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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1700**

Fartun Aidid,
Respondent,

vs.

Progressive Direct Insurance Company,
Respondent,

vs.

Stand Up Multipositional Advantage MRI, P. A.,
applicant for intervention,
Appellant.

**Filed July 1, 2013
Affirmed, motion granted
Chutich, Judge**

Hennepin County District Court
File No. 27-CV-12-4905

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Co.)

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Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

On appeal from the district court's order confirming an arbitration award to respondent-insured Fartun Aidid, appellant Stand Up Multipositional Advantage MRI, P.A. (SUMA) argues that the district court erred by denying its motion to intervene and confirming the arbitration award. Because SUMA is not entitled to intervene, we affirm.

FACTS

Aidid was injured in an automobile accident in early 2010 and received treatment from several medical providers, including SUMA. She received two magnetic resonance imaging (MRI) scans from SUMA and, at the time of each scan, Aidid signed a document entitled "Authorization and Irrevocable Assignment of Insurance Benefits." The pertinent provision in the assignment states:

Assignment and Lien Terms. I hereby assign to the Office to the extent permitted by law, but only to the extent of my Charges, all of my rights, remedies, and benefits relating to any Payer, including without limit my right to receive Proceeds from any Payer now or in the future, and any and all causes of action that I might have against any Payer now or in the future

The total unpaid balance for Aidid's two MRI scans was \$3,840.65.

On July 30, 2010, SUMA filed a Uniform Commercial Code (U.C.C.) lien to secure the amount owed by Aidid for the two scans. SUMA notified Aidid's counsel of the lien by certified letter sent the same day.

In October 2010, Aidid filed a petition for arbitration to recover benefits from Progressive Direct Insurance Company (Progressive), her automobile insurer, under the

Minnesota No-Fault Act, Minn. Stat. § 65B.525, subd. 1 (2010). Aidid requested \$4,965.65 to cover medical expenses from all of her medical providers, including SUMA. In March 2011, the arbitrator awarded Aidid \$3,958.11, less than the amount she requested, which included a total of \$3,659.75 for her medical fees. The arbitrator did not itemize the award. Progressive issued a check on March 22, 2011, made payable to Aidid, her attorneys, and SUMA.¹

In March 2012, Aidid moved to confirm the arbitration award in district court. Aidid also requested that “payment of the judgment must be directed *solely* to [Aidid] and her attorney.” Progressive opposed Aidid’s motion to confirm the arbitration award because it had already issued a check in the amount of the arbitration award and it wanted the district court to address the validity of SUMA’s lien. SUMA moved to intervene in the district court proceeding under Minnesota Rules of Civil Procedure 24.01 and 24.02, arguing that it was entitled to the entire award for medical fees based on its assignment and lien.

The district court granted Aidid’s motion to confirm the arbitration award and denied SUMA’s motion to intervene, concluding that SUMA did not have an interest in the matter. SUMA now appeals.

¹ The arbitrator did not specifically award SUMA any money or otherwise mention SUMA in the arbitration award. Progressive included SUMA as a payor on the check on its own initiative, presumably because of the assignment and lien.

DECISION

I. Intervention of Right

Denial of a motion to intervene under Minnesota Rule Civil Procedure 24.01 is a question of law that we independently assess. *Erickson v. Bennett*, 409 N.W.2d 884, 886 (Minn. App. 1987). “Minnesota courts are to follow a policy of encouraging all legitimate interventions.” *Jerome Faribo Farms, Inc. v. Cnty. of Dodge*, 464 N.W.2d 568, 570 (Minn. App. 1990), *review denied* (Minn. Mar. 15, 1991).

To intervene under rule 24.01, a nonparty must demonstrate:

(1) a timely application for intervention; (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party’s ability to protect that interest; and (4) a showing that the party is not adequately represented by the existing parties.

Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 207 (Minn. 1986).

The nonparty must satisfy all four factors. *Luthen v. Luthen*, 596 N.W.2d 278, 280–81 (Minn. App. 1999).

Interest

Because the district court relied solely on this second factor in denying SUMA’s motion to intervene under rule 24.01, we address it first. The party seeking to intervene must show that its interest “relates to the property or transaction involved in the underlying action.” *Schumacher*, 392 N.W.2d at 207. The district court found that Aidid’s “matter was filed solely to confirm the arbitration award. SUMA was not a party to the arbitration and has no interest in whether the award is confirmed.” In so finding,

the district court declined to address the validity of SUMA's assignment and lien, which is central to whether SUMA has an interest in the action that would justify intervention. Accordingly, we now address the validity of the assignment and lien.

“A valid assignment generally operates to vest in the assignee the same right, title, or interest that the assignor had in the thing assigned.” *State ex rel. Southwell v. Chamberland*, 361 N.W.2d 814, 818 (Minn. 1985). “An assignment operates to place the assignee in the shoes of the assignor, and provides the assignee with the same legal rights as the assignor had before assignment.” *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004).

Aidid signed documents purporting to assign her claim for insurance proceeds to SUMA. On appeal, Aidid now claims that the assignment was invalid due to a non-assignment clause in her Progressive automobile insurance policy. To support her argument, Aidid cites the “transfer” provision in her insurance contract that states “[t]his policy may not be transferred to another person without our written consent.”

As SUMA notes, Minnesota law distinguishes between insurance provisions that prohibit the assignment of an insured's interest in the policy from those that prohibit assignment of the policy itself. An anti-assignment clause, such as the transfer clause in Aidid's insurance policy, may prevent an insured from assigning a policy to another, but it does not prevent an insured from assigning post-loss proceeds to a third-party. *See Windey v. N. Star Farmers Mut. Ins. Co.*, 231 Minn. 279, 283, 43 N.W.2d 99, 102 (1950) (“Assignment, after loss, of the proceeds of insurance does not constitute an assignment of the policy, but only of a claim or right of action on the policy.”). Thus, the supreme

court has stated that policy holders may assign their post-loss proceeds claims to auto-glass repair companies because such assignment “does not affect the bargain struck between the insurer and the insured.” *Star Windshield Repair, Inc. v. W. Nat’l Ins. Co.*, 768 N.W.2d 346, 350 n.6 (Minn. 2009).

We find assignment of post-loss benefits also appropriate in the context of medical providers. Here, the contract language only prohibits the assignment of the policy itself—not Aidid’s rights or benefits under the policy. Such an interpretation does not change or expand Progressive’s liability under the policy because Progressive is covering the risk that it agreed to cover when originally contracting with Aidid. *See id.* Therefore, we conclude that Aidid’s assignment of her post-loss proceeds to SUMA as payment for medical procedures is valid.

We next address the validity of SUMA’s U.C.C. lien. Based on Aidid’s assignment, SUMA filed a U.C.C. lien for the value of the medical treatments it provided. Insurance proceeds are securable interests under Article 9 of the U.C.C. The U.C.C., as adopted in Minnesota, defines “health-care-insurance receivable” as “an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.” Minn. Stat. § 336.9-102(46) (2010). A valid interest in a health-care-insurance receivable is perfected “by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services.” Minn. Stat. § 336.9-309(5) (2010).

After Aidid assigned her benefits, SUMA filed a lien with the secretary of state to secure the amount Aidid owed. *See* Minn. Stat. § 336.9-203 (b)(3)(A) (2010) (stating

that one of the conditions for enforceability is that “the debtor has authenticated a security agreement that provides a description of the collateral”). Thus, SUMA has a valid assignment and lien and, accordingly, has an interest in whether the arbitration award is confirmed because it would be entitled to some or all of the award.

Although SUMA demonstrated an interest in the subject matter of the arbitration, our analysis of the remaining three factors shows that it was not entitled to intervention as a matter of right.

Timeliness

“The determination of whether intervention is timely must be considered on a case-by-case basis.” *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 501 (Minn. App. 2005). In reviewing the timeliness of a motion to intervene, courts may consider (1) how far the case has progressed; (2) the reason for the delay in seeking intervention; and (3) whether the existing parties will be prejudiced by the delay. *Erickson*, 409 N.W.2d at 886. “Intervention should not be allowed where circumstances show that the would-be intervenor was aware of the suit and permitted the trial to proceed, waiting to see if the outcome would be favorable to its interests.” *Blue Cross/Blue Shield of R.I. v. Flam*, 509 N.W.2d 393, 396 (Minn. App. 1993), *review denied* (Minn. Feb. 24, 1994).

SUMA moved to intervene just over one month after Aidid filed her motion to confirm the arbitration award in March 2012. While SUMA’s motion to intervene in the district court action occurred shortly after it was commenced, SUMA’s motion was untimely when considered under the circumstances of this case. For nearly two years, SUMA took no action based on its assignment, either by seeking payment directly from

Progressive or by pursuing arbitration in the absence of payment. *See Ill. Farmers Ins.*, 683 N.W.2d at 804 (finding that assigned claims against insurers are subject to no-fault arbitration). Rather, SUMA stood by and allowed Aidid to pursue SUMA's claim against Progressive.²

In addition, SUMA made no effort to timely modify or correct the arbitrator's award. Had SUMA believed that it was wrongly excluded from the award, it could have moved to modify the award within 90 days after it was issued. *See Minn. Stat. § 572.20*, subd. 1 (2010) ("Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award . . ."). But here, SUMA did not attempt to modify the award until over a year after it was issued. Thus, we conclude that SUMA's motion to intervene is untimely. *See Blue Cross/Blue Shield*, 509 N.W.2d at 396.

Impair or Impede a Party's Ability to Protect Its Interest

Next, the potential intervenor must show that the disposition of the action may impair or impede the nonparty's ability to protect its stated interest. *Schumacher*, 392 N.W.2d at 207. Because the arbitration award makes no determination regarding the validity of SUMA's assignment or lien, SUMA may alternatively pursue an action

² SUMA claims that it had no knowledge that Aidid was arbitrating the claim with Progressive. The record, however, demonstrates that sometime before the arbitrator issued its award, SUMA's business manager spoke to a Progressive claim adjuster to have SUMA's name included on any settlement check because of its assignment and lien on Aidid's insurance proceeds. Aidid asserts that she notified SUMA via letter in October 2010 that she was entering into arbitration with Progressive. As SUMA notes, however, this letter is not part of the district court record. Accordingly, we grant SUMA's motion to strike the letter from Aidid's appendix and we do not consider it on appeal.

against Aidid to recover the amount of its lien or for breaching her contract with SUMA. See Minn. Stat. § 336.9-601(a)(1) (2010) (stating that after default on a lien, a secured party “may reduce a claim to judgment”). While this approach may not be the most efficient method for resolving the underlying dispute between Aidid and SUMA, it demonstrates that Aidid’s motion to confirm the award does not impair SUMA’s ability to protect its interest and recover payments owed to it by Aidid.

Inadequate Representation

Finally, the nonparty carries “the ‘minimal’ burden of showing that the existing parties ‘may’ not adequately represent [its] interests.” *Faribo Farms*, 464 N.W.2d at 570; see also *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981) (stating that the potential intervenor “ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the [potential intervenor] (quotation omitted)). Here, Aidid’s and SUMA’s interests are similar in that they are both interested in the greatest possible recovery from Progressive, and, in fact, Aidid requested the full amount that she owed to SUMA. Although the arbitration award is in Aidid’s name, as discussed above, this fact would not prevent subsequent action by SUMA to collect for the medical services it provided Aidid. Thus, it appears that Aidid adequately represented SUMA’s interest.

SUMA has failed to establish the requirements for intervention as a matter of right under rule 24.01. Accordingly, we conclude that the district court properly denied SUMA’s motion to intervene as of right.

II. Permissive Intervention

“Permissive intervention rulings are reviewed under an abuse-of-discretion standard.” *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 691 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). Minnesota Rule of Civil Procedure 24.02 “provides that district courts, in their discretion, may permit intervention where the [nonparty’s] claim or defense and the main action have a common question of law and fact if doing so would not unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

SUMA claims that its “entitlement to the insurance proceeds at issue” demonstrate shared questions of law and fact with Aidid’s motion to confirm the arbitration award. The district court concluded that the “matter was filed solely to confirm the arbitration award.” We agree with the district court that, given the limited scope of the motion to confirm the arbitration award, permissive intervention was not appropriate. When a party moves to confirm an arbitration award and no timely challenge to the award to vacate or modify has been made, the district court is required to confirm the award. *See* Minn. Stat. § 572B.22 (2010) (“[T]he party may file a motion with the court for an order confirming the award, at which time the court shall issue such an order”). Here, neither Progressive nor SUMA challenged the award within the statutory time limitations; confirmation therefore was mandatory. Thus, SUMA failed to demonstrate that the district court abused its discretion by denying its motion to intervene under rule 24.02.

III. Confirmation of Arbitration Award

SUMA also appeals the district court's confirmation of the arbitration award, claiming that it erroneously held SUMA to be bound by the results of the arbitration proceeding. Because we affirm the district court's denial of SUMA's motion to intervene, we conclude that SUMA does not have standing to challenge any other aspect of the district court's order.

In sum, the anti-assignment clause in Aidid's insurance contract did not prevent her from assigning her insurance proceeds to SUMA in return for medical treatments. Nevertheless, we find that SUMA's interest in obtaining repayment for the services it provided Aidid does not entitle it to intervene in an action to confirm an arbitration award after it failed to act on the assignment or to timely challenge the award. Accordingly, we affirm the district court's denial of SUMA's motion to intervene.

Affirmed; motion granted.