STATE OF MICHIGAN

COURT OF APPEALS

CASSANDRA BRANCH, as Personal Representative of the Estate of KIMMIETTA BRANCH,

Plaintiff-Appellee,

v

NORMAN CARTER,

Defendant,

and

BLUE CARE NETWORK,

Defendant-Appellant,

and

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Intervenor.

UNPUBLISHED
May 9, 2000

No. 209247
Genesee Circuit Court
LC No. 96-042743-NH

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant, Blue Care Network (BCN), appeals by leave granted the trial court's order denying its motion for partial summary disposition on the issue of whether plaintiff has standing to bring the present action. We affirm.

According to Cassandra Branch, her daughter, Kimmietta Branch, had been a patient of Pediatrician Norman Carter since her birth in August 1979. Dr. Carter eventually entered into an employment contract with defendant BCN. As an employee of BCN, Dr. Carter could treat non-

enrollees of the network as fee-for-service patients.[1] Cassandra received Blue Cross Blue Shield health coverage as a benefit of her employment and was not, at anytime, an enrollee or subscriber of BCN.

In March 1987, Dr. Carter treated Kimmietta for headaches on a fee-for-service basis. In June 1987, Kimmietta received treatment for a cough, congestion and sore throat from a specialist employed by defendant BCN for which Cassandra was charged $40. The parties dispute whether Cassandra had notice of that charge and notice of defendant BCN's warning that nonpayment of the bill would preclude her from making further appointments at network facilities. It is undisputed that the bill was never paid. On August 19, 1990, Cassandra took Kimmietta to McLaren General Hospital in Flint where she was treated for a fever and pain in her throat and neck. The treating physician prescribed an antibiotic and instructed Cassandra to take Kimmietta to her family doctor in three to four days. On August 23, 1990, Cassandra arrived at Dr. Carter's office with Kimmietta, who was listless, feverish and was suffering from headaches and neck and back pain. Cassandra was told by Dr. Carter's staff that Kimmietta could not see Dr. Carter due to the outstanding bill from 1987. Defendant BCN's "bad debt" policy precluded fee-for-service patients with outstanding debt of more than 120 days from making future appointments with network providers. According to Cassandra, she offered to pay the bill, but was still refused treatment by Dr. Carter. Dr. Carter's nurse suggested Kimmietta drink fluids and take Tylenol to reduce her fever. On August 25, 1990, Kimmietta was taken by ambulance to Flint Osteopathic Hospital with a high fever. Doctors discovered Kimmietta suffered from viral encephalitis, a brain disease, which eventually caused her to become mentally incompetent and quadriplegic. Kimmietta lived as such until her death on January 10, 1996.

Plaintiff filed suit soon after Kimmietta's death, alleging several counts of negligence and medical malpractice against the doctor and facility that treated Kimmietta on August 19, 1990, and against Dr. Carter for his refusal to treat Kimmietta four days later. Plaintiff later added defendant BCN to the suit, claiming defendant BCN was negligent in setting policies that prevented Kimmietta from receiving necessary medical care, in usurping the authority of its physicians to administer medical care and to direct nurses, in permitting unqualified personnel to render medical treatment and in failing to properly train its personnel.[2] All of the defendants, aside from defendant BCN, were dismissed below. Defendant BCN brought a motion for partial summary disposition, arguing specifically that plaintiff lacked standing to sue for negligence that was based on its board of directors' policy decisions. The trial court denied that motion.[3]

On appeal, defendant BCN argues that the trial court erred in denying summary disposition on the standing issue because Cassandra and Kimmietta were not enrollees or subscribers of the network and were precluded standing to sue under the Health Maintenance Organizations Act, MCL 333.21001 *et seq*.; MSA 14.15(21001) *et seq*. We disagree. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra* at 337; *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). This Court must review the record to determine whether the defendants were entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998); *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995). A court may rely on affidavits, pleadings,

depositions, or any other documentary evidence in deciding whether a genuine issue of material fact exists. *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). Additionally, statutory interpretation is a question of law which is reviewed de novo on appeal. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

To have standing, a plaintiff must have a "legally protected interest that is in jeopardy of being adversely affected." *Donaldson v Alcona Co Bd of Co Rd Comm'rs*, 219 Mich App 718, 722; 558 NW2d 232 (1997); *Wortelboer v Benzie Co*, 212 Mich App 208, 214; 537 NW2d 603 (1995). The plaintiff must "allege a sufficient personal stake in the outcome of the dispute to ensure that the controversy sought to be adjudicated will be presented in an adversarial setting that is capable of judicial resolution." *Donaldson, supra* at 722. In the present case, plaintiff has standing to bring the present negligence action. The Health Maintenance Organizations Act, MCL 333.21001 *et seq*.; MSA 14.15(21001) *et seq*., does not expressly preclude fee-for-service patients standing to challenge an HMO's conduct. While the act provides an express grievance procedure only for enrollees in an HMO, see MCL 333.21035; MSA 14.15(21035); MCL 333.21063; MSA 14.15(21063); MCL 333.21065; MSA 14.15(21065), the Legislature's failure to express a similar procedure for patients who pay on a fee-for-service basis does not exclude such patients from challenging the reasonableness of an HMO's policy that has affected them. Whether an individual is provided treatment from an HMO as an enrollee or on a fee-for-service basis, the patient is part of a class of customer of the HMO. Thus, it is unreasonable to interpret the Legislature's failure to include a broader grievance procedure as wholly precluding fee-for-service patients standing to challenge an HMO's conduct. See *Grand Rapids v Grand Rapids Employees Ass'n of Public Administrators*, 235 Mich App 398, 406; 597 NW2d 284 (1999). Furthermore, MCL 333.20203(2); MSA 14.15(20203)(2), specifically reserves patients' remedies at law with respect to suits against health facilities or agencies.[4] There is no authority precluding plaintiff standing to bring the present negligence action against defendant BCN. Plaintiff, as personal representative of Kimmietta's estate, has a sufficient personal stake in the outcome of the present dispute to permit standing. Accordingly, the trial court did not err in denying defendant BCN's motion for partial summary disposition on the narrow issue of standing.

In other words, defendant BCN places too much stock on the fact that plaintiff's decedent was not an enrollee or subscriber to BCN's HMO plan. The fact that she was not an enrollee or subscriber means that the act is inapplicable. The act only regulates the relationship between an HMO and its subscribers or enrollees. The relationship is different between an HMO and fee-for-service patients—it is no longer an HMO-enrollee relationship, but is now a traditional provider-patient relationship.

That is, because plaintiff's decedent was a fee-for-service patient, plaintiff's rights are the same as if Dr. Carter had been employed by "XYZ Medical Center," a private company employing physicians and providing medical care for patients. In other words, for purposes of this lawsuit, BCN is not an HMO, but that of a private medical provider treating fee-for-services patients. Simply put, BCN's rights, duties and responsibilities to plaintiff and plaintiff's decedent are not that of an HMO, but that of a private company providing medical services to fee-for-services patients. Nothing more, but also nothing less.

We decline to express any view on the merit of plaintiff's factual support for her claim that defendant BCN was negligent based on its board of directors' implementation of its "bad debt" policy. The narrow issue before this Court is whether plaintiff has standing to bring the present suit and our holding is limited to that issue. See *City of Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995). Accordingly, we express no opinion on the merits of plaintiff's claim. We only hold that she has the same standing to sue defendant BCN as she would if BCN were a private physicians group or other medical provider rather than an HMO.

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Henry W. Saad

[1] Fee-for-service patients do not prepay to participate in an HMO, but instead, are billed for each specific service rendered by an HMO caregiver.

[2] Blue Cross Blue Shield was added to the suit as an intervening plaintiff for the purpose of protecting its right to reimbursement of medical expenses under the subrogation clause in its contract with Cassandra.

[3] Defendant BCN brought a separate motion for partial summary disposition, arguing it did not have a duty to treat Kimmietta on the date in question. The trial court granted that motion, which is not at issue on this appeal.

[4] An HMO is included within the meaning of "health facility or agency" referenced in MCL 333.20201; MSA 14.15(20201) and MCL 333.20202; MSA 14.15(20202). MCL 333.20106(1)(e); MSA 14.15(20106)(1)(e).