STATE OF MICHIGAN

COURT OF APPEALS

DETROIT MEDICAL CENTER, HARPER HUTZEL HOSPITAL, DETROIT RECEIVING HOSPITAL AND UNIVERSITY HEALTH CENTER, and SINAI GRACE HOSPITAL,

Plaintiffs/Counterdefendants-Appellees,

and

COUNTY OF WAYNE,

Intervening Plaintiff/Counterdefendant-Appellee,

and

HENRY FORD HEALTH SYSTEM, OAKWOOD HEALTHCARE, INC., and ST. JOHN HEALTH,

Intervening Plaintiffs-Appellees,

v

URBAN HOSPITAL CARE PLUS,

Defendant/Cross-Plaintiff/Cross-Defendant-Appellee,

and

ULTIMED HMO OF MICHIGAN, INC.,

Defendant/Counterplaintiff/Cross-Plaintiff/Cross-Defendant-Appellant,

and

ULTICARE, INC.,

UNPUBLISHED
December 13, 2005

No. 257411
Wayne Circuit Court
LC No. 03-317433-CK

Defendant.

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant Ultimed HMO of Michigan, Inc. ("UltiMed"), appeals as of right from orders approving a distribution plan and directing the release of trust funds. Because the trial court did not abuse its discretion by approving the distribution plan, we affirm.

The grant or denial of the motion to approve the distribution plan was within the trial court's discretion, therefore, this Court's review is limited to whether the trial court abused its discretion. An abuse of discretion occurs when an unprejudiced person, considering the facts upon which the trial court relied, would conclude that there was no justification or excuse for the decision. *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 254; 701 NW2d 144 (2005). In addition, the proper interpretation of a contract is a question of law which this Court reviews de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Grand Trunk W R Co, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004). In interpreting a contract, this Court's obligation is to determine the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). This Court must examine the language of the contract and accord words their ordinary and plain meanings if such meanings are apparent. *Wilkie, supra* at 47. If the language is unambiguous, courts must interpret and enforce the contract as written. *Quality Products, supra* at 375. "Thus, an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Id.*

The first step in analyzing whether the trial court abused its discretion in approving the distribution plan is to determine whether defendant Urban Hospital Care Plus ("UHCP") properly withheld its July, August, and September 2003 payments to UltiMed. Under the provider contract between UltiMed and UHCP ("the provider contract"), UHCP was authorized to withhold these payments. Section 10.04 of the provider contract states:

> The Corporation [UHCP] may suspend its payments to the Contractor [UltiMed] at any time the Contractor fails to comply with Section 4.03, 13.04 or 34.01.

Section 34.01 of the contract provides, in relevant part:

> The Contractor shall immediately inform the Corporation of material change in its operation, corporate structure, ownership or financial condition. Material changes include, but are not limited to a material:
>
> * * *
>
> F. Delinquent payment, or nonpayment, of subcontractors or providers.

UHCP suspended its payments to UltiMed in July 2003 because of the DMC plaintiffs'[1] allegations of unpaid claims. UHCP notified UltiMed of the suspension in a letter indicating that UHCP was invoking its rights under §§ 10.04 and 34.01 of the provider contract. UltiMed's failure to inform UHCP of its nonpayment to providers was a condition that permitted UHCP to suspend payments under the plain language of the provider contract.

Further, § 21.01, regarding termination of the provider contract, allowed UHCP to withhold any payments due UltiMed for the purpose of set off. Section 21.01 provides:

> Upon any termination of this contract, the Corporation may withhold any payment(s) to the Contractor for the purpose of set-off until such time as the exact amount of any sums due the Corporation and the exact amount due from the Contractor to any of its providers for Services rendered to Enrollees are determined. The Contractor shall remain liable for any amounts owing to the Corporation or any of its providers in excess of any set-off. If this contract is terminated, the Corporation may, at its option, take over the Services for Enrollees and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the Corporation for all costs incurred by the Corporation in doing so.

The provider contract was terminated in September 2003. In accordance with the above language, upon termination UHCP was authorized to withhold any payments due UltiMed for the purpose of set off until the exact amounts due from UltiMed to its providers could be ascertained. Thus, UHCP was contractually authorized to withhold the July, August, and September 2003 payments under both § 10.04 and § 21.01 of the provider contract.

UHCP's September 18, 2003, letter to UltiMed reflects that UHCP requested from UltiMed accounts payable information and that UHCP was attempting to determine the amounts that UltiMed owed providers so that UHCP could pay those providers from the withheld funds. In the meantime, however, the providers agreed to settle their outstanding claims for a portion of the funds withheld plus the funds held in trust. The hospital plaintiffs[2] offered a proposed distribution plan, which the trial court ultimately approved. Under the distribution plan, the hospital plaintiffs agreed to settle their claims for a combined total of $5 million of the $5.5 million at issue. The plan directed that the remaining funds be distributed to the other providers who filed claims in accordance with each provider's pro-rata share of the remaining funds. UltiMed argues that the trial court erred by approving the distribution plan because the plan paid the DMC plaintiffs and St. John more than these entities were entitled to collect under the plain

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[1] Our references to "the DMC plaintiffs" refer to plaintiffs Detroit Medical Center, Harper Hutzel Hospital, Detroit Receiving Hospital and University Health Center, and Sinai Grace Hospital.

[2] Our references to "the hospital plaintiffs" refer to the DMC plaintiffs and intervening plaintiffs Henry Ford Health System ("Henry Ford"), Oakwood Healthcare, Inc. ("Oakwood") and St. John Health ("St. John").

language of UltiMed's contracts with those entities. UltiMed also argues that the distribution plan erroneously allowed Henry Ford and Oakwood to recover under the plan because those entities did not have contracts with UltiMed.

UltiMed's contracts with the DMC plaintiffs and St. John required UltiMed to reimburse those entities for services rendered at the rate of 60 percent of the Medicaid rate. UltiMed argues that the distribution plan allowed the DMC plaintiffs and St. John to collect more than 60 percent of the Medicaid rate for all outstanding claims. Thus, UltiMed essentially sought to enforce the plain language of its contracts with the DMC plaintiffs and St. John despite its breach of those contracts by failing to pay those providers and despite the fact that those providers agreed to settle their claims. UltiMed also sought to enforce the plain language of § 21.01 of the provider contract which required UHCP to determine the "exact amount" due from UltiMed to its providers upon termination of the provider contract.

The trial court did not abuse its discretion by approving the distribution plan. The remedy for breach of a contract is to place the nonbreaching party in as favorable a position as if the contract had been performed. *Corl v Huron Castings, Inc*, 450 Mich 620, 625; 544 NW2d 278 (1996). Determining the exact amounts that UltiMed was contractually required to pay on the outstanding claims was not feasible. UHCP maintained that UltiMed owed the DMC plaintiffs over $29 million and that UltiMed owed its remaining providers over $22 million. UltiMed, however, contended that it owed the plaintiff hospitals a combined total of $2,392,389.60, and that its total liability to its providers for PlusCare enrollees amounted to $6.3 million. At a hearing on the hospital plaintiffs' motion to approve the distribution plan, counsel for Henry Ford, Oakwood, and St. John acknowledged that UltiMed did not normally pay providers based on the providers' billed charges, but rather, paid only 60 percent of the Medicaid rate. Counsel admitted that if the outstanding billed charges were reduced to 60 percent of the Medicaid rate, UltiMed owed providers approximately $7.2 million. Rather than examining each individual claim to locate the discrepancies between the amounts that UltiMed claimed it owed and the amounts that the providers claimed to be owed, the trial court accepted the proposed settlement agreement. The trial court acknowledged that examining each individual claim was not feasible:

> What Ultimed is proposing borders on the irrational, that is that we do not extinguish the liability to these people, that we allow all these claimants to make their claim in this court against this fund of money, and that we adjudicate the claims one by one. That borders on the absurd. That is about a fifteen year – maybe – I'll take it back – maybe it's only six years. That's about a six year ordeal. It's not going to happen.

Perhaps the most significant factor weighing against an individual examination of each outstanding claim is UltiMed's admission that its outstanding claims totaled $6.3 million when the funds available to pay the claims amounted to only $5.5 million. UltiMed continues to acknowledge on appeal that its indebtedness to PlusCare providers totaled approximately $6.3 million. Thus, the trial court did not abuse its discretion by declining to sift through hundreds, or more likely thousands, of individual claims when it was undisputed that there was insufficient funds to pay all of the outstanding claims in any event.

Further, by arguing that the distribution plan accorded the DMC plaintiffs and St. John more than these entities were contractually entitled to recover, UltiMed disregards the fact that these entities reached a settlement agreement with UHCP. UHCP properly possessed the funds at issue by virtue of the plain language of the provider contract. Under the language of the contract, UltiMed was not entitled to the withheld funds. In addition, UltiMed has not argued that UHCP was not authorized to use the funds held in trust to satisfy provider claims. Accordingly, UHCP reached a settlement agreement with the providers which differed from the language of the contracts that UltiMed had with the individual providers. Because UltiMed was in breach of those contracts, however, and UHCP legally held the funds at issue, the distribution plan governed over the language of the individual contracts between UltiMed and the DMC plaintiffs and St. John. An agreement to settle a pending lawsuit is a contract and is governed by the law pertaining to contracts. *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). UHCP was authorized to contract with the plaintiff hospitals to settle the instant lawsuit. In negotiating a settlement, UHCP was not obligated to honor language of the underlying contracts that UltiMed had already breached, especially considering that the nonbreaching parties to those contracts did not seek to enforce the contractual language. In any event, even if the trial court adhered to the language of UltiMed's underlying contracts with its providers, UltiMed admits that its total indebtedness exceeded $5.5 million. Thus, following UltiMed's approach, the nonbreaching parties to the underlying contracts, i.e., the health care providers, would not have been placed in as favorable a position as if the contracts had not been breached. *Corl, supra* at 625. Accordingly, UltiMed's approach was insufficient to remedy its contractual breaches.

UltiMed also argues that the trial court erred by approving the distribution plan because it had no contracts with Henry Ford or Oakwood. UltiMed argues that in situations where a hospital rendered services to a PlusCare member and no contract existed with that hospital, its liability is limited to legitimate, emergency room services. UltiMed apparently preferred that the trial court examine each individual claim made by Henry Ford and Oakwood to determine if the claim was for legitimate, emergency room services. As previously discussed, this approach was not feasible. In any case, UltiMed admitted some liability to Henry Ford and Oakwood by arguing in its motion for reconsideration that it owed these entities $404,803.33 and $30,801.11, respectively. Thus, UltiMed has effectively conceded that the fact that no contract existed between these entities and UltiMed did not preclude their participation in the distribution plan.

Further, UltiMed argues that the trial court erred by relying on billed charges rather than the amounts that UltiMed owed the providers. The trial court, however, did not rely on any particular charges in approving the distribution plan. Rather, the parties agreed to apportion the $5.5 million in accordance with each provider's pro-rata share of outstanding billed charges. The parties and the trial court recognized that the billed charges were used for allocation purposes only to determine each provider's pro-rata share of the $5.5 million. Because this method of apportioning the $5.5 million was preferable to examining each individual claim and from there determining the amount to which each provider was entitled, the trial court did not abuse its discretion by approving the distribution plan.

UltiMed also argues that the trial court erred by denying the motion to intervene made by Walgreen Company, CVS Pharmacy, Inc., and Rite Aid Corporation (collectively "the pharmacies"). This Court reviews a trial court's decision on a motion to intervene for an abuse

of discretion. MCR 2.209(B); *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761; 630 NW2d 646 (2001). As an initial matter, the hospital plaintiffs, UHCP, and intervening plaintiff County of Wayne argue that UltiMed does not have standing to challenge the trial court's denial of the pharmacies' motion to intervene. In order to have standing to appeal an issue, a party must be "aggrieved" by a lower court's decision. MCR 7.203(A); *Rymal v Baergen*, 262 Mich App 274, 318; 686 NW2d 241 (2004), citing *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 385; 600 NW2d 406 (1999). An "aggrieved party" is a party whose legal rights are invaded by an action or whose pecuniary interest is directly or adversely affected by the lower court's decision. *Id*. at 318-319, citing *Shah, supra* at 381.

UltiMed is an aggrieved party with standing to appeal the trial court's denial of the pharmacies' motion to intervene. The trial court's decision adversely affected UltiMed's pecuniary interest because disallowing the pharmacies to participate in the distribution plan resulted in UltiMed's continued liability to the pharmacies. If the trial court had allowed the pharmacies to participate in the distribution, their outstanding claims against UltiMed would have been satisfied with the same $5.5 million that other providers shared under the plan. By denying the pharmacies' motion, UltiMed remains liable to the pharmacies for all outstanding claims. Accordingly, UltiMed's pecuniary interest was adversely affected and it has standing to challenge the trial court's denial of the pharmacies' motion.

The pharmacies sought to intervene as of right under MCR 2.209(A) and by permission under MCR 2.209(B). The trial court's denial of the pharmacies' motion on the basis that it was untimely did not constitute an abuse of discretion. In *W A Foote Mem Hosp v Dep't of Pub Health*, 210 Mich App 516, 525; 534 NW2d 206 (1995), this Court recognized that both MCR 2.209(A) and (B) require a "timely application" for intervention. Relying on *Dean v Dep't of Corrections*, 208 Mich App 144, 150-151; 527 NW2d 529 (1994), this Court stated that a trial court abuses its discretion by granting a motion to intervene after a judgment favorable to the party seeking to intervene has already been entered in favor of the original party with whom the proposed intervenor is attempting to align. *W A Foote Mem Hosp, supra* at 525, citing *Dean, supra* at 150-151.

In the instant case, the pharmacies did not move to intervene until after the trial court issued its bench ruling approving the distribution plan. Thus, it would have been unfair to allow the pharmacies to intervene when the hospital plaintiffs had just received a favorable ruling from the trial court. As this Court held in *Dean, supra*, allowing intervention at that point would have constituted an abuse of discretion. *W A Foote Mem Hosp, supra* at 525; *Dean, supra* at 150-151.

Moreover, the disposition of this action did not impair or impede the pharmacies' ability to protect their interests as discussed in MCR 2.209(A)(3). Because the pharmacies did not participate in the distribution plan and thereby sign a release of claims against UltiMed, they remain able to pursue their claims against UltiMed just as the hospital plaintiffs did by filing a complaint against UltiMed. Thus, the pharmacies' ability to protect their interests was not impaired.

Further, in determining whether to grant permissive intervention under MCR 2.209(B), a trial court is required to consider whether granting intervention will prejudice the adjudication of the rights of the original parties. In denying the pharmacies' motion, the trial court repeatedly acknowledged that the hospital plaintiffs had spent a great deal of time and money pursuing their

claims and that UltiMed's liability far exceeded the $5.5 million available to pay the providers. The trial court's determination that the hospital plaintiffs would have been prejudiced by allowing the pharmacies to intervene and further dilute the $5.5 million was not an abuse of discretion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper
/s/ Pat M. Donofrio