

RENDERED: AUGUST 30, 20019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001343-MR

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE KENT HENDRICKSON, JUDGE
ACTION NO. 15-CI-00043

SCOTT GAJOS, BY AND THROUGH HIS
AUTHORIZED REPRESENTATIVE,
APPALACHIAN REGIONAL HEALTHCARE,
INC., AND HUMANA INSURANCE COMPANY
OF KENTUCKY, D/B/A HUMANA CARESOURCE

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: GOODWINE, SPALDING, AND L. THOMPSON, JUDGES.

GOODWINE, JUDGE: This is one of three appeals designated as lead cases by this Court on July 12, 2016.¹ Thirteen additional appeals with similar issues were held in abeyance by order of this Court on May 23, 2019, pending finality of these lead cases. The managed care organizations' (MCOs) recurring argument in these cases is that because Medicaid paid for the services rendered to the enrollees, they would owe nothing at all from any extended hospital stay or additional services rendered.

BACKGROUND

Medicaid is a healthcare benefits program jointly administered and funded by the federal and state governments. The federal government provides extensive financial support to states, which operate the program, to provide care for low-income individuals and families. The states' funding depends on their compliance with extensive federal statutory and regulatory requirements. *See* 42 U.S.C.² § 1396a(a), (b).

In 2011, Kentucky contracted with MCOs to provide a managed care system for Medicaid members throughout the Commonwealth rather than continue the traditional fee-for-service method of Medicaid reimbursement. The rationale

¹ The other two cases are 2015-CA-001471-MR (Harlan Circuit Court) and 2015-CA-001670-MR (Franklin Circuit Court). We will enter separate opinions in each case.

² United States Code.

for this change was Kentucky's desire to curb waste, improve health, and reduce taxpayer expense "in response to ballooning Medicaid costs and resulting pressures on the state's budget[.]" *Appalachian Reg'l Healthcare, Inc. v. Coventry Health & Life Ins. Co.*, 714 F.3d 424, 426 (6th Cir. 2013).

Under the managed care system, MCOs provide healthcare to Medicaid beneficiaries in exchange for capitation payments from the state. MCOs enroll Medicaid beneficiaries as members, contract with healthcare providers to provide services to the members and reimburse the providers for those services.

Scott Gajos, a Medicaid enrollee, was admitted to Appalachian Regional Healthcare, Inc. (ARH), on or about June 29, 2014. He received inpatient services from June 29 to July 3, 2014. Humana Insurance Company of Kentucky, d/b/a Humana CareSource (CareSource), is one of several managed care organizations (MCOs) that administer Kentucky's Medicaid program. 42 U.S.C. § 1396n. The MCOs are responsible for arranging for health services in the amount, duration, and scope specified in administrative regulations promulgated by the Cabinet for Health and Family Services (the Cabinet). *See* 907 KAR 17:020 § 1(1)(b). By law, Medicaid enrollees cannot be held liable for the cost of their medical care. *See* 42 C.F.R. § 447.15. After receiving treatment, Gajos was discharged, but was not billed for the cost of his medical care. When ARH sought payment for the treatment provided to Gajos from CareSource, it denied the claim

citing lack of medical necessity. ARH requested an internal review of this denial, but CareSource upheld its original denial.

On or about September 8, 2014, Gajos, by and through his authorized representative, requested a state fair hearing from the Cabinet to appeal CareSource's denial of payment to ARH. On December 29, 2014, the Cabinet's Secretary entered a final order dismissing the appeal without a hearing, finding that Gajos did not have standing.

On or about January 8, 2015, Gajos, by and through ARH, filed a petition for review of the final order in Harlan Circuit Court. On or about March 23, 2015, ARH filed a motion for summary judgment, arguing that a hearing was required by federal law and regulations. The Harlan Circuit Court granted ARH's motion for summary judgment, finding that Gajos and ARH had standing to bring the administrative appeal, and ordered the case be remanded to the Cabinet for a state fair hearing. CareSource filed a motion to reconsider, which the Cabinet joined. The circuit court denied the motion. This appeal followed.

STANDARD OF REVIEW

CR³ 56.03 provides summary judgment is appropriate when no genuine issue of material fact exists, and the moving party is therefore entitled to judgment as a matter of law. Summary judgment may be granted when “as a

³ Kentucky Rule of Civil Procedure.

matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant.” *Steelevest, Inc., v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 483 (Ky. 1991) (internal quotations omitted). “While the Court in *Steelevest* used the word ‘impossible’ in describing the strict standard for summary judgment, the Supreme Court later stated that that word was ‘used in a practical sense, not in an absolute sense.’” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001) (quoting *Perkins v. Hausladen*, 828 S.W.2d 652, 654 (Ky. 1992)).

Whether summary judgment is appropriate is a legal question involving no factual findings, so a trial court’s grant of summary judgment is reviewed *de novo*. *Coomer v. CSX Transp., Inc.*, 319 S.W.3d 366, 370-71 (Ky. 2010). Under *de novo* review, we owe no deference to the trial court’s application of the law to the established facts. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004).

ANALYSIS

In *Commonwealth of Kentucky, Cabinet for Health and Family Servs., Dep’t of Medicaid Servs. v. Sexton*, 566 S.W.3d 185 (Ky. 2018),⁴ the Kentucky

⁴ ARH, on behalf of Ms. Sexton, indicated it would file a Petition for Writ of Certiorari with the U.S. Supreme Court. We note that the filing of a petition for writ of certiorari does not affect the finality of *Sexton*. See CR 76.30. Pursuant to CR 76.44, this Court *may* grant a stay for a specified number of days not to exceed 90, as may reasonably be required to enable the writ to be obtained. This panel declines to do so.

Supreme Court faced an issue of first impression, namely, whether a Medicaid beneficiary had standing to exercise a right to an administrative hearing under federal law. It ruled that a Medicaid beneficiary does not have such a right, holding that Sexton lacked the requisite constitutional standing to file a petition for judicial review. We find *Sexton* dispositive.

ARH sought appeals through the MCOs' internal appeals process in its purported capacity as an "authorized representative" of Lettie Sexton and Gajos herein. When the MCOs continued to deny ARH's request for payment, ARH then sought state fair hearings with the Cabinet to challenge the denial of payments for services. The assigned hearing officers recommended that the appeals be dismissed because neither Sexton nor Gajos suffered an injury resulting from the MCO's denial of payment for services rendered and, therefore, did not have standing to pursue a state fair hearing. The Cabinet Secretary, Audrey Tayse Haynes, then adopted those recommendations.

In *Sexton*, the Kentucky Supreme Court found that the circuit court could not maintain original jurisdiction over the merits of the case because the case was nonjusticiable due to a failure of Sexton to satisfy the constitutional standing requirement. Consequently, neither the Court of Appeals nor the Kentucky Supreme Court could exercise appellate jurisdiction over the merits of the case. Specifically:

[F]or a party to sue in Kentucky, the initiating party must have the requisite constitutional standing to do so, defined by three requirements: (1) injury, (2) causation, and (3) redressability. . . .

If a case is not *justiciable*, specifically because the plaintiff does not have the requisite standing to sue, then the circuit court *cannot* hear the case. And because both this Court and the Court of Appeals “shall have *appellate jurisdiction only*,” logically speaking, neither court can adjudicate a case on appeal that a circuit court cannot adjudicate because the exercise of appellate jurisdiction *necessarily assumes* that proper original jurisdiction has been established first at some point in the case.

Therefore, if a circuit court cannot maintain proper original jurisdiction over a case to decide its merits because the case is *nonjusticiable* due to the plaintiff’s failure to satisfy the constitutional standing requirement, the Court of Appeals and this Court are constitutionally precluded from exercising appellate jurisdiction over that case to decide its merits. . . . Stated more simply, establishing the requisite ability to sue in circuit court is a necessary predicate for continuing that suit in appellate court. In this way, the *justiciable cause* requirement applies to cases at all levels of judicial relief.

Sexton, 566 S.W.3d at 196-97 (internal citations omitted) (emphasis original). The Kentucky Supreme Court formally adopted the federal-standing *Lujan* test as the constitutional doctrine in Kentucky as a predicate for filing suit in Kentucky’s courts. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). It further concluded that “it is the constitutional responsibility of all Kentucky courts to consider, even upon their own motion, whether plaintiffs have the requisite standing, a constitutional predicate to a Kentucky court’s adjudication of a case, to bring suit.” *Sexton*, 566 S.W.3d at 199.

In sum, Gajos, who received services and was not liable for the cost of those services lacked standing to maintain a judicial appeal due to a lack of injury. The injuries proffered at various times by ARH were deemed to be conjectural or hypothetical. The *Sexton* Court further rejected the argument that federal and state Medicaid statutes and regulations themselves create standing to sue in a Kentucky court stating that the “deprivation of a procedural right without some concrete interest that is affected by the deprivation – a procedural right *in vacuo* – is insufficient to create . . . standing. Only a ‘person who has been accorded a procedural right to protect *his concrete interests* can assert that right without meeting all the normal standards for redressability and immediacy.’” *Sexton*, 566 S.W.3d at 198 (internal citations omitted) (emphasis in original).

Thus, neither a circuit court nor this Court can maintain proper jurisdiction over the appeal of a Medicaid recipient who received the medical services at issue and has no liability for payment of those services due to lack of standing.

Based on the foregoing, ARH’s motion for this Court to accept judicial notice of other lower court decisions on standing is denied as moot. We reverse the order of the Harlan Circuit Court granting summary judgment in favor of ARH, and remand with instructions to dismiss the circuit court action.

ALL CONCUR.

BRIEF FOR APPELLANT
Commonwealth of Kentucky,
Cabinet for Health and Family
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Frankfort, Kentucky

BRIEF FOR APPELLEE
Humana Insurance Company of
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Ozair Mohammed Shariff
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