STATE OF MICHIGAN

COURT OF APPEALS

HEALTHSOURCE, Plaintiff-Appellee,	UNPUBLISHED December 14, 2006
v	No. 270482 Wayne Circuit Court
URBAN HOSPITAL CARE PLUS, Defendant-Appellant.	LC No. 05-531775-CZ

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's grant of summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10). We affirm the grant of summary disposition, but remand for further proceedings.

I. Facts

Defendant is a non-profit entity that receives public funding to support health care programs in Wayne County. Among other projects, defendant arranged funding for the now-terminated PlusCare program, which provided health care for indigent Wayne County residents. Plaintiff, a subsidiary of the Detroit Medical Center, was one of two contractors retained by defendant to provide medical services to PlusCare program enrollees.[1] Under the contract between plaintiff and defendant, defendant was required to regularly compensate plaintiff on a per-patient basis, paying a set amount monthly for each Wayne County resident enrolled in the PlusCare program. Under the contract, a portion of the PlusCare monies owed by defendant to plaintiff were to be withheld and deposited into a trust account. This trust account was designed to ensure that sufficient PlusCare funds would remain available to pay for services in the event of plaintiff's insolvency. It is undisputed that more than $2 million owed by defendant to plaintiff was withheld and is currently contained in the trust account.

[1] Defendant also contracted with a second contractor, UltiMed, to provide health care services for PlusCare enrollees.

The contract between plaintiff and defendant governed the creation and maintenance of the trust account. Section 13.01 of the contract provided:

> [Plaintiff] shall enter into a trust agreement with [defendant] as set forth in Appendix B. All amounts entitled "Trust Deposits" in Appendix B shall be reductions of the amounts otherwise payable to [plaintiff] under . . . this contract, and [plaintiff] shall have no rights to such Trust Deposits except as expressly set forth in Appendix B.

Section 13.02 of the contract required plaintiff to submit to defendant regular budget projections, balance sheets, financial statements, claims reports, and other financial information.

Appendix B of the contract contained the parties' trust agreement. As executed by the parties, this trust agreement provided that "[defendant] shall deposit with the Trustee for the Trust the sum of $1,370,472, which shall constitute the initial deposit for the Trust as agreed to by [defendant] and [plaintiff]." The agreement also provided that "[e]ach payment to [plaintiff under this agreement] after the date of this Trust Agreement shall be reduced by up to 7½% of such payment," and required that these regular 7½ percent reductions be paid into the trust account. The agreement directed the trustee to hold the trust assets in an interest-bearing account, and to keep detailed records of the amount on deposit. Section 3 of the agreement directed the trustee to release the trust funds to defendant in the event of plaintiff's bankruptcy or insolvency. Section 4 explained that neither plaintiff nor defendant would have any right to the trust funds except as provided in the trust agreement, and stated that neither party would have the right to control or direct the actions of the trustee.

Section 6 of the trust agreement governed the termination of the trust account. As amended by the parties, that section provided that "[t]he Trust created under this agreement shall terminate upon . . . [d]elivery to the Trustee of a writing signed by [plaintiff] and [defendant] stating that the Trust is terminated[.]" Section 6 also provided, "Immediately upon such termination, the Trustee shall pay over to [plaintiff] all assets then held by the Trustee under this Trust Agreement."

It is undisputed that the PlusCare program terminated in its entirety on September 30, 2003. Section 12.05 of the contract between the parties provided that "[plaintiff] shall not be responsible for paying claims it receives more than one year from the date Services were provided to an Enrollee." Therefore, payment by plaintiff of any enrollee claims not satisfied as of September 30, 2004, was necessarily time-barred by the plain language of the parties' contract.

Upon termination of the PlusCare program, plaintiff requested that defendant consent to the release of the trust funds. Plaintiff asserted that it was entitled to the trust funds as reimbursement for certain PlusCare enrollee claims that it had paid with its own money. According to plaintiff, defendant stated that it would not consent to the release of the trust funds until after the expiration of a two-year period. In October 2005, more than two years after the PlusCare program's termination, plaintiff again requested release of the trust funds. Defendant was apparently concerned that there remained outstanding claims by PlusCare enrollees that still had not been paid by plaintiff. Thus, plaintiff sent defendant documents that purported to show that all PlusCare enrollee claims had been paid in full by plaintiff. Plaintiff also indicated that it

was willing to execute an indemnity or release agreement "protecting [defendant] from [plaintiff's] failure to pay provider claims relating to [plaintiff's] involvement in the PlusCare program."

After nearly a month, plaintiff again sent correspondence requesting that defendant consent to the release of the trust funds to plaintiff. Plaintiff informed defendant that "all eligible claims have been paid," and that the only claims that were not paid during the pendency of the PlusCare program had been non-covered or ineligible claims.

Almost one year later, defendant responded to plaintiff, indicating that it would consent to the release of the trust funds if plaintiff would execute an indemnity or release agreement. Specifically, defendant wrote:

> Attached is the release document for the [PlusCare] trust. Please review. Once it is executed, [defendant] will send the required letter to [the trustee] so that the funds can be released to [plaintiff].

The proposed release agreement was broad and generally worded. On its face, the proposed release applied to both plaintiff and the Detroit Medical Center, stating that both entities waived and released any and all present and future claims that they had or might ever have against defendant. By its plain language, the release document was not limited to claims arising out of the PlusCare program, but arguably applied to all legal claims that might ever arise. The proposed release also specifically provided that plaintiff and the Detroit Medical Center waived and released any and all claims against defendant arising in relation to a completely separate lawsuit, Wayne Circuit Case No. 03-317433-CK.

Contending that the release was overly broad in scope, plaintiff refused to execute the document. In November 2005, plaintiff commenced the present action, seeking a court-ordered release of the trust funds. Plaintiff alleged in its complaint that the PlusCare program had long since ended, that all legitimate PlusCare enrollee claims had been paid, that any unpaid claims were now time-barred under the terms of the parties' contract, and that the purpose for which the trust was created had therefore ceased to exist. Asserting that "[t]he trust no longer serves any legitimate purpose," the complaint asked the trial court to terminate the trust and release the trust assets to plaintiff.

Defendant countered by asserting that it was not willing to consent to the release of the trust funds because it had no way of knowing whether all PlusCare enrollee claims had been properly paid by plaintiff. Defendant also asserted that unless defendant was willing to execute the proposed release agreement, it could not consent to the release of the trust assets until all terms of the trust agreement had been satisfied.

On December 5, 2005, defendant served plaintiff with its first set of discovery requests. Defendant requested numerous documents and voluminous records from plaintiff, including all documents concerning every PlusCare enrollee claim that had ever been paid. Plaintiff did not fully comply with the discovery request, instead stating that it would be "impossible" to deliver up the information requested by plaintiff without incurring unreasonable expenses.

In January 2006, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), claiming that there were no disputed questions of fact, that the trust's purpose had long since ended, and that it was therefore entitled to a release of the trust assets.

In response to the motion, defendant asserted that (1) summary disposition would be premature because discovery was still open and plaintiff had not complied with the discovery request, and (2) there remained genuine issues of material fact that had not been resolved. Relying on Wayne Circuit Case No. 03-317433-CK, in which the Detroit Medical Center sued UltiMed,[2] defendant argued that there remained a genuine question of fact with respect to whether all claims paid by plaintiff were legitimate and non-fraudulent. In Wayne Circuit Case No. 03-317433-CK, there was evidence that Detroit Medical Center had falsified or forged certain signatures on PlusCare enrollee claims that were submitted to UltiMed for payment. Based on this evidence, defendant argued in the present matter that because Detroit Medical Center had submitted fraudulent or falsified PlusCare claims to UltiMed, it had likely submitted falsified or fraudulent PlusCare claims to plaintiff as well. Therefore, defendant asserted that there remained a factual question regarding whether plaintiff had wrongfully paid fraudulent PlusCare claims.

Defendant also asserted that there remained a genuine issue of material fact with respect to whether any eligible PlusCare claims remained yet to be satisfied by plaintiff. Defendant contended that it was unable to determine whether all eligible PlusCare claims had been paid by plaintiff because plaintiff had failed to comply with the discovery request for financial reports and other documents.

On April 21, 2006, the trial court granted plaintiff's motion for summary disposition under MCR 2.116(C)(10). The court ordered that "the Trust is terminated and the Trustee shall immediately disburse all trust proceeds to [plaintiff]. Defendant . . . shall cooperate fully to ensure the immediate release of the trust proceeds and shall execute any documents requested by the Trustee." The trial court stayed the order for 14 days to allow defendant to file a motion for reconsideration. Defendant moved for reconsideration, but the motion was denied. This Court granted a stay of the trial court's order, and expedited this appeal.[3]

II. Standard of Review

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Under MCR 2.116(C)(10), summary disposition is proper when "there is no genuine issue as to any material

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[2] UltiMed was similar to plaintiff in that both entities were contractors retained by defendant to provide medical services for PlusCare enrollees. As a subsidiary of the Detroit Medical Center, plaintiff naturally relied on the Detroit Medical Center as a health care provider for many of its enrollee-patients. Similarly, UltiMed relied on the Detroit Medical Center as a health care providers for its enrollee-patients. However, although plaintiff was a subsidiary of the Detroit Medical Center, UltiMed was not.

[3] Unpublished order of the Court of Appeals, entered June 2, 2006 (Docket No. 270482).

fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A motion for summary disposition under (C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

The proper interpretation of a contract is a question of law that we review de novo. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003). The primary goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). Similarly, we review de novo the language used in a trust document as a question of law. *In re Estate of Reisman*, 266 Mich App 522, 527; 702 NW2d 658 (2005).

Finally, whether a trust has terminated is a question of law. See *Herpolsheimer v Herpolsheimer Realty Co*, 344 Mich 657, 669; 75 NW2d 333 (1956). We review questions of law de novo. *Fraser Twp v Linwood-Bay Sportsman's Club*, 270 Mich App 289, 293; 715 NW2d 89 (2006).

III. Analysis

Defendant argues that summary disposition should have been precluded by the fact that no meaningful discovery had been completed. We disagree.

If summary disposition is granted before discovery on a disputed issue is complete, it is generally considered premature. *Oliver v Smith*, 269 Mich App 560, 567; 715 NW2d 314 (2006); *Stringwell v Ann Arbor Pub School Dist*, 262 Mich App 709, 714; 686 NW2d 825 (2004). However, the mere fact that discovery is incomplete does not preclude summary disposition. *VanVorous v Burmeister*, 262 Mich App 467, 476-477; 687 NW2d 132 (2004). The nonmoving party must present some independent evidence that a genuine issue of material fact exists. *Id.* Summary disposition may be granted before the end of discovery if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 266 Mich App 297, 306; 701 NW2d 756 (2005); *Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000).

The central question presented in this case concerns the termination date of the parties' trust. As noted above, § 6 of the parties' trust agreement governed the termination of the trust account. As amended by the parties, that section provided that "[t]he Trust created under this agreement shall terminate upon . . . [d]elivery to the Trustee of a writing signed by [plaintiff] and [defendant] stating that the Trust is terminated[.]" Section 6 also provided, "Immediately upon such termination, the Trustee shall pay over to [plaintiff] all assets then held by the Trustee under this Trust Agreement."

As the language of § 6 makes clear, plaintiff—and plaintiff alone—is entitled to the trust assets upon termination of the trust. As the language further makes clear, the question whether the trust had terminated was in no way dependent on which PlusCare enrollee claims were paid by plaintiff, whether plaintiff paid false or fraudulent claims, or whether any outstanding

PlusCare claims still remained to be paid. Instead, the question whether the trust had terminated depended on one critical inquiry: whether the parties agreed that the trust should be terminated.

We concede that there may have remained questions of fact with respect to whether plaintiff paid all PlusCare enrollee claims and whether plaintiff paid any false, fraudulent, or ineligible claims. However, in order to preclude summary disposition and justify further discovery on a particular issue, a party must present some independent evidence that a genuine issue of *material* fact exists. *VanVorous*, *supra* at 476-477. "A material fact is an ultimate fact issue upon which a jury's verdict must be based." *Belmont v Forest Hills Pub Schools*, 114 Mich App 692, 696; 319 NW2d 386 (1982); see also Black's Law Dictionary (7th ed) (providing that a material fact is "[a] fact that is significant or essential to the issue or matter at hand"). Because the questions whether plaintiff had paid all outstanding PlusCare claims and whether plaintiff paid any fraudulent claims were irrelevant to the ultimate question in this matter—whether the parties' trust had terminated—the remaining questions of fact with respect to these issues were not "material" for purposes of the MCR 2.116(C)(10) summary disposition rule. In other words, further discovery of plaintiff's financial documents and claim-payment records did not stand a reasonable chance of uncovering factual support for defendant's contention that the trust had not terminated. *Trentadue*, *supra* at 306; *Dimondale*, *supra* at 566. The mere fact that discovery was incomplete on certain immaterial matters was not sufficient to foreclose summary disposition in this case.

Defendant also argues that remaining questions of fact concerning whether plaintiff paid all eligible PlusCare claims, whether plaintiff paid any fraudulent claims, and whether any claims still remained to be paid were sufficient to preclude summary disposition in this matter. We disagree.

Summary disposition is appropriate when, "[e]xcept as to the amount of damages, there is no genuine issue as to any *material* fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10) (emphasis added). As noted above, a "material fact" is "an ultimate fact issue upon which a jury's verdict must be based." *Belmont*, *supra* at 696. The questions whether plaintiff paid all eligible PlusCare claims, whether plaintiff paid any fraudulent claims, and whether any claims still remained to be paid had no bearing on whether the parties had in fact agreed or not agreed to terminate the trust. Because these questions were irrelevant to the ultimate fact question in this case, these issues were not "material" for purposes of MCR 2.116(C)(10). Thus, even assuming arguendo that genuine questions of fact existed with respect to all of these issues, such factual disputes were insufficient to overcome summary disposition for plaintiff.

Defendant next argues that the trial court erred in ruling that because the purpose of the trust had been completed, the trust had necessarily terminated. We disagree.

Despite the language of § 6 of the trust agreement, the trial court had the inherent power to terminate the trust agreement in this case. The circuit court has broad equitable powers. MCL 600.601(1)(b); *Lester v Spreen*, 84 Mich App 689, 695; 270 NW2d 493 (1978). Under Michigan law, a court of equity has the power to terminate a trust upon completion of the purpose for which the trust was established, and upon agreement by all trust beneficiaries that the trust should be terminated. *Fornell v Fornell Equipment, Inc*, 390 Mich 540, 551; 213 NW2d 172 (1973) (stating that "it is within the power of a court of equity to decree a termination of a trust

where the purpose for which it was created is fulfilled and all of the parties owning the entire beneficial interest are in agreement that the trust be dissolved").

We agree with defendant that the language of § 6 could lead to an unjust and unreasonable result in the present matter, effectively delaying the release of trust assets forever while plaintiff continues to baselessly withhold its consent for trust termination. A trust such as that established in the present matter must necessarily terminate at *some* point. Indeed, the purpose of the trust, expressly provided in the parties' trust agreement, was to ensure that sufficient funds remained available to pay eligible PlusCare claims in the event of plaintiff's insolvency or bankruptcy. Therefore, by its very language, the parties' agreement envisioned that the trust would end upon completion of the PlusCare program and payment of all outstanding expenses.

Turning to the specific facts of this case, there remained no question of fact regarding whether the trust's purpose had concluded. As noted above, it is undisputed that the PlusCare program terminated in its entirety on September 30, 2003. Moreover, § 12.05 of the parties' contract provided that "[plaintiff] shall not be responsible for paying claims it receives more than one year from the date Services were provided to an Enrollee." Therefore, payment by plaintiff of any enrollee claims not satisfied as of September 30, 2004, was necessarily time-barred by the plain language of the agreement.

Because the PlusCare program had terminated and all claims were either paid or barred by the passage of time, reasonable minds could not have concluded that the trust remained necessary to protect against plaintiff's possible insolvency or bankruptcy. In short, the purpose of the trust was complete. Further, plaintiff was the sole beneficiary of the trust. Section 6 of the trust agreement recognized this basic fact by making all trust assets payable to plaintiff upon the trust's termination. Because the trust's express purpose had been completed, and because the trust's sole beneficiary had agreed to the trust's termination, the trial court properly ordered the termination of the trust in this case. *Fornell*, *supra* at 551. Summary disposition of this issue was properly granted.

Finally, defendant argues that the trial court had no authority to order the trustee to distribute the trust assets to plaintiff because the trustee was never made a party to this action.[4] We agree.

We recognize that circuit courts have broad powers, MCL 600.601, and that they have the authority to make any order proper to fully effectuate their jurisdiction and judgments, MCL 600.611. However, circuit courts generally lack jurisdiction over non-parties against whom no

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[4] Defendant does not challenge the trial court's ruling on the basis of the "real party in interest" rule of MCR 2.201. Nonetheless, we note in passing that while MCR 2.201(B) generally requires that an action be prosecuted in the name of the real party in interest, subsection (B)(1) provides an exception for a "trustee of an express trust." MCL 600.2041, which provides that "[e]very action shall be prosecuted in the name of the real party in interest," similarly provides an exception for trustees of an express trust.

complaint has been filed. *Spurling v Battista*, 76 Mich App 350, 353-354; 256 NW2d 788 (1977). Here, no complaint was filed against the trustee, and the trustee was never made a party to this action. Therefore, even though summary disposition was proper, the trial court nonetheless erred in ordering the trustee to release the trust funds to plaintiff.

Because the trustee holds legal title to the trust assets in this case, the trustee's presence as a party was necessary to permit the trial court to render complete relief. Accordingly, the trustee should have been joined as a necessary party in this matter. MCR 2.205(A). "Parties may be added or dropped by order of the court . . . on the court's own initiative at any stage of the action and on terms that are just." MCR 2.207. On remand, the trial court shall join the trustee as a party in this matter, and shall align it as a plaintiff or defendant according to its respective interest. MCR 2.205(A); MCR 7.216(A)(7).

Affirmed but remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kathleen Jansen