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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 04-13-2010
PHILIP G. URRY, CLERK
BY: GH

ALEX STALLINGS, a disabled minor) 1 CA-CV 09-0264
student and Arizona resident, by)
and through his parents, CLIFF) DEPARTMENT E
STALLINGS and BELINDA STALLINGS,)
Arizona residents,) **MEMORANDUM DECISION**
)
Plaintiffs-Appellants,) (Not for Publication -
) Rule 28, Arizona Rules of
v.) Civil Appellate Procedure)
)
ARIZONA HEALTH CARE COST)
CONTAINMENT SYSTEM)
ADMINISTRATION,)
)
Defendant-Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV LC2008-000177-001 DT

The Honorable Robert C. Houser, Judge

AFFIRMED

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By David L. Abney
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By Logan T. Johnston III
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Phoenix

G E M M I L L, Judge

¶1 This is an Arizona Health Care Cost Containment System ("AHCCCS") lien case.¹ Alex Stallings ("Stallings"), by and through his parents, Cliff and Brenda Stallings, appeals from a decision upholding AHCCCS's partial compromise of a lien on his third-party liability recoveries and rejecting his statute of limitations defense. For reasons explained below, we affirm the judgment in all respects.

FACTS AND PROCEDURAL BACKGROUND

¶2 From a car accident in 2002 when he was 13 years old, Stallings sustained catastrophic injuries including brain injuries and spastic quadriparesis. The accident left him unable to walk and virtually unable to communicate. He will likely require 24-hour care for the rest of his life.

¶3 Stallings filed suit against third parties seeking damages for personal injury and product liability. He obtained a \$1,000,000 settlement, and received another \$230,000 from insurance.

¶4 It is undisputed that AHCCCS paid for some of the

¹ AHCCCS is the state agency responsible for administering the delivery of health services to Arizona's indigent population pursuant to Arizona Revises Statutes ("A.R.S.") sections 36-2901 to -2998. It is also responsible for implementing the federal Medicaid program in Arizona. See 42 U.S.C. §§ 1396a - 1396u-8; *Ariz. Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 229, 234, 928 P.2d 653, 658 (App. 1996). Individual health plans bid for and contract with this state through AHCCCS to provide covered health services. *Bentley*, 187 Ariz. at 231 n.1, 928 P.2d at 655 n.1.

medical expenses Stallings incurred. As a condition of AHCCCS eligibility, Stallings assigned to AHCCCS any recovery he might receive to help pay the costs of care. See 42 U.S.C. § 1396k(a)(1)(A) (1980) (requiring the Medicaid recipient's assignment of rights); A.R.S. §§ 36-2903(F)(2009) (the assignment of rights exists by operation of law) and 12-962(A)(2003) (an assignment may be required "to the extent of the reasonable value of the medical care or treatment" provided). Stallings gave notice of his impending settlement, and AHCCCS filed a lien claim on the judgment on November 15, 2004.

¶15 Following Stallings' tort claim recovery, AHCCCS demanded \$67,754 to satisfy its lien. Stallings' attorneys asked AHCCCS to waive the lien entirely pursuant to A.R.S. § 36-2915(H) and (I), but the agency refused. AHCCCS stated that its best and final offer was \$49,840, the amount of the lien minus an amount representing the agency's proportional share of attorneys' fees.

¶16 Stallings contested this decision and requested an administrative hearing. At the hearing, his attorney argued that AHCCCS should waive its lien but did not submit evidence of the specific value of the case. The AHCCCS representative declined to estimate a total value of Stallings' claim and stated that AHCCCS would reduce its lien by \$17,914, to \$49,840,

an amount representing approximately 4 percent of Stallings' total recovery. An administrative law judge from the Office of Administrative Hearings recommended that no further reduction be made. The Director of AHCCCS adopted the ALJ's recommendation.

¶17 Stallings then filed an action in superior court seeking judicial review of the Director's decision pursuant to A.R.S. § 12-905(A) (2003) of the Administrative Review Act. Based on the briefing and oral argument, the superior court found that the ALJ and Director had not abused their discretion in refusing to further compromise the lien and entered judgment in favor of AHCCCS.

¶18 This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-913 (2003) and 12-2101(B)(2003).

ANALYSIS

Standard Of Review

¶19 Our task is to determine whether substantial evidence supports the superior court's judgment. *Samaritan Health Servs. v. Ariz. Health Care Cost Containment Sys. Admin.*, 178 Ariz. 534, 537, 875 P.2d 193, 196 (App. 1994). We accordingly reach the underlying issue of whether the administrative decision "is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion." A.R.S. § 12-910(E)(2003).

¶10 This court views the facts in the light most favorable

to upholding the Director's decision. *Eaton v. Ariz. Health Care Cost Containment Sys.*, 206 Ariz. 430, 431, ¶ 2, 79 P.3d 1044, 1045 (App. 2003). A court is not entitled to re-weigh the evidence and substitute its findings for those of the agency. *Plowman v. Ariz. State Liquor Bd.*, 152 Ariz. 331, 335, 732 P.2d 222, 226 (App. 1986). Nevertheless, we review de novo the administrative agency's interpretation and application of the law. *Carondelet Health Servs. v. Ariz. Health Care Cost Containment Sys. Admin.*, 182 Ariz. 502, 504, 897 P.2d 1388, 1390 (App. 1995).

The Compromise Decision

¶11 Under A.R.S. § 36-2915(A) (2009),² AHCCCS is "entitled to a lien for the charges for hospital or medical care and treatment." The lien is limited to the amount estimated to be due for hospital or medical care and treatment. A.R.S. § 36-2915(B). AHCCCS "shall compromise a claim it has pursuant to this section . . . if, after considering the factors listed in subsection I of this section, the compromise provides a settlement of the claim that is fair and equitable." A.R.S. § 36-2915(H).

¶12 Subsection I of A.R.S. § 36-2915 provides:

In determining the extent of the compromise of the claim required by subsection H of this section, the public entity shall

² For convenience, we cite the current version of the statute.

consider the following factors:

1. The nature and extent of the patient's injury or illness.
2. The sufficiency of insurance or other sources of indemnity available to the patient.
3. Any other factor relevant for a fair and equitable settlement under the circumstances of a particular case.

¶13 Stallings argues that AHCCCS abused its discretion by offering only the \$17,914 reduction in its lien and by not exercising its discretion to waive the lien altogether. The discretion accorded the agency is considerable, however, and on this record we find no abuse of discretion.

¶14 Stallings contends that AHCCCS misapplied A.R.S. § 36-2915(I) by failing to consider whether he was fully compensated for his injuries and by applying the fee reduction as a "mathematical exercise." Stallings had the burden to show his entitlement to relief by a preponderance of the evidence. See Ariz. Admin. Code ("A.A.C.") R2-19-119(B) (2008) (generally placing the burden of proof on the party asserting an affirmative defense).

¶15 The ALJ considered the three factors listed in § 36-2915(I). Addressing the first factor, the ALJ found that Stallings "failed to put any evidence in the record as to any

particular amount of his damages as a result of the accident." Because Stallings established the extent of injuries, but did not establish the value of the current and future amount of damages, the ALJ found that Stallings had failed to carry his burden as to this first factor.

¶16 Stallings also did not meet the burden as to the second A.R.S. § 36-2915(I) factor, the sufficiency of insurance and other sources of indemnification. The ALJ found that AHCCCS was covering Stallings' medical expenses and likely would continue to do so. There is no evidence in the record that payment of the AHCCCS lien would have jeopardized Stallings' future needs or care. With respect to the final "catchall" factor in A.R.S. § 36-2915(I), the ALJ appropriately considered attorneys' fees and costs as a factor in reducing the lien amount.

¶17 Stallings maintains that AHCCCS had the burden to evaluate the facts "equitably" and take a position on the recovery's sufficiency. We do not believe, however, that this burden rests on AHCCCS. Under A.R.S. §§ 36-2915(A) and -2903(F), a lien on his tort recovery is created by operation of law. Although A.R.S. § 36-2915(H) and (I) require AHCCCS to consider relevant factors in evaluating a potential lien compromise, the provisions do not require AHCCCS to discover and

present evidence establishing the factors.³ The burden is on the benefit recipient to establish these factors, through expert testimony or otherwise. A.A.C. R2-19-119(B); see *McMillan v. Stroud*, 83 Cal. Rptr. 3d 261, 269-70 (Ct. App. 2008) (analogizing the health care agency to a creditor and concluding that the debtor-benefit recipient bears the burden of proof on the affirmative defense that the amount demanded exceeds what is permitted by law).

¶18 Stallings cites *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006) in support of his appeal, but we find *Ahlborn* distinguishable because its factual foundation differs from the record in this case.

¶19 Stallings argues strongly that AHCCCS should have exercised its discretion to further reduce or waive its lien. Additional compromise or waiver of the lien may have been within the discretion of the agency. But the question presented to us when judicially reviewing the agency's exercise of discretion is whether an abuse of discretion has occurred. Based on this record and giving deference to the ALJ's factual findings, we cannot say that the ALJ abused its discretion. Accordingly, we affirm the superior court's decision upholding the ALJ's ruling.

³ We recognize that 42 U.S.C. § 1396a(a)(25)(A) requires state agencies to obtain information about third party insurers to enable the pursuit of claims. Nothing in the statute, however, shifts the burden of proof to the benefit recipient.

The Statute Of Limitations Defense

¶20 Stallings alternatively argues that AHCCCS's lien claim is barred under the one-year limitations period for statutory claims in A.R.S. § 12-541(5) (2003).⁴ He further contends that we should hold unconstitutional the A.R.S. § 12-510 (2003) provision prohibiting statutes of limitation from running against the state. We apply a de novo analysis to questions of statutory interpretation. *Ariz. Health Care Cost Containment Sys. v. Cochise County*, 186 Ariz. 210, 212, 920 P.2d 776, 778 (App. 1996).

¶21 Section 12-510 states that "[e]xcept as provided in § 12-529, the state shall not be barred by the limitations of actions prescribed in this chapter." First enacted in 1901, A.R.S. § 12-510 has been repeatedly applied in Arizona. See, e.g., *Tucson Unified Sch. Dist. v. Owens-Corning Fiberglass Corp.*, 174 Ariz. 336, 337, 849 P.2d 790, 791 (1993) (exempting a school district from the statute of limitations period). One purpose for the statute is "to protect the public from the negligence of public officers that might deprive the public of its rights to redress against wrongdoers." *Id.* (citation omitted).

⁴ The statute provides in relevant part: "There shall be commenced and prosecuted within one year after the cause of action accrues, and not afterward, the following actions . . . (5) Upon a liability created by statute, other than a penalty or forfeiture." A.R.S. § 12-541(5).

¶122 Stallings has not cited, nor have we found, any case law authority holding A.R.S. § 12-510 unconstitutional. According to Stallings, Arizona's rejection of sovereign immunity in 1963 supplies a constitutional basis for invalidating the prohibition on limitations.

¶123 We note that the Arizona Supreme Court did not supply a constitutional basis for abandoning the broad common law doctrine of sovereign immunity in *Stone v. Arizona Highways Commission*, 93 Ariz. 384, 381 P.2d 107 (1963), *overruled in part by Grimm v. Ariz. Bd. of Pardons & Paroles*, 115 Ariz. 260, 564 P.2d 1227 (1977). Rather, as the *Stone* court explained: "We are now convinced that a court-made rule, when unjust or outmoded, does not necessarily become with age invulnerable to judicial attack." *Id.* at 393, 381 P.2d at 113; *see generally* Jefferson L. Lankford & D. Blaze, *The Law of Negligence in Arizona* § 7.04[3], at 7-6 (3d ed. 2006) (the court "rejected the doctrine, reasoning that the immunity was judicially created and could be judicially abrogated."). *Stone* does not abolish sovereign immunity on constitutional grounds and provides no basis for holding A.R.S. § 12-510 constitutionally invalid.⁵

⁵ We also note that the Arizona Supreme Court in 1982 invited the legislature to enact statutes defining the parameters of any governmental immunity. *Ryan v. State*, 134 Ariz. 308, 310-11, 656 P.2d 597, 599-600 (1982), *modified by* A.R.S. §§ 12-820 to -826. Since then, the legislature has enacted statutes granting absolute or qualified immunity to certain governmental

¶24 The claim of unconstitutionality is further undercut by the Arizona Supreme Court's continuing application of A.R.S. § 12-510. Thirty years after *Stone*, the Arizona Supreme Court ruled that A.R.S. § 12-510 precluded a company from raising a statute of limitations defense against a school district. *Owens-Corning*, 174 Ariz. at 339-40, 849 P.2d at 793-94 (holding that the governmental-proprietary test is not applicable to the statute because the state is always exercising its sovereign powers). The Arizona Supreme Court also applied the statute more recently. See *In re Diamond Benefits Life Ins. Co.*, 184 Ariz. 94, 96, 907 P.2d 63, 65 (1995).

¶25 We decide, therefore, that A.R.S. § 12-510 remains viable in this state. Whether or not this statute still represents sound public policy is ultimately a question for the legislature. See *City of Phoenix v. Fields*, 219 Ariz. 568, 571, ¶ 7, 201 P.3d 529, 532 (2009) ("But although *Stone* and subsequent cases have developed a new common law of governmental liability, the legislature retains the power to modify the common law and develop this area of the law."); *Clouse*, 199 Ariz. at 203, ¶¶ 24-25, 16 P.3d at 764 (holding that the

decisions, and most of these statutory limitations on governmental liability have been upheld. See Article IV, Part 2, Section 18 of the Arizona Constitution; *Clouse ex rel. Clouse v. State*, 199 Ariz. 196, 16 P.3d 757 (2001); *DeVries v. State*, 221 Ariz. 201, 211 P.3d 1185 (App. 2009).

"immunity clause" of the Arizona Constitution, Article IV, Part 2, Section 18, grants the legislature authority to direct the manner in which suit is brought against the state).

CONCLUSION

¶26 We affirm the superior court's decision in all respects.⁶ In addition, we deny Stallings' request for attorneys' fees and costs on appeal.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Presiding Judge

_____/s/_____
PHILIP HALL, Judge

⁶ Our resolution of this issue obviates any need to address whether AHCCCS has an independent right to collect based on an assignment of benefits.