RENDERED: AUGUST 30, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001670-MR

APPALACHIAN REGIONAL HEALTHCARE, INC., D/B/A HARLAN ARH AND HAZARD ARH (ACTING AS THE AUTHORIZED REPRESENTATIVE FOR EACH OF THE INDIVIDUAL ENROLLEES IDENTIFIED AS C.C., G.W., J.C., T.S., R.H., L.H., L.B., AND D.B.) — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 15-CI-00732

COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES; AUDREY TAYSE HAYNES, NOT INDIVIDUALLY BUT IN HER OFFICIAL CAPACITY AS SECRETARY, CABINET FOR HEALTH AND FAMILY SERVICES; AND WELLCARE HEALTH INSURANCE COMPANY OF KENTUCKY, INC., D/B/A WELLCARE OF KENTUCKY[1] — APPELLEES

OPINION
AFFIRMING

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

[1] On March 7, 2018, this Court granted ARH's and Coventry Health and Life Insurance Company's motion to dismiss Coventry as a party to this appeal. Thus, Coventry's role in the underlying dispute will not be discussed.

GOODWINE, JUDGE: This is one of three consolidated appeals designated as lead cases by this Court on July 12, 2016.[2] Thirteen additional appeals with similar issues were held in abeyance by order of this Court on May 23, 2019, pending finality of these consolidated appeals. 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.

On March 29, 2019, WellCare of Kentucky, Inc. ("WellCare") moved this Court to dismiss this appeal following the Kentucky Supreme Court's decision in *Commonwealth of Kentucky, Cabinet for Health and Family Services, Department of Medicaid Services v. Sexton*, 566 S.W.3d 185 (Ky. 2018). We find *Sexton* dispositive.[3] Based on our ruling herein, WellCare's motion is denied as moot.

[2] The other two cases are 2015-CA-1343-MR and 2015-CA-001471-MR out of Harlan Circuit Court. We will enter separate opinions in each case.

[3] In response to WellCare's motion to dismiss these consolidated appeals, counsel for Appalachian Regional Healthcare, Inc., (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* Kentucky Rules of Civil Procedure (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.

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.[4] § 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 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.

[4] United States Code.

The eight individual appellants are Medicaid enrollees (individual enrollees) who were admitted to either Harlan ARH or Hazard ARH for medical treatment. WellCare is one of several 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, the individual enrollees were discharged, but were not billed for the cost of their medical care. When ARH sought payment for the treatment provided to the enrollees from WellCare, it denied the claims, citing lack of medical necessity. ARH requested an internal review of the denials, but WellCare upheld its original denials.

The individual enrollees, by and through their authorized representative, ARH, requested a state fair hearing from the Cabinet to appeal the denial of payments to ARH. In each case, the Cabinet's Secretary entered a final order dismissing the appeal without a hearing, finding the individual enrollees did not have standing.

Thereafter, the individual enrollees, by and through ARH, filed a petition for review of the final order in Franklin Circuit Court. The Cabinet and

WellCare each filed motions to dismiss. On September 25, 2015, the Franklin Circuit Court entered its opinion and order affirming the Cabinet hearing officer's order dismissing the underlying administrative appeals for lack of standing and granted WellCare's motion to dismiss for failure to state a claim. ARH filed a motion to reconsider, which the circuit court denied. This appeal followed.

STANDARD OF REVIEW

We review dismissals for failure to state a claim *de novo*, with no deference to the trial court. *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010) (footnotes omitted). CR[5] 12.02(f) sets forth the standard for dismissing a complaint for failure to state a claim.

> "The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Pari–Mutuel Clerks' Union v. Kentucky Jockey Club*, Ky., 551 S.W.2d 801, 803 (1977). In making this decision, the circuit court is not required to make any factual determinations; rather, the question is purely a matter of law.

James v. Wilson, 95 S.W.3d 875, 883-84 (Ky. App. 2002)*; see also Wayne County Hospital, Inc. v. WellCare Health Ins. Co. of Kentucky, Inc.*, 576 S.W.3d 161 (Ky. App. 2018) (internal citations omitted).

[5] Kentucky Rules of Civil Procedure.

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),[6] the Kentucky 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 the individual enrollees 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 the enrollees suffered an injury resulting from the MCO's denial of payment for services rendered and,

[6] In response to a motion to dismiss this appeal, counsel for 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.

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, the Medicaid enrollees who received services and were 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. The Franklin Circuit Court correctly held that the individual enrollees lacked standing and, thus, were not entitled to a state fair hearing. It affirmed the Cabinet's dismissal of the administrative appeal and dismissed the circuit court action for failure to state a claim. Based on *Sexton*, we affirm the decision of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT ARH, by and on behalf of the Individual enrollees:

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