Third District Court of Appeal

State of Florida

Opinion filed October 23, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-376
Lower Tribunal No. 17-24717

Wade K. Semerena, individually and on behalf of a class of all others similarly situated,
Appellants,

vs.

The District Board of Trustees of Miami Dade College, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Abby Cynamon, Judge.

Lyons & Farrar, P.A., and Douglas S. Lyons, Marsha L. Lyons, and Aaron Brock (Tallahassee); Barbara C. McCauley, for appellants.

Rumberger, Kirk & Caldwell, P.A., and Joshua D. Lerner, for appellee District Board of Trustees of Miami Dade College.

Before FERNANDEZ, HENDON, and MILLER, JJ.

HENDON, J.

Wade K. Semerena ("Semerena") seeks to reverse the trial court's order dismissing his first amended complaint with prejudice as to Miami Dade College and the District Board of Trustees of Miami Dade College (collectively, "MDC"). We affirm.

In 2003, when Semerena retired from MDC after thirty-four years of employment as a philosophy professor, he enrolled in Medicare Part B and elected to continue his health insurance coverage under MDC's group plan, as a "supplemental"[1] insurance policy to Medicare. The monthly premiums for any insurance Semerena chose would be deducted from his Florida Retirement System ("FRS") pension. The record indicates that Semerena made several choices from the menu of retirement benefits, and he opted to continue group health insurance with United HealthCare, as a supplemental policy to Medicare.[2] Because the group insurance option was offered through MDC as a result of his many years of state employment, Semerena could take advantage of the $150 subsidy provided by the FRS that would be applied towards any monthly insurance premium and deducted

[1] The parties appear to use the terminology of "supplemental" and "secondary" interchangeably. The nature of both the United HealthCare and Aetna health insurance policies, however, as set forth in the appellate record indicate that they are secondary to Medicare, i.e., covering the costs of certain health care services that Medicare as the primary payer does not cover.

[2] The record shows that Semerena was also notified of individual "Medigap" plans that were independent of those policies offered through MDC.

from his monthly pension income. In 2008, Aetna took over as the insurance provider for the health care insurance Semerena chose.[3] Semerena's coverage would continue unless he chose to opt out and lose the FRS subsidy. Semerena alleges that in 2014 he discovered that the Aetna policy was a more expensive secondary health insurance plan for which he had been paying higher premiums since 2008.

Semerena filed a putative class action complaint against MDC and Aetna. The order on appeal here dismissed the complaint with prejudice as to MDC.[4] In this appeal, Semerena alleges: 1) MDC, as Semerena's agent, negligently failed to enroll him and others similarly situated in a group health insurance plan appropriate for retirees enrolled in Medicare; 2) MDC breached its fiduciary duty to Semerena

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[3] The Aetna Certificate of Coverage that Semerena received annually since 2008 provided that Semerena's group coverage through the MDC plan would cover "the benefits as a Secondary Plan" to Medicare. Semerena states that the annual notice informed him of the annual premiums and provided an opt-out form, which, if Semerena did not affirmatively opt out, would automatically continue his coverage under the terms set forth in the annual notice.

[4] Semerena first filed suit solely against Aetna in 2016, based on the foregoing alleged facts. Semerena v. Aetna Health, Inc., 11th Cir. Ct. Case No. 2016-004062-CA-01 ("Semerena I"). In February 2017, the circuit court granted Aetna's motion to dismiss Semerena's second amended complaint, with prejudice. Before the court entered a written order, however, Semerena voluntarily dismissed that action without prejudice. Despite the filing of the notice of voluntary dismissal, the trial court entered an order, nunc pro tunc, dismissing the second amended complaint with prejudice. On appeal, this Court held that upon the filing of the notice of voluntary dismissal, the trial court lost jurisdiction and was without authority to enter the order of dismissal. Semerena v. Aetna Health, Inc., 248 So. 3d 230 (Fla. 3d DCA 2018). The instant appeal arises out of Semerena's subsequent suit that added MDC as a defendant.

by failing to ensure that the money taken out of his pension to pay the insurance premium was not grossly expensive; 3) MDC was unjustly enriched by its actions by having Semerena pay full price for a secondary health insurance policy, thereby lowering MDC's risk pool; 4) MDC behaved unconscionably by binding Semerena to a non-negotiable insurance policy and by charging him and other retired Medicare recipients excessive premiums; 5) MDC negligently misrepresented the insurance options available to Semerena and induced him to choose the more expensive group health insurance to his detriment.[5]

We review a final order dismissing a complaint with prejudice under the de novo standard of review. In doing so, we assume all of the allegations in the complaint are true. We construe all reasonable inferences from the allegations in favor of Semerena. See United Auto. Ins. Co. v. Law Offices of Michael I. Libman, 46 So. 3d 1101, 1103–04 (Fla. 3d DCA 2010); Extraordinary Title Servs., LLC v. Fla. Power & Light Co., 1 So. 3d 400, 402 (Fla. 3d DCA 2009) (quoting Susan Fixel, Inc. v. Rosenthal & Rosenthal Inc., 842 So. 2d 204, 206 (Fla. 3d DCA 2003)). After a thorough review of the record, we find no merit in any of Semerena's claims against MDC.

[5] We note that MDC argues on appeal that statutes of limitations bar these claims. We do not address that issue because counsel for MDC conceded below, in the hearing on its motion to dismiss, that it would not seek dismissal based on this argument.

Semerena argues that MDC was negligent and breached its duty to provide him and others similarly situated with an appropriate retirement health insurance package. MDC, however, has no statutory or common law duty to ensure that Semerena was enrolled in "suitable" healthcare insurance. MDC negotiates with Aetna and other insurers to allow MDC to offer various group-rate insurance options to its retirees, should those retirees so choose. MDC does not manage the policies or take into account its retirees' individual financial needs – it is up to the individual retiree to assess his or her own financial and health care needs, read the policy information provided by the insurer, and make an informed choice from among the insurances offered.[6] "Florida law has long held that a party to a contract is 'conclusively presumed to know and understand the contents, terms, and conditions of the contract.'" Rocky Creek Ret. Props., Inc. v. Estate of Fox, 19 So. 3d 1105, 1108–09 (Fla. 2d DCA 2009**)** (quoting Stonebraker v. Reliance Life Ins. Co. of Pittsburgh, 166 So. 583, 584 (Fla. 1936)). MDC had no duty to Semerena to ensure that he was enrolled in the most financially appropriate insurance contract for him. As there was no duty, it follows there is no cause of action against MDC for negligence.

[6] The annual Certificate of Coverage that Semerena received provides: "READ THIS ENTIRE CERTIFICATE CAREFULLY. IT DESCRIBES THE RIGHTS AND OBLIGATIONS OF MEMBERS AND HMO. IT IS THE CONTRACT HOLDER'S RESPONSIBILITY TO UNDERSTAND THE TERMS AND CONDITIONS IN THIS CERTIFICATE."

The causes of action for unjust enrichment and unconscionability similarly fail. MDC is not an agent for any of the health insurers that provide insurance for MDC's retirees. The contract between MDC and Aetna specifically states that neither entity is an agent of the other. MDC does not collect any premiums or reap any financial benefit from the insurers its retirees choose to do business with, and MDC does not manage any of the insurance policies its retirees choose. The premiums are set by the insurance companies, the insurance premiums are deducted from the policyholders' pension benefits by the FRS, and the policyholders are notified annually of the costs and benefits under the policies they have chosen. MDC did not deceive Semerena, did not lure him into a bad bargain, and this record reveals no substantive or procedural unconscionability on MDC's part.

Semerena admits he was on annual notice of any changes in benefits or premiums, but argues that the policy was too lengthy and the language too complicated for him to understand. As the Fifth District Court of Appeal stated in Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Benton, 467 So. 2d 311, 313 (Fla. 5th DCA 1985):

> The rule that one who signs a contract is presumed to know its contents has been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them. If a person cannot read the instrument, it is as much his duty to procure some reliable person to read and explain it to him, before he signs it, as it would be to read it before he signed it if he were able to do so . . . .

(quoting Sutton v. Crane, 101 So. 2d 823, 825 (Fla. 2d DCA 1958) (quoting 12 Am. Jur. Contracts §137)); Rivero v. Rivero, 963 So. 2d 934, 938 (Fla. 3d DCA 2007) (holding that parties to a contract have a duty to understand the contents); Breckenridge v. Farber, 640 So. 2d 208, 211 (Fla. 4th DCA 1994) (holding that a party is "assumed to have known, and [is] charged with the knowledge, of the provisions incorporated into the contract [he] executed.") (quoting Marthame Sanders & Co. v. 400 W. Madison Corp., 401 So. 2d 1145, 1146 (Fla. 4th DCA 1981)).

MDC negotiates with a variety of insurance companies, which in turn provide a menu of insurance options to MDC employees and retirees. Although MDC makes these options available, MDC does not endorse or recommend any specific policies. Consequently, MDC did not negligently misrepresent the insurance package that Semerena chose; the information was there for Semerena to read and compare. The record indicates that Semerena chose a group health insurance plan that clearly stated it was secondary to Medicare. The bottom line is that Semerena always had the ability to shop for insurance outside of the choices provided by MDC, or to choose an option within the MDC menu. If Semerena had questions about the various provisions of the group health policy, he had the responsibility and opportunity to educate himself and choose accordingly.

None of Semerena's claims against MDC have legal merit. We accordingly affirm the trial court's order dismissing Semerena's complaint against MDC with prejudice.

Affirmed.