment programs for patients with opioid dependence. Suboxone treatment is a covered service under the Provider Agreements. However, IHC does not have a contract with Passport for these services.

In a letter dated May 10, 2013, Passport sent a letter to Dr. Dave, alleging that First Stop was in violation of the Provider Agreements. Passport first stated that Dr. Dave improperly discontinued Suboxone treatment programs at two First Stop facilities and transferred those services to facilities operated by IHC. Passport also alleged that Dr. Dave made untrue statements to Passport insureds regarding coverage for Suboxone treatment. Furthermore, the letter alleged that Dr. Dave was referring Passport members to IHC for Suboxone treatment services and directly billing those members in violation of the Provider Agreements.

Based on these alleged violations, Passport specified that First Stop take the following corrective actions: (1) removal of all false references to Passport regarding Suboxone treatment services; (2) furnish a written listing of all Passport members referred to out-of-network locations of Suboxone treatment and the

facilities to which they were referred; (3) immediate reimbursement of the improper charges to Passport members; and (4) a full accounting of all Suboxone member charges and corresponding reimbursements. Passport advised Dr. Dave that it wanted the reimbursements completed and documented before May 31, 2013.

In his response to the letter, Dr. Dave denied that any of his entities made any untrue statements about coverage for Suboxone treatment. He also denied that any patients were referred by First Stop to any other entity for Suboxone treatment. However, Dr. Dave admitted he made the decision to discontinue Suboxone treatment through First Stop. He also admitted that, subsequently, IHC began providing Suboxone treatment on a cash-only basis at some of the First Stop locations, but in separate office space. He stated that some patients may have been unaware of the difference between the companies and were confused about whether the services were being provided by First Stop or First You. Because of that confusion, Dr. Dave indicated that First Stop would be willing to refund payments to patients who had been improperly billed.

Passport responded stating that it still considered First Stop to be in material breach of their Provider Agreements, and again reiterated its demand that First Stop make the corrective actions. The parties were unable to come to an agreement, and by letter of July 12, 2013, Passport advised First Stop and First

You that their Provider Agreements would be terminated effective August 16, 2013. First Stop appealed this decision to Passport.

Following Passport's denial of the appeal, First Stop filed this action alleging that Passport had breached the Provider Agreements, had violated the "Any Willing Provider" statute, and had tortiously interfered with the business relationships with their patients. Thereafter, Passport moved for summary judgment, arguing that Dr. Dave's admissions in discovery clearly established the breaches of the Provider Agreements. In response, First Stop argued that Dr. Dave signed the Provider Agreements only in his corporate and representative capacities. Consequently, they maintained that Dr. Dave's provision of Suboxone treatment programs through IHC did not constitute a violation of their Provider Agreements. The trial court agreed with Passport, granting the motion for summary judgment and dismissing First Stop's complaint by order entered on September 16, 2015.

On appeal, First Stop argues that there were genuine issues of material fact which would preclude summary judgment for Passport. The standard of review governing an appeal of a summary judgment is well-settled. We must determine whether the trial court erred in concluding that there was no genuine issue as to any material fact and that the moving party was entitled to a judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR² 56.03. In *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985), the Supreme Court of Kentucky held that for summary judgment to be proper, the movant must show that the adverse party cannot prevail under any circumstances. *See also Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Because summary judgment involves no fact-finding, this Court's review is *de novo*, in the sense that we owe no deference to the conclusions of the trial court. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

As an initial matter, First Stop argues the Provider Agreements are ambiguous. Since extrinsic evidence is necessary to interpret an ambiguous agreement, First Stop contends that summary judgment was not appropriate. But as Passport points out, First Stop never made this assertion before the trial court, and is therefore precluded from raising it for the first time on appeal. *Fischer v. Fischer*, 197 S.W.3d 98, 102 (Ky. 2006). Furthermore, First Stop did not specifically identify this issue in its prehearing statement, as required by CR 76.03(8). Consequently, the matter is not properly before this court for review. *Sallee v. Sallee*, 142 S.W.3d 697, 698 (Ky. App. 2004).

Nevertheless, the interpretation of a written contract, including questions of ambiguity, is a question of law for the court to decide. *Cinelli v.*

² Kentucky Rules of Civil Procedure.

Ward, 997 S.W.2d 474, 476 (Ky. App. 1998). First Stop also contends that Passport's termination of the Provider Agreements violated Kentucky's "Any Willing Provider" statute, KRS³ 304.17A-270. That statute prohibits Passport from refusing to accept or from removing a provider who is willing to meet the terms of its Provider Agreement. In this case, however, Passport has alleged that First Stop violated the terms of their Provider Agreements and that it was unwilling to fully comply with those terms in the future. Thus, the controlling question is whether First Stop's actions amounted to a clear violation of the terms of the Provider Agreements.

First Stop primarily argues that, since Dr. Dave is not an individual party to either of the Provider Agreements, his independent actions are not attributable to either the corporation or the LLC and cannot constitute violations of the Provider Agreements. In response, Passport contends that Dr. Dave was subject to the Provider Agreements as a physician associated with both First Stop and First You. Consequently, Passport maintains that he could not evade the terms of the Provider Agreements by acting in his independent capacity or through IHC.

As First Stop notes, Dr. Dave signed the Provider Agreements in his representative capacities for First Stop and First You. However, the Provider Agreements define "Primary Care Provider," in pertinent part, to mean:

³ Kentucky Revised Statutes.

A duly licensed pediatrician, internist, family practitioner, doctor of general medicine ... or group thereof, or provider associated with a ... Primary Care Center, ... who has been successfully credentialed by, and is a Participating Provider with HMO, and who will be responsible for the supervision, coordination, and provision of Basic Health Services to Members who have selected, or have been assigned to that provider.

Based on this definition, Passport takes the position that all physicians associated with and credentialed by First Stop, including Dr. Dave, are subject to the terms of the Provider Agreements. We agree. First Stop fails to identify any other reasonable interpretation which would exclude Dr. Dave from the obligations of the Provider Agreements.

Finally, First Stop argues that there are genuine issues of material fact whether Dr. Dave's actions with respect to IHC amount to violations of its obligations under the Provider Agreements. The Provider Agreements require that First Stop accept Passport's payments as full compensation for all covered services. First Stop may not directly charge any Passport member for any portion of those covered services. Furthermore, except in specified circumstances, First Stop may not refer any Passport member to an out-of-network provider for covered services.

In his deposition testimony, Dr. Dave stated that he discontinued providing Suboxone treatment services at First Stop because it was no longer financially viable. IHC began providing those services on a cash-only basis in

rented office space at First Stop's Broadway and Dupont locations. First Stop and IHC share common ownership, and Dr. Dave is a medical provider for both companies. First Stop and IHC also employ some of the same staff at those locations.

Considering that First Stop discontinued providing Suboxone treatment and IHC immediately began providing those services at the same addresses, there is sufficient evidence to support the reasonable inference that First Stop was referring its Suboxone patients to IHC. First Stop does not point to any affirmative evidence which would rebut that inference. Therefore, we agree with the trial court that First Stop was clearly in violation of the Provider Agreements, and Passport was entitled to terminate those Agreements. Therefore, the trial court properly granted Passport's motion for summary judgment.

Accordingly, we affirm the summary judgment by the Jefferson Circuit Court.

ALL CONCUR

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