[Cite as *Mulk v. Ohio Dept. of Job & Family Servs.*, 2011-Ohio-5850.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Yahya Mulk et al.,	:	
Plaintiffs-Appellants,	:	No. 11AP-211
v.	:	(C.P.C. No. 09CVH07-10003)
Ohio Department of Job & Family Services,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 10, 2011

The Donahey Law Firm, Mark E. Defossez and Jacob J. Beausay, for appellants.

Michael DeWine, Attorney General, and Henry G. Appel, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Plaintiffs-appellants, Yahya Mulk ("Mulk"), Blair Hamren ("Hamren"), and Lisa Brown ("Brown") (collectively "appellants"), appeal from a judgment of the Franklin County Court of Common Pleas granting the motion for judgment on the pleadings filed by defendant-appellee, Ohio Department of Job and Family Services ("appellee"). For the reasons that follow, we affirm.

{¶ 2} Appellants each required medical care as a result of injuries sustained due to the tortious conduct of third parties. Appellants' medical care was paid for in part by

appellee through the Medicaid program. Appellants subsequently initiated tort claims against the third parties believed to be responsible for their injuries. They retained attorneys to pursue these tort claims and agreed to pay these attorneys on a contingency-fee basis. Generally, these agreements provided that appellants' attorneys would receive one-third of any amount recovered under a settlement or judgment award.

{¶ 3} Appellants settled their tort cases and paid their attorneys according to the contingency-fee agreements. Appellee asserted a right to recover 100 percent of the medical expenses it paid on appellants' behalf from the settlements in their various cases. Appellants Mulk and Hamren declined to pay full reimbursement to appellee; appellant Brown agreed to pay full reimbursement for medical expenses paid by appellee. Appellants filed suit seeking declaratory judgment that they are only obligated to reimburse appellee in the amount of medical expenses paid after a pro rata deduction of the attorney's fees and costs incurred in obtaining settlement of their tort claims.[1]

{¶ 4} Appellee moved for judgment on the pleadings, arguing that the court below lacked jurisdiction, that appellants failed to state a claim upon which relief could be granted, and that appellee was entitled to judgment as a matter of law. The trial court granted appellee's motion, finding that, although the court had jurisdiction, appellee was entitled to judgment as a matter of law.

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[1] We note that appellants also sought to have the case certified as a class action, with two proposed classes. One class would be composed of Medicaid recipients who were under threat of litigation from appellee to recover medical expenses, and the other class would be composed of Medicaid recipients who had made full reimbursement for medical expenses paid by appellee and now sought restitution in the amount of a pro rata share of attorney's fees and costs. The court below did not reach the class certification issue, and, accordingly, we do not address it in this decision.

{¶ 5} Appellants appeal from the trial court's judgment, assigning the following error for this court's review:

> The trial court erred in granting Defendant's Motion for Judgment on the Pleadings because, under existing state and federal law, Defendant-Appellee is not permitted to recover any of a Medicaid recipient's recovery from a third party other than those that represent medical expenses.

{¶ 6} We review a trial court's grant of judgment on the pleadings de novo. *Martin v. McKnight*, 10th Dist. No. 08AP-633, 2008-Ohio-6914, ¶7. "A motion for judgment on the pleadings is to be granted when, after viewing the allegations and reasonable inferences therefrom in the light most favorable to the non-moving party, the moving party is entitled to judgment as a matter of law." Id.

{¶ 7} Appellants argue that appellee's recovery of Medicaid payments for medical expenses must be reduced pro rata to account for the attorney's fees and costs incurred by appellants in obtaining recovery from third-party tortfeasors. Appellants offer four arguments in support of their lone assignment of error. First, they argue that failing to reduce the state's recovery pro rata violates federal law under *Arkansas Dept. of Health & Human Servs. v. Ahlborn* (2006), 547 U.S. 268, 126 S.Ct. 1752. Second, appellants assert that, under general subrogation principles, appellee cannot attain greater rights in recovery than the rights held by appellants themselves. Third, appellants argue that appellee would be unjustly enriched unless its recovery is reduced pro rata. Fourth, appellants argue that failing to reduce appellee's recovery pro rata creates an unconstitutional taking of appellants' property.

I. Background on Medicaid Program

{¶ 8} We begin our analysis by considering the general parameters of the Medicaid program and Ohio's participation in the program. "The Medicaid program, which provides joint federal and state funding of medical care for individuals who cannot afford to pay their own medical costs, was launched in 1965 with the enactment of Title XIX of the Social Security Act." *Ahlborn*, 547 U.S. at 275, 126 S.Ct. at 1758. Although federal law does not compel states to participate in Medicaid, all states have chosen to join the program. Id. Participating in Medicaid subjects the states to certain statutory requirements. Among these requirements is that the state agency charged with managing Medicaid must take reasonable measures to determine the liability of third parties to pay for medical services and, if such liability is determined after the state has made payments for medical services, the agency must seek reimbursement for those payments to the extent of such liability. Id., 547 U.S. at 275-76, 126 S.Ct. at 1758, citing 42 U.S.C. §1396(a)(25)(A)-(B). States are required to enact laws providing that, where a third party has legal liability to make payments for medical expenses, the state will be considered to have acquired the rights of the injured party to such payment to the extent that the state provided assistance with medical expenses. Id., 547 U.S. at 276, 126 S.Ct. at 1758-59, citing 42 U.S.C. §1396(a)(25)(H).

{¶ 9} Ohio has fulfilled its obligation to seek reimbursement for medical expenses paid through Medicaid when a third party is found liable for those expenses by enacting R.C. 5101.58. That statute provides that "[w]hen an action or claim is brought against a third party by a public assistance recipient or participant, any payment, settlement or compromise of the action or claim, or any court award or judgment, is subject to the recovery right of the department of job and family services or county department of job

and family services." R.C. 5101.58(A). The law stipulates that acceptance of public assistance gives appellee or the applicable county department of job and family services an "automatic right of recovery." Id.

II. *Ahlborn* decision

{¶ 10} Appellants argue that proper application of the *Ahlborn* decision requires a pro rata reduction of the amount appellee may recover under its automatic right to recovery. The plaintiff in *Ahlborn*, Heidi Ahlborn, had been injured in an automobile accident. The Arkansas Department of Health and Human Services ("ADHS") paid $215,645.30 in medical expenses on her behalf. *Ahlborn*, 547 U.S. at 272-73, 126 S.Ct. at 1757. Ahlborn then filed suit against two alleged tortfeasors; the case was settled out of court for $550,000. ADHS asserted a lien against the settlement for the total amount of medical expenses paid on Ahlborn's behalf. Ahlborn filed suit seeking a declaratory judgment that the state's lien violated federal law because it would "require depletion of compensation for injuries other than past medical expenses." Id., 547 U.S. at 274, 126 S.Ct. at 1757. Ahlborn and ADHS stipulated that her total claim was worth more than $3 million, and that the settlement amount constituted approximately one-sixth of the total claim value. The parties also stipulated that $35,581.47, or 16.5 percent, of the settlement constituted "a fair representation of the percentage of the settlement constituting payment by the tortfeasor for past medical care." *Ahlborn v. Arkansas Dept. of Human Servs.* (C.A.8, 2005), 397 F.3d 620, 622. The trial court granted summary judgment for ADHS, concluding that ADHS was entitled to recover "the full extent of Medicaid's payments for her benefit." *Ahlborn*, 547 U.S. at 274, 126 S.Ct. at 1758. The United States Court of Appeals for the Eighth Circuit reversed, holding that ADHS was

only entitled to the portion of the settlement that represented payments for medical care. *Ahlborn*, 547 U.S. at 275, 126 S.Ct. at 1758.

{¶ 11} The United States Supreme Court affirmed the Eighth Circuit's ruling, holding that federal law "does not sanction an assignment of rights to payment for anything other than medical expenses—not lost wages, not pain and suffering, not an inheritance." Id., 547 U.S. at 281, 126 S.Ct. at 1761. Under other portions of federal law, ADHS was prohibited from asserting a lien on any portion of the settlement beyond the amount representing payments for medical care. Id., 547 U.S. at 292, 126 S.Ct. at 1767.

{¶ 12} As appellee notes, the question of attorney's fees was not raised in *Ahlborn*, and the decision does not directly address the issue of whether a state's recovery of medical expenses must be adjusted to account for attorney's fees. However, appellants argue that the principles established in *Ahlborn* require a pro rata reduction of appellee's recovery from any judgment or settlement for medical expenses paid to account for attorney's fees and costs. Appellants' argument is based on the premise that attorney's fees and costs are effectively paid out of each dollar recovered under a judgment or settlement. Assuming a one-third contingency fee agreement, appellants assert that their attorneys are effectively paid 33 cents of each dollar recovered. Thus, they argue that their recovery for medical expenses is reduced by 33 percent. If appellee is permitted to recover 100 percent reimbursement for medical expenses, appellants argue that they will be required to "dip into" the portion of the judgment or settlement compensating for other forms of damages, such as lost wages or pain and suffering, in order to satisfy their attorney's fees and costs.

{¶ 13} We disagree with appellants' construction of the *Ahlborn* decision and its impact on Ohio law. Appellants generally overlook a key provision of R.C. 5101.58, which makes allowance for the payment of attorney's fees and costs. That portion of the statute, R.C. 5101.58(G), provides as follows:

> (1) Subject to division (G)(2) of this section, the right of recovery of a department does not apply to that portion of any judgment, award, settlement, or compromise of a claim, to the extent of attorneys' fees, costs, or other expenses incurred by a recipient or participant in securing the judgment, award, settlement, or compromise, or to the extent of medical, surgical, and hospital expenses paid by such recipient or participant from the recipient's or participant's own resources.
>
> (2) Reasonable attorneys' fees, not to exceed one-third of the total judgment, award, settlement, or compromise, plus costs and other expenses incurred by the recipient or participant in securing the judgment, award, settlement, or compromise, shall first be deducted from the total judgment, award, settlement, or compromise. After fees, costs, and other expenses are deducted from the total judgment, award, settlement, or compromise, the department of job and family services or appropriate county department of job and family services shall receive no less than one-half of the remaining amount, or the actual amount of medical assistance paid, whichever is less.

Thus, existing Ohio law provides for the payment of attorney's fees and costs *before* calculating appellee's recovery for medical expenses. Moreover, the law is structured to ensure that appellee will take no more than half of the remaining recovery, thereby ensuring that the injured party will retain a portion of the judgment or settlement to compensate for other categories of damages. State and federal courts have found that Medicaid recovery systems in other states that are similar to Ohio's system are permissible under *Ahlborn*.

{¶ 14} In *State v. Peters* (2008), 287 Conn. 82, the state of Connecticut sought to enforce a lien to recover Medicaid benefits against an arbitration award received by an accident victim from the third-party tortfeasor responsible for the accident. Id. at 83. The accident victim claimed, inter alia, that federal law required a one-third pro rata reduction in the amount of the lien to account for attorney's fees and costs involved in pursuing the arbitration award. Id. at 85. The relevant Connecticut statute granting the state a lien provided that " 'the claim of the state shall be a lien against the proceeds therefrom in the amount of the assistance paid or fifty per cent of the proceeds received by such beneficiary * * * after payment of all expenses connected with the cause of action, whichever is less.' " Id. at 85, fn. 4, quoting Conn.Gen.Stat. section 17b-94(a).

{¶ 15} The Supreme Court of Connecticut reviewed the relevant federal and state statutes and concluded that "[t]he [victim's] position would require us to read language into the medicaid statutes that simply does not exist, namely, that * * * if the state chooses to pursue reimbursement indirectly through a lien on judgment or settlement proceeds obtained by a recipient, the state must compensate the recipient pro rata for the attorney's fees and costs incurred by him in pursuing the third party." Id. at 93-94. The court rejected the victim's position, finding that there was "no support in the legislative history whatsoever" for an argument that states seeking indirect reimbursement of Medicaid benefits must compensate the recipient for attorney's fees and costs. Id. at 95. The court further noted that federal law required a pro rata reduction in recovery of Medicare reimbursements to account for the costs of procuring a judgment or settlement, which contrasted with the law governing Medicaid reimbursements. Id. at 99. Thus, the court concluded that "the federal statutes that govern the medicaid program do not

require the state * * *, if the state chooses to collect reimbursement indirectly from the medicaid recipient, to reduce the amount of the reimbursement pro rata to compensate the recipient for attorney's fees and costs that he incurred in pursuing the third party." Id. at 100.

{¶ 16} Similarly, the United States District Court for the District of Maryland rejected a claim that Maryland's Medicaid recovery law violated *Ahlborn* by not requiring that the state's recovery be reduced by a proportionate share of the attorney's fees and costs. *Special Needs Trust for K.C.S. v. Folkemer* (Mar. 28, 2011), D.Md. No. 08:10-CV-1077. Maryland law provided that a Medicaid recipient who received money in a settlement or judgment was required to "hold that money, for the benefit of the Department [of Health and Mental Hygiene], to the extent required for the subrogation claim, after deducting applicable attorney's fees and litigation costs." Id., quoting Md.Code Health-Gen. section 15-120(c)(1). The plaintiffs claimed that, unless the state's recovery was reduced by a proportionate share to account for attorney's fees and costs, then recovery for other categories of damages would be depleted to pay those expenses. The federal trial court rejected this argument, finding that failing to reduce the state's recovery by a proportionate share to account for attorney's fees would not have the effect of allowing the state to recover from the portion of the judgment or settlement intended to compensate the recipient for other categories of damages. Id.

{¶ 17} The Connecticut and Maryland laws upheld in the *Peters* and *Special Needs Trust* decisions provided for payment of attorney's fees and costs by the recipient of a judgment or settlement before calculating the state's recovery. In this respect, these statutes are similar to R.C. 5101.58(G). Connecticut's recovery statute also limited the

state to recovering the amount of benefits paid or 50 percent of the injured party's recovery from a third-party tortfeasor, which mirrors the limit under R.C. 5101.58(G). Given the similarity between these recovery laws and Ohio's recovery statute, we find the logic of these cases to be persuasive. *Ahlborn* does not require a pro rata reduction of appellee's recovery of medical expenses when state law already provides for payment of attorney's fees and costs before calculating the state's recovery.

{¶ 18} Moreover, courts have upheld Medicaid recovery statutes in other states that are similar to Ohio's recovery provisions. In *Tristani ex rel. Karnes v. Richman* (June 29, 2011), 3d Cir. No. 09-3537, 652 F.3d 360, the United States Court of Appeals for the Third Circuit ruled that Pennsylvania's Medicaid recovery structure did not violate federal law. The Pennsylvania law provided that where a Medicaid recipient pursued a claim alone, without assistance from the Department of Public Welfare, in the case of a favorable judgment *after* the payment of attorney's fees and litigation expenses, the court would allocate the judgment between medical expenses, which would be subject to a lien in favor of the state, and other damages. In the case of a settlement, the law provided that the state could recover no more than one-half of the total recovery *after* deducting attorney's fees, litigation costs, and medical expenses paid by the beneficiary. Thus, the effect of the Pennsylvania recovery scheme was similar to R.C. 5101.58(G)—i.e., attorney's fees and costs were deducted from any award or settlement prior to calculating the portion subject to recovery by the state. Although the plaintiffs in *Tristani* did not raise the issue of a pro rata reduction of the state's recovery to account for attorney's fees, and the appellate court did not expressly address the issue in its decision, the case

demonstrates that recovery systems similar to Ohio's have been upheld in recent cases, thereby lending support to our conclusion that R.C. 5101.58 does not violate federal law.

{¶ 19} Further, we agree with the *Peters* court's conclusion that "to the extent that there is any policy justification for requiring states to provide for pro rata reductions for a recipient's attorney's fees and costs incurred in pursuing liable third parties, * * * this is a matter more appropriately addressed by the legislature." *Peters* at 97-98. R.C. 5101.58 was amended in 2007 to add division (G)(2) providing for deduction of attorney's fees and costs before allocating the state's recovery. Am.Sub.H.B. No. 119, 2007 Ohio Legis.Serv. 513, 1185. The Legislative Service Commission's final analysis report on the legislation indicates that this amendment was enacted in response to the *Ahlborn* decision and guidance from federal Medicaid officials following *Ahlborn*. Am.Sub.H.B. No. 119, Legislative Service Commission Final Analysis (2007). Thus, the General Assembly has decided, as a matter of policy, that appellee's recovery of medical expenses will be adjusted under the method set forth in R.C. 5101.58(G)(2). Absent a conflict with other state or federal law or a constitutional provision, it remains the General Assembly's prerogative to amend this policy.

III. Subrogation

{¶ 20} Appellants also argue that, under the law of subrogation, appellee's recovery of medical expenses must be reduced pro rata to account for attorney's fees and costs because, as a subrogee, appellants cannot maintain a greater right to recovery than its subrogor. In the context of subrogation under an insurance policy, the Supreme Court of Ohio has declared that "an insurer-subrogee cannot succeed to or acquire any right or remedy not possessed by its insured." *Chemtrol Adhesives, Inc. v. Am. Mfrs. Mut. Ins.*

Co. (1989), 42 Ohio St.3d 40, 42. Although appellants' argument is based on a valid general principle of law, we find that it does not apply in this case.

{¶ 21} "In Ohio, there are three distinct kinds of subrogation: legal, statutory, and conventional. Legal subrogation arises by operation of law and applies when one person is subrogated to certain rights of another so that the person is substituted in the place of the other and succeeds to the rights of the other person. Statutory subrogation is a right that exists only against a wrongdoer. Conventional subrogation is premised on the contractual obligations of the parties, either express or implied." *Blue Cross & Blue Shield Mut. of Ohio v. Hrenko*, 72 Ohio St.3d 120, 121, 1995-Ohio-306 (internal citations omitted).

{¶ 22} Prior to 1997, R.C. 5101.58 provided that acceptance of benefits gave appellee a "right of subrogation" against the liability of a third party for the cost of medical expenses. The statute was then amended to replace the right of subrogation to a right of recovery. Am.Sub.H.B. 215, 147 Ohio Laws 877, 1584. The Legislative Service Commission analysis of the bill amending R.C. 5101.58 indicates that this change was enacted to eliminate some of the limits on appellee's ability to recover from liable third parties, such as a failure of the beneficiary to bring an action within the period allowed under the statute of limitations. Am.Sub.H.B. No. 215, Legislative Service Commission Final Analysis (1997). The change also allowed appellee and county departments of job and family services to seek reimbursement of payments for medical expenses independent of the beneficiary. Id. Thus, it appears that the General Assembly intended to ensure that appellee's ability to recover payments for medical expenses from a liable third party was not limited by the general law of subrogation.

{¶ 23} We note that the case cited by appellants to demonstrate the general limitation on a subrogee's rights applies in the Medicaid context was decided *prior* to the 1997 amendment discussed above. *Ohio Dept. of Human Servs. v. Kozar* (1995), 99 Ohio App.3d 713. However, we also note that the decision stated that the state agency was subrogated "to the extent of the Medicaid benefits paid." Id. at 715. *Kozar* held that, because the beneficiary's claim was barred by res judicata, the state's claim was also barred by res judicata. Id. at 716. Although a deduction of attorney's fees and costs was not at issue in the case, the language cited above, indicating that the state could recover "to the extent of the Medicaid benefits paid" suggests that the state was entitled to full recovery of such benefits, without a deduction for attorney's fees and costs.

{¶ 24} Further, prior to the amendment of R.C. 5101.58 changing appellee's right of subrogation into a right of recovery, another appellate court found that the right of subrogation granted under the statute did not grant any right to deduct attorney's fees and costs from the subrogated amount payable to the public agency. *Padgett v. Ohio Dept. of Pub. Welfare* (1979), 65 Ohio App.2d 96, 100. If the law of subrogation did not require a deduction for attorney's fees and costs, then, accordingly, no such deduction would be imposed on appellee's right of recovery under the amended statute.

IV. Unjust Enrichment

{¶ 25} Appellants argue that failing to reduce appellee's recovery by a pro rata share of the appellants' attorney's fees and costs constitutes unjust enrichment. The doctrine of unjust enrichment applies when a benefit is conferred upon a party, and it would be inequitable to permit the benefitting party to retain the benefit without compensating the conferring party. *Meyer v. Chieffo*, 193 Ohio App.3d 51, 2011-Ohio-

1670, ¶16. Under R.C. 5101.58, appellee is only entitled to recover the medical expenses paid on behalf of an injured party. Thus, this is a scenario where the injured party is reimbursing appellee for a benefit that appellee conferred, not where appellee is retaining a benefit conferred by the injured party. Moreover, we note once again that R.C. 5101.58(G)(2) limits appellee's recovery to the lesser of the actual medical expenses paid or 50 percent of the recovery after payment of attorney's fees and costs to ensure that appellee does not receive an excess recovery.

V. Takings Clause

{¶ 26} Appellants also argue that, by requiring full reimbursement of medical expenses paid by appellee, Ohio law violates the Takings Clause of the United States Constitution. The Takings Clause of the Fifth Amendment, applied to the states under the Fourteenth Amendment, prohibits the government from taking private property without just compensation. See *State ex rel. Hensley v. Columbus*, 10th Dist. No. 10AP-840, 2011-Ohio-3311, ¶27. Under R.C. 5101.58(A), by accepting public assistance, an injured party grants an automatic right of recovery to appellee. Because this assignment is made before any recovery is obtained from a liable third party, the beneficiary has no property interest in this portion of the recovery. See *Wesley Health Care Ctr., Inc. v. DeBuono* (C.A.2, 2001), 244 F.3d 280, 285 (quoting the trial court's conclusion that the beneficiary "did not have a property interest in insurance proceeds taken because [he] had already assigned a superior interest voluntarily to the State"). Further, appellants did receive compensation in the form of the initial payment of their medical expenses. Therefore, there has been no taking of appellants' property without just compensation.

VI. Pro Rata Deductions in Other States

{¶ 27} Finally, appellants argue that other states have determined that a pro rata deduction for attorney's fees and costs is required under the federal Medicaid statute. Appellants cite to *Anderson v. Wood* (1999), 204 W.Va. 558, as one example of a state court ruling that attorney's fees and costs must be deducted from the amount of medical expenses the state can recover. However, the *Anderson* decision actually turned on a narrow issue of statutory interpretation of a state law, and it is not applicable to the present case. The West Virginia statute at issue in *Anderson* explicitly required a pro rata deduction for attorney's fees from the amount that the state could claim from a recovery by judgment or settlement obtained by an individual who had received medical assistance from the state. Id. at 560, fn. 4. The statute provided that " '[i]rrespective of whether the case be terminated by judgment or by settlement without trial, from the amount required to be paid to the department of health and human resources there shall be deducted the attorney fees attributable to such amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro rata portion of such attorney fees.' " Id., quoting W.Va. Code section 9-5-11(b). Accordingly, the state conceded that the amount of medical expenses it could recover was to be reduced by one third to reflect its share of the attorney's fees. Id. at 560. However, the state argued that the plain language of the statute only required a reduction of its recovery to account for legal costs only when it failed to properly assert its subrogation rights within 60 days of receiving notice of a settlement. Id. at 562-63.

{¶ 28} The Supreme Court of West Virginia found that the statute was silent as to whether the state's recovery was subject to a pro rata deduction for costs when it timely

asserted its subrogation rights. Construing the statute, the court concluded that the legislature intended for the state to share in the payment of costs whenever there was a recovery, not only when the state failed to timely assert its subrogation rights. Id. at 563. However, unlike the West Virginia statute at issue in *Anderson*, R.C. 5101.58 provides that attorney's fees are deducted before determining the state's recovery, and it does not require a pro rata deduction from the state's recovery of medical expenses paid. Further, appellants cite *Anderson* for a list of decisions from other states requiring pro rata deductions for attorney's fees. Yet, appellants fail to acknowledge that the *Anderson* decision cited Ohio as a jurisdiction that did not require the state to contribute to payment of a recipient's attorney's fees or costs. Id. at 564, fn. 10, citing *Padgett*.[2]

{¶ 29} Similarly, appellants cite California and other states that have concluded that the state must reduce its recovery of medical expenses by a pro rata share of the attorney's fees and costs incurred in obtaining the recovery. However, this obligation is generally imposed by state statute, rather than an interpretation of the federal Medicaid laws. See, e.g., Cal. Welf. & Inst. Code §14124.72(d); *Branson v. Sharp Healthcare, Inc.* (2011), 193 Cal. App.4th 1467, 1474; Id. Code §56-209b(6). Accordingly, because Ohio's statutory Medicaid recovery system differs from these other states' laws, they are not relevant to our determination of this case.

VII. Conclusion

[2] We note that the Supreme Court of West Virginia decided *Anderson* in 1999, after Ohio law had been amended to provide for a right of recovery, rather than a right of subrogation, yet the court cited to the *Padgett* decision, which analyzed the older version of Ohio's Medicaid recovery statute. As explained above, however, even after this amendment, Ohio law does not require a deduction in appellee's recovery to account for attorney's fees and costs.

{¶ 30} Accordingly, we find that federal law does not require a pro rata reduction of appellee's recovery to account for appellants' attorney's fees and costs. The General Assembly has created a valid method to fulfill its obligations under federal law and to preserve an injured party's recovery of other categories of damages. Further, Ohio's recovery procedure does not constitute unjust enrichment or an unconstitutional taking.

{¶ 31} For the foregoing reasons, appellants' assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.