STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY JOHNSON,

Plaintiff,

and

SOUTHEAST MICHIGAN SURGICAL HOSPITAL LLC d/b/a SOUTHEAST MICHIGAN SURGICAL HOSPITAL,

Intervening Plaintiff-Appellant,

and

GREAT LAKES ANESTHESIA PLLC and GREATER LAKES AMBULATORY SURGICAL CENTER PLLC d/b/a ENDOSURGICAL CENTER AT GREAT LAKES,

Intervening Plaintiffs,

v

TITAN INDEMNITY COMPANY,

Defendant,

and

VICTORIA GENERAL INSURANCE COMPANY,

Defendant-Appellee,

and

LEE BOMA JOHNSON,

Defendant.

UNPUBLISHED
May 21, 2013

No. 308685
Wayne Circuit Court
LC No. 09-020352-NI

Before: BORRELLO, P.J., and K. F. KELLY and MURRAY, JJ.

PER CURIAM.

In this action to recover benefits under the no-fault act, intervening plaintiff Southeast Michigan Surgical Hospital (Southeast) appeals as of right a February 3, 2012, trial court order granting defendant Victoria General Insurance Company's (Victoria General's) motion for reconsideration wherein the court set aside an October 14, 2011, order reopening the case to allow Southeast to intervene in the proceeding. The trial court also held that Victoria General and plaintiff Anthony Johnson had a binding settlement agreement and held that Southeast's patient lien agreement was void and stricken from the record. For the reasons set forth in this opinion, we reverse and remand for further proceedings.

I. FACTS AND PROCEDURAL HISTORY

In August 2008, Johnson was a passenger in an automobile that was involved in an accident. Victoria General was the no-fault insurer of the automobile. Johnson suffered injuries that necessitated professional medical treatment from several medical care providers including Southeast. According to Southeast, Johnson's medical bill totaled $56,182.19.

On August 18, 2009, Johnson commenced this lawsuit against Victoria General seeking to recover personal injury protection (PIP) benefits under the no fault act, MCL 500.3101 *et seq*. After Johnson filed his complaint and commenced discovery, on August 24, 2010, he signed a "Patient Lien Agreement" with Southeast wherein he agreed to grant the hospital a lien "against any judgments, settlements or other recoveries, for any and all services provided" by the hospital. Johnson agreed that the lien would extend to "any settlements or litigation proceeds, including proceeds from third party actions related to any injuries or conditions for which I am receiving treatment. . . ." Further, the lien instructed Johnson's attorney to "withhold from any and all judgment, settlements or other recoveries monies owed to [Southeast] prior to any distribution. . . ."

At or about the time Johnson signed the lien, according to Southeast, the hospital retained Ira Saperstein as counsel to "look into" Johnson's unpaid medical bills. According to Southeast, Saperstein wrote a letter to Kevin Geer, counsel for Johnson, inquiring about the instant lawsuit. Geer responded by letter on May 23, 2011, wherein he stated that Southeast was aware that "we filed a first party lawsuit *and have been pursuing claims on their behalf*" (emphasis added). Geer further stated, "[a]ccordingly please fully expect that any proceeds payable to your client will have our office as a payee due to our attorney lien."

On May 24, 2011, the parties proceeded to case evaluation. Thereafter, Johnson and Victoria General agreed to terms of a settlement agreement where Johnson would receive $50,000 and relinquish his right to any further recovery for all medical services provided between August 2008 and August 2011. The parties did not place a settlement agreement on the record.

When Southeast learned of the terms of the settlement agreement, Saperstein wrote a letter to Geer and counsel for Victoria General indicating that Geer failed to include Southeast's

bill at case evaluation. Saperstein indicated that Southeast would move to intervene as a party plaintiff. The next day, on September 22, 2011, Southeast moved to intervene pursuant to MCR 2.209(A) and (B), arguing that the parties would not adequately represent its right to recover from Victoria General.

On September 30, 2011, the trial court granted Southeast's motion to intervene after a hearing where Geer indicated that he had been under the mistaken belief that Southeast had already intervened or filed a separate suit to recover the unpaid medical bill. Victoria General opposed the motion to intervene. Two weeks later, on October 14, 2011, following a settlement conference, the trial court entered an order reopening the case.

Victoria General moved for reconsideration, arguing that Southeast was not entitled to intervene because it was aware of the pending litigation before case evaluation, yet failed to become involved until after the parties agreed to settle. At a motion hearing, Geer argued that Southeast lost its right to assert the patient lien because Southeast failed to become involved in the case until after case evaluation. Geer argued that it would be unjust to allow Southeast to assert the lien against Johnson.

In response, Southeast argued that it had no reason to suspect that Geer would fail to include its bill at case evaluation where Geer requested documents from Southeast to include in the case evaluation and where Southeast sent Geer the hospital bill, records, and the patient lien prior to case evaluation.

After hearing arguments, the trial court granted Victoria General's motion for reconsideration and held that Southeast's patient lien was void because Southeast "sat on their rights." On February 3, 2012, the trial court entered a written order granting Victoria General's motion for reconsideration, setting aside its October 14, 2011, order reopening the case, and declaring the Southeast patient lien "stricken and void." This appeal ensued.

II. ANALYSIS

Southeast contends that the trial court erred in denying its motion to intervene and in granting Victoria General's motion for reconsideration. We review a trial court's decision on a motion to intervene for an abuse of discretion. *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612; 773 NW2d 267 (2009). Similarly, we review a trial court's decision on a motion for reconsideration for an abuse of discretion. *Tinman v Blue Cross & Blue Shield*, 264 Mich App 546, 556-557; 692 NW2d 58 (2004). A trial court abuses its discretion when it reaches a decision that falls "outside the principled range of outcomes." *Auto-Owners Ins Co*, 284 Mich App at 612. "This Court reviews de novo a trial court's resolution of issues of law including the interpretation of statutes and court rules." *Hill v L.F. Transp., Inc.*, 277 Mich App 500, 507; 746 NW2d 118 (2008). "A court by definition abuses its discretion when it makes an error of law." *In re Waters Drainage Dist.*, 296 Mich App 214, 220; 818 NW2d 478 (2012).

MCR 2.209(A)(3) provides that a party has a right to intervene when:

> the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a

> practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"The decision whether to grant a motion to intervene is within the court's discretion." *Precision Pipe & Supply, Inc. v Meram Const, Inc*., 195 Mich App 153, 156; 489 NW2d 166 (1992). "The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Neal v Neal*, 219 Mich App 490, 492; 557 NW2d 133 (1996). However, "intervention may not be proper where it will have the effect of delaying the action or producing a multifariousness of parties and causes of action." *Precision Pipe & Supply, Inc*, 195 Mich App at 157.

Southeast contends that it had the right to intervene pursuant to MCR 2.209(A)(3), because it had an interest in the underlying action where its unpaid medical bill was a component of the PIP benefits that Victoria General owed Johnson.

Having reviewed the record, we conclude that Southeast had a right to intervene under MCR 2.209(A)(3) and that the trial court erred as a matter of law in concluding otherwise. In this case, Southeast had an interest in the "property or transaction" that was the subject of the underlying no-fault action. Specifically, Southeast provided over $56,000 of medical treatment to Johnson. The benefits were directly related to Johnson's no fault action. In addition, disposition of the present action absent Southeast's participation would impair or impede Southeast's ability to protect its interest in recovering the unpaid medical bill. The proposed settlement agreement between Johnson and Victoria General did not take into account the amounts owed to Southeast, and the agreement would either impair or impede Southeast's future recovery from Victoria General.

Moreover, Southeast did not intentionally delay its motion to intervene by sitting on its rights. See *Precision Pipe & Supply, Inc*, 195 Mich App at 157 (reversing the trial court's order denying the appellant's motion to intervene in part because any delay caused by the intervention was not the fault of the appellant). Here, the record does not support that Southeast "sat on its rights." Rather, Southeast had reason to believe that Geer would include its bill in case evaluation and settlement talks. In particular, on the day before case evaluation, Geer sent a letter to Southeast's counsel representing that he was "pursuing claims" on Southeast's behalf. Furthermore, Geer acknowledged that Southeast sent him copies of the medical bill, records, and a copy of the patient lien agreement. Nevertheless, contrary to the representations in his letter, Geer did not include Southeast's unpaid medical bill in the case evaluation or settlement talks. Instead, Geer and Victoria General reached an informal settlement agreement without considering Southeast's interests. Once Southeast learned that Geer did not include its bill in agreeing to terms of the settlement agreement, it timely moved to intervene two weeks later.[1]

[1] We are mindful that Geer claimed at oral argument that he did not include Southeast's bill in the case evaluation because he thought that Saperstein indicated that he would move separately to recover the bill. However, at most, this assertion created an issue of fact regarding the communications between Geer and Saperstein concerning their respective plans going forward.

Moreover, Southeast's intervention will not overcomplicate the proceedings where its claim is similar to the other claims involved in the case. See *id*. In short, we find that the trial court abused its discretion in denying Southeast's motion to intervene.

Southeast also contends that the trial court erred in finding that Johnson and Victoria General had an enforceable settlement agreement. We review a trial court's decision to enforce a settlement agreement for an abuse of discretion. *Keyser v Keyser*, 182 Mich App 268, 270; 451 NW2d 587 (1990). An agreement to settle litigation is contractual in nature. *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 456; 733 NW2d 766 (2006). "We review for clear error the findings of fact underlying the circuit judge's determination whether a valid contract was formed." *46th Circuit Trial Court v Cty of Crawford*, 476 Mich 131, 140; 719 NW2d 553 (2006).

In this case, the record supports that the parties negotiated terms of a settlement agreement, but had not finalized the agreement. Here, the parties did not place a settlement agreement on the record. Further, at the time Southeast moved to intervene, based on the assertions of the attorneys for both Victoria General and for Johnson, it appears that Johnson had not yet signed the settlement agreement. At a hearing to address Victoria General's motion for reconsideration, Johnson's counsel agreed that, "the only reason that there isn't a settlement anymore is because of this intervention." Counsel for Victoria General stated: "The settlement was with Mr. Geer. When the intervenor hit . . . following that negotiation, everything came to a screeching halt. . . ." Thus, based on the representations of counsel for both parties, the trial court clearly erred in concluding that there was a binding settlement agreement as of January 6, 2012.

Finally, Southeast contends that the trial court erred in voiding its patient lien agreement. Whether a lien is authorized in a particular case involves a question of law that we review de novo. *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 281; 761 NW2d (2008).

Here, the trial court stated that the lien was void after finding that Southeast "sat on its rights." Given our conclusion above that the record does not support that Southeast "sat on its rights," the trial court necessarily erred in voiding the lien agreement on that basis. Furthermore, at the time the court made its ruling, Johnson had not yet finalized the settlement with Victoria General; thus, Southeast could not have "sat on its rights" with respect to asserting the lien against the settlement.

In sum, we conclude that Southeast had the right to intervene under MCR 2.209(A)(3), and that the trial court erred as a matter of law in concluding otherwise. Consequently, the trial court abused its discretion in denying Southeast's motion to intervene and in granting Victoria General's motion for reconsideration.[2] See *Waters Drainage Dist*, 296 Mich App at 220 ("A court by definition abuses its discretion when it makes an error of law"). In addition, the trial

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It did not constitute proof that Southeast lost its right to intervene under MCR 2.209(A)(3) by sitting on its rights.

[2] Given our conclusion that Southeast had a right to intervene under MCR 2.209(A)(3), we need not address Southeast's argument that it also had a right to intervene under MCR 2.209(A)(1).

court clearly erred in concluding that there was a binding settlement agreement between Johnson and Victoria General and in voiding Southeast's lien agreement.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Appellant having prevailed, may tax costs. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray