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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000030-MR

EDGEMONT MANOR NURSING HOME, INC. AND
HMS ENTERPRISES, LLC

APPELLANTS

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 06-CI-00281

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES AND DEPARTMENT FOR
MEDICAID SERVICES

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON,¹ JONES, AND KRAMER JUDGES.

JONES, JUDGE: Appellants, Edgemont Manor Nursing Home, Inc.

(“Edgemont”), and HMS Enterprises, LLC (“HMS”), appeal an order of the

¹ Judge Robert G. Johnson concurred in this opinion prior to the expiration of his term of office. Release of the opinion was delayed by administrative handling.

Franklin Circuit Court denying their motion for an order directing Appellees, Cabinet for Health and Family Services (the “Cabinet”) and Department for Medicaid Services (“DMS”), to pay pre- and post-judgment interest on wrongfully-withheld Medicaid reimbursements. Following a review of the record and applicable law, we AFFIRM.

I. BACKGROUND

During the time relevant to this appeal, Edgemont and HMS owned and operated Edgemont Manor Nursing Home in Cynthiana, Kentucky, which participated in the Kentucky Medical Assistance Program (“Medicaid”).² The Cabinet is responsible for managing Medicaid reimbursements to providers, such as Edgemont and HMS. This arrangement was governed by a Medicaid Provider Agreement (the “Provider Agreement”), which included a requirement that the Cabinet reimburse providers according to federal and state statutes and regulations.

In October of 2003, DMS sent a demand letter to Edgemont seeking recoupment of funds relating to an audit of Edgemont’s February 1995 cost report. Edgemont contended that DMS’s claim was barred by the applicable statute of limitations, which it contended was found in KRS³ 413.120(3) and not, as DMS asserted, the statute of limitations found in KRS 413.090(2), which governs actions

² Edgemont owned and operated Edgemont Manor Nursing Home until September 15, 2005, at which point HMS purchased and became the owner and operator of the nursing home.

³ Kentucky Revised Statutes.

based upon written contracts. To support its contention, Edgemont argued that “although a Provider Agreement is signed by Edgemont as part of the Medicaid reimbursement process, that agreement does not govern the nature of reimbursement” Edgemont contended that DMS’s claims against it were premised on statutory or regulatory authority and, because there was no other applicable limitations period, the general limitations period found in KRS 413.120(3) must apply. The parties engaged in dispute resolution under 907 KAR⁴ 1:671, Section 8, and DMS determined that its claim was not barred by the statute of limitations. Edgemont appealed DMS’s determination to the Cabinet’s Hearing Officer, which affirmed. The Cabinet then proceeded to recoup approximately \$65,260.23 in funds from HMS.

In February of 2006, Edgemont and HMS filed a petition for appeal and motion for declaratory and injunctive relief in Franklin Circuit Court. The petition alleged that, pursuant to the Cabinet’s own regulations, it had no legal authority to recoup funds from HMS. Accordingly, the petition asserted that the unlawful confiscation of funds from HMS presented immediate and irreparable harm, such that the issuance of a temporary or permanent injunction was necessary. Additionally, Edgemont and HMS maintained their position that any claims for recoupment by the Cabinet against Edgemont and HMS were barred by

⁴ Kentucky Administrative Regulations.

the doctrine of laches and the statute of limitations found in KRS 413.120(2). The petition made no mention of the Provider Agreement or any rights Edgemont or HMS had under the Agreement.

The trial court held the case in abeyance pending the Kentucky Supreme Court's final decision in *Commonwealth v. EPI Corp.*, No. 2006-SC-000348-DG, 2008 WL 5274857 (Ky. Dec. 18, 2008). Following rendition of the *EPI* opinion, the trial court denied the Cabinet's motion for summary judgment and found that the Cabinet was barred from collecting overpayments for fiscal years 1994-96 under the statute of limitations found in 907 KAR 1:110, Section 3.⁵ Accordingly, the trial court ordered the Cabinet to return any sums it had already recouped. The Cabinet then appealed the trial court's order to this Court, which affirmed. *Cabinet for Health & Family Serv. ex rel. Commonwealth v. Edgemont Manor Nursing Home, Inc.*, No. 2011-CA-000308-MR, 2012 WL 1758152 (Ky. App. May 18, 2012).

On remand, Edgemont and HMS moved the trial court for an order directing the Cabinet to pay Edgemont the sums it believed it was owed. In addition to seeking return of the \$65,260.23 the Cabinet had recouped from HMS, Edgemont and HMS sought prejudgment interest of \$30,628.34 and post-judgment interest of \$15,823.99. In their motion, Edgemont and HMS acknowledged that, in

⁵ 907 KAR 1:110, Section 3 was amended in 1996 to eliminate the limitations period.

many circumstances, agencies of the Commonwealth would be immune from paying interest. Edgemont and HMS contended, however, that case law held that KRS 45A.245 specifically authorized an award of pre-judgment interest against an agency of the state when the right to payment arose out of a contractual relationship. While the trial court ordered the Cabinet to pay Edgemont and HMS the principal amount of \$65,260.23, it ultimately concluded that the Cabinet was immune from paying interest on that amount. The trial court's decision was based on its belief that KRS 45A.245 waived sovereign immunity only for damages on contracts formed under the Model Procurement Code. As the Provider Agreement was not a Model Procurement Code contract, the trial court found that KRS 45A.245 was inapplicable. Edgemont and HMS appealed the trial court's order denying payment of interest to this Court.

A panel of this Court reversed. The Court found that the plain language of KRS 45A.245 "specifically waives governmental or sovereign immunity for contract actions against the Commonwealth." *Edgemont Manor Nursing Home, Inc. v. Commonwealth*, No. 2013-CA-001145-MR, 2015 WL 1778185, at *2 (Ky. App. Apr. 17, 2015). Looking to *Commonwealth v. Samaritan Alliance, LLC*, 439 S.W.3d 757 (Ky. App. 2014), the Court concluded that the trial court had erred in finding that KRS 45A.245 applied exclusively to contracts formed under the Model Procurement Code. Accordingly, the Court

remanded with instructions for the trial court to “determine whether Edgemont and HMS are entitled to pre-and/or post-judgment interest, and if so, the rate at which such interest should accrue.” *Edgewood Manor Nursing Home, Inc. v. Commonwealth*, 2015 WL 1778185 at 2. The Kentucky Supreme Court denied the Cabinet’s motion for discretionary review.

On remand for the second time, Edgemont and HMS filed another motion for the trial court to direct the Cabinet to pay pre- and post-judgment interest, arguing that equity required that the Cabinet pay interest on the amounts it had wrongfully recouped. In the Cabinet’s response, it acknowledged that the Provider Agreement was a contract between itself and Edgemont/HMS. The Cabinet noted, however, that Edgemont and HMS had never made a claim for breach of that contract. In fact, when arguing which statute of limitations applied, Edgemont and HMS had specifically argued that the Provider Agreement did not govern the nature of reimbursement for Edgemont’s services, but that reimbursement was governed by statutory and regulatory authority. The Cabinet argued that, to be entitled to damages under KRS 45A.245, breach of contract must be proved. Further, because Edgemont and HMS had not previously argued that the Cabinet had breached the Provider Agreement, the Cabinet contended that Edgemont and HMS were now barred by the doctrine of *res judicata* from asserting such. Because it believed that KRS 45A.245 was inapplicable in the

action and no other statutory authority waived sovereign immunity, the Cabinet contended that Edgemont and HMS could not collect interest. Additionally, the Cabinet argued that the equitable arguments made by Edgemont and HMS were without merit. In their reply, Edgemont and HMS contended that the Cabinet's interpretation of KRS 45A.245 was too limited. While Edgemont and HMS did not deny that they had not pursued a breach of contract claim against the Commonwealth, they contended that their claims against the Cabinet still arose from the Provider Agreement. Accordingly, Edgemont and HMS asserted that KRS 45A.245 applied to allow the recovery of interest.

The trial court entered an order denying the motion for interest on December 5, 2016. Looking to opinions from this Court concerning the application of KRS 45A.245, the trial court concluded that a breach of contract must be found for the statute to apply and waive immunity. Because Edgemont and HMS had never asserted a breach of contract claim against the Cabinet, but had instead made arguments concerning interpretation of administrative regulations, the trial court concluded that Edgemont and HMS could not collect interest from the Cabinet. Further, the trial court stated that, even if Edgemont and HMS had made a contract claim, it was unsure whether KRS 45A.245 allows the collection of pre-and post-judgment interest in recoupment claims.

This appeal followed.

II. STANDARD OF REVIEW

At issue in this appeal is the proper interpretation of KRS 45A.245 and whether it works to bar an assertion of sovereign immunity in this case. “[S]tatutory interpretation is a question of law, and this Court reviews it *de novo*.” *Workforce Dev. Cabinet v. Gaines*, 276 S.W.3d 789, 792 (Ky. 2008) (citing *Neurodiagnostics, Inc. v. Kentucky Farm Bureau Mut. Ins. Co.*, 250 S.W.3d 321, 325 (Ky. 2008)). We review the trial court’s factual findings for clear error. *Miller v. Eldridge*, 146 S.W.3d 909, 915 (Ky. 2004).

III. ANALYSIS

Edgemont and HMS’s main contention in this appeal is that KRS 45A.245 is not limited to breach of contract actions, but instead applies to all actions arising from a contract. Because they contend that all claims brought against the Cabinet arose from the Provider Agreement, Edgemont and HMS believe the trial court erred in concluding that KRS 45A.245 did not work to waive sovereign immunity in this case. KRS 45A.245 reads in pertinent part as follows:

(1) Any person, firm or corporation, having a lawfully authorized written contract with the Commonwealth . . . **may bring an action against the Commonwealth on the contract, including but not limited to actions either for breach of contracts or for enforcement of contracts or for both** All defenses in law or equity,

except the defense of governmental immunity, shall be preserved to the Commonwealth.

(2) If damages awarded on a contract claim under this section exceed the original amount of the contract, such excess shall be limited to an amount which is equal to the amount of the original contract.

(Emphasis added).

“A basic rule in statutory interpretation is that the ‘plain meaning’ of the statute controls.” *Commonwealth v. McBride*, 281 S.W.3d 799, 803 (Ky. 2009) (citing *Exec. Branch Ethics Comm’n v. Stephens*, 92 S.W.3d 69, 73 (Ky. 2002)).

“In other words, we assume that the ‘[Legislature] meant exactly what it said, and said exactly what it meant.’” *Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815, 819 (Ky. 2005) (quoting *Stone v. Pryor*, 20 Ky. 312, 45 S.W. 1136, 1142 (1898)

(Waddle, S. J., dissenting)). Recently, in *University of Louisville v. Rothstein*, 532 S.W.3d 644 (Ky. 2017), the Kentucky Supreme Court examined the language of KRS 45A.245 and concluded that, “[c]learly, the legislature has waived governmental immunity on *all* claims brought by *all* persons on *all* lawfully authorized written contracts with the Commonwealth.” *Id.* at 651. Accordingly, we agree with Edgemont and HMS that KRS 45A.245 is not confined to actions for breach of contract, but rather applies to any claim “based upon lawfully authorized written contracts” with the Commonwealth. *Id.* at 650.

KRS 45A.245 allows for a party to maintain an action on a contract against the Commonwealth; however, this does not mean that a party bringing any action against the Commonwealth on a contract is entitled to interest. While the Legislature waived the Commonwealth's sovereign immunity on claims based on written contracts, "because [KRS 45A.245] is a statute waiving sovereign immunity, it must be strictly and narrowly construed." *Louisville Arena Auth., Inc. v. RAM Engineering & Const., Inc.*, 415 S.W.3d 671, 681 (Ky. App. 2013).

In *University of Louisville v. RAM Engineering & Construction, Inc.*, 199 S.W.3d 746 (Ky. App. 2005), the Court determined that RAM could collect pre-judgment interest on its breach of contract claim against the University. In so finding, the Court first discussed contract law principles, noting that "[i]nterest for breach of a contract to pay a certain sum is recoverable as consequential (general) damages from the time the amount is due." *Id.* at 748. Looking at the language of KRS 45A.245, the Court noted that "[t]he only limitation on damages is that they cannot exceed twice the original amount of the contract." *Id.* at 749. Because interest is a part of the general damages as a consequence of breach of contract and the waiver of sovereign immunity in KRS 45A.245 does not distinguish between types of damages, the Court concluded that RAM could collect pre-judgment interest on its claim. Therefore, based on the language of KRS 45A.245 and this Court's opinion in *RAM*, for Edgemont and HMS to prevail on their claim that they

are entitled to collect interest they must show that (1) they brought a claim against the Cabinet on the Provider Agreement, and (2) that claim is one which ordinarily allows for the collection of pre- and post-judgment interest.

As noted above, during the administrative proceedings, Edgemont and HMS vigorously contended that the Provider Agreement was irrelevant, as the claims of DMS and the Cabinet were governed by statutory and regulatory authority. Edgemont and HMS maintained this position when they filed their petition for appeal in the Franklin Circuit Court. Edgemont and HMS did not file a declaratory action seeking a determination of their rights under the Provider Agreement, but instead argued that under 907 KAR 1:671 the Cabinet lacked the legal authority to recoup funds from HMS and continued to argue that the statute of limitations governing written contracts was inapplicable. Edgemont and HMS alleged that the Cabinet/DMS had wrongfully and illegally recouped funds, but they did not allege that the Cabinet or DMS had breached the Provider Agreement in so doing. The trial court did not adjudicate any claims based on the Provider Agreement.

Edgemont and HMS contend that the precise claim asserted is immaterial, so long as the claim arises under the contract. In support of this position, Edgemont and HMS cite to *Kentucky Spirit Health Plan, Inc. v. Commonwealth, Finance & Administration Cabinet*, 462 S.W.3d 723 (Ky. App.

2015), in which this Court found that Kentucky Spirit’s action against the Commonwealth fell within the purview of KRS 45A.245 because, “[i]n effect, Kentucky Spirit sought enforcement of the Contract.” *Id.* at 727. In *Kentucky Spirit*, however, Kentucky Spirit had filed an action seeking “declaratory and injunctive relief concerning the terms of its contract with the Commonwealth.” *Id.* Claims concerning terms of a contract are clearly claims on a contract. In contrast, Edgemont and HMS sought a judgment declaring that the Cabinet was barred under 907 KAR 1:110 from withholding money from HMS. Edgemont and HMS contend that in finding that 907 KAR 1:110 did, in fact, bar the Cabinet from recouping funds, the trial court implicitly found that the Cabinet had breached the Provider Agreement. Therefore, Edgemont and HMS argue, their action against the Cabinet can be properly classified as an action on the contract. There is nothing in the trial court’s order, however, so much as suggesting that a breach of contract had occurred. The trial court’s analysis focuses solely on the effect of 907 KAR 1:110. We agree with the trial court that, while Edgemont and HMS could have potentially brought claims on the Provider Agreement, they did not do so. The mere fact that a party asserts claims against another with whom he has a contract does not mean that the party is suing on the contract.

“[T]he Commonwealth and its agencies are exempt from paying interest on public debts unless a statute or contract explicitly authorizes interest.”

Bradley v. Commonwealth, 301 S.W.3d 27, 30 (Ky. 2009) (citing *Commonwealth, Dep't of Transp., Bureau of Highways v. Lamb*, 549 S.W.2d 504, 507 (Ky. 1976)).

As Edgemont and HMS did not bring an action against the Cabinet on a contract, KRS 45A.245 cannot apply to allow Edgemont and HMS to collect interest.

Edgemont and HMS have additionally argued that we should apply KRS 360.040 to allow them to collect post-judgment interest on the amount recouped by the Cabinet and that principles of equity dictate that the Cabinet should be required to pay interest. KRS 360.040, however, “does not apply to state agencies absent an explicit declaration by the legislature or an explicit contract provision to that effect.” *Bradley*, 301 S.W.3d at 30 (citing *Powell v. Bd. of Educ. of Harrodsburg*, 829 S.W.2d 940, 941 (Ky. App. 1991)). Edgemont and HMS have pointed to no such declaration or contract provision. Further, we find Edgemont and HMS’s equitable arguments unmeritorious. Accordingly, we affirm the trial court’s order finding that Edgemont and HMS are not entitled to collect interest from the Cabinet.

IV. CONCLUSION

Based on the foregoing, we AFFIRM the order of the Franklin Circuit Court.

ALL CONCUR.

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