STATE OF MINNESOTA
IN COURT OF APPEALS
A09-437

Gina R. Hosch, et al.,
Appellants,

vs.

Keith Byron Levings, et al.,
Defendants,

ING Insurance Company, et al.,
Respondents.

Filed October 27, 2009
Affirmed
Connolly, Judge

St. Louis County District Court
File No. 69DU-CV-06-917

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Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the district court's decision that respondent may assert its subrogation rights against the proceeds of a settlement. Because the district court correctly concluded that the full-recovery rule of Minn. Stat. § 62A.095 (2008) does not apply to government-sponsored health plans, and that Minnesota law applies to this case, we affirm.

FACTS

Appellant Gina R. Hosch, a Minnesota resident, was severely injured in a multiple-vehicle accident that occurred in Duluth, Minnesota. Appellant brought suit in Minnesota and subsequently settled her claims against the defendant-tortfeasors resulting from the automobile accident in Duluth.

At the time of the accident, appellant was an employee of the Wisconsin Indianhead Technical College and received medical benefits from the health plan sponsored by the Wisconsin Indianhead Technical College (Wisconsin Plan). The Wisconsin Technical College system is a governmental subdivision of the State of Wisconsin. Wis. Stat. Ann. §§ 38.001-38.50 (West 2002 & 2009 Supp.). The Wisconsin Plan is administered in Minneapolis, Minnesota, by CoreSource, Inc., a Minnesota corporation. The Wisconsin Plan is sponsored and self-funded by the State of Wisconsin. The Wisconsin Plan purchased stop-loss reinsurance from respondent ING Insurance Company (ING).

The Wisconsin Plan paid for medical expenses that appellant incurred in Minnesota. The Wisconsin Plan did not pursue its right to reimbursement for amounts paid directly by the Wisconsin Plan, but ING did exercise its right to subrogation under the Wisconsin Plan language.

The district court held a distribution hearing and heard arguments from appellant that subrogation should not be permitted because she had not been made whole. However, the parties did stipulate that the proper amount of the subrogation claim is $73,840.07. The contract expressly and unambiguously provides that the Wisconsin Plan has a first-dollar right of recovery from any settlement proceeds. The district court held that Minnesota law applies to this case and that the full-recovery statute does not apply to government-sponsored health plans.

D E C I S I O N

I. The district court did not err when it held that the Minnesota full-recovery statute, Minn. Stat. § 62A.095, does not apply to a government-sponsored health plan.

Questions of law are subject to de novo review. *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001). "Statutory construction is a question of law, fully reviewable under a de novo standard when applied to undisputed facts." *Lundberg by Lundberg v. Jeep Corp.*, 582 N.W.2d 268, 270 (Minn. App. 1998).

"When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2008). When the statutory text is ambiguous, a court may look outside the text in an effort to "ascertain and effectuate the intention of

the legislature." *Id.* Courts may consider factors relevant to the intention of the legislature, including "the occasion and necessity for the law," "the mischief to be remedied," "the object to be attained," and "the consequences of a particular interpretation." *See id.* A court must not supply language that the legislature omitted. *Northland Country Club v. Comm'r of Taxation*, 308 Minn. 265, 271, 241 N.W.2d 806, 809 (1976). "A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted). "We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Id.*

Whether section 62A.095 excludes government-sponsored health plans from the full-recovery rule depends on the language of the statute. The full-recovery rule applies to all "health plan[s]" that are sold to or cover Minnesota residents. Minn. Stat. § 62A.095, subd. 1(a). No such health plan is allowed to contain a subrogation clause unless the subrogation clause "applies only after the covered person has received a full recovery from another source." *Id.*, subd. 2(1). The statute specifically exempts "[h]ealth plans providing benefits under health care programs administered by the commissioner of human services," which are subject to certain subrogation and lien provisions. *Id.*, subd. 1(b).

A "health plan" is defined as

> a policy or certificate of accident and sickness insurance as defined in section 62A.01 offered by an insurance company licensed under chapter 60A; a subscriber contract or

> certificate offered by a nonprofit health service plan corporation operating under chapter 62C; a health maintenance contract or certificate offered by a health maintenance organization operating under chapter 62D; a health benefit certificate offered by a fraternal benefit society operating under chapter 64B; or health coverage offered by a joint self-insurance employee health benefit plan operating under chapter 62H.

2009 Minn. Laws ch. 178, art. 1, § 20, at 2138 (amending Minn. Stat. § 62A.011, subd. 3 (2008)). All of these definitions of "health plan" contemplate private insurers, and appellant does not argue that the Wisconsin Plan falls under any of those specific provisions.

Because government-sponsored health plans are not included in the statutory definition, they are excluded by omission. We reach this conclusion based on the text of the statute and the apparent intention of the legislature. First, the statute specifically lists the five types of health coverage that fall within the statutory definition of "health plan," none of which include government health plans. *Id.* A court must not supply language that the legislature omitted. *Northland Country Club*, 308 Minn. at 271, 241 N.W.2d at 809. The plain meaning of statutory language must be given effect; courts look outside statutes to resolve ambiguity, not to create ambiguity. *Minneapolis-St. Paul Sanitary Dist. v. City of St. Paul*, 240 Minn. 434, 437, 61 N.W.2d 533, 535-36 (1953). Under the plain language of the statute, a government-sponsored health plan such as the Wisconsin Plan is not included within the insurance entities to which the full-recovery rule applies.

Second, while section 62A.011 only *includes* private insurers, section 62A.095 *excludes* government health-care programs. The MinnesotaCare program, run by the

Minnesota Department of Human Services, is expressly excluded, Minn. Stat. § 62A.095, subd. 1(b), and the state agency and its managed-care plans have a lien on an enrollee's cause of action arising from the occurrence that resulted in MinnesotaCare payments, Minn. Stat. § 256L.03, subd. 6; *Erickson v. Fullerton*, 619 N.W.2d 204, 206-07 (Minn. App. 2000). Also excluded are state-agency subrogation rights for "medical assistance or alternative care services," Minn. Stat. § 256B.37 (2008) & 2009 Minn. Laws ch. 79, art. 8, § 56, at 716; state-agency liens for the cost of care when the agency "provides, pays for, or becomes liable for medical care," Minn. Stat. § 256B.042, subd. 1 (2008); state-agency liens for public-assistance payments, Minn. Stat. § 256.015 (2008); and state-agency liens for the cost of "general assistance medical care," Minn. Stat. § 256D.03, subd. 8 (2008). *See* Minn. Stat. § 62A.095, subd. 1(b) (citing these statutes as not subject to the full-recovery rule).

Third, the policy behind allowing government liens or subrogation appears to be to strike a balance between providing full compensation to injured persons and allowing the government to recapture a portion of any benefits provided under a subsidized health insurance plan.

Appellant argues for a reinsurance exception, suggesting that the Wisconsin Plan is not a government health plan because ING is a stop-loss reinsurer. Appellant points to section 62A.09, which provides, "Nothing in sections 62A.01, 62A.02, 62A.03, 62A.04, 62A.05, 62A.06, 62A.07, and 62A.08 shall apply to or affect: . . . (2) any policy or contract of reinsurance." Minn. Stat. § 62A.09(2) (2008). Nothing in any of those sections is at issue in this case, however. The relevant sections on appeal are the full-

recovery provision, Minn. Stat. § 62A.095, and the definition of "health plan," Minn. Stat. § 62A.011. Moreover, the State of Wisconsin is sponsoring and paying for the plan, part of which consists of its purchase of stop-loss reinsurance through ING. As this court recognized in *Erickson*, a state's contractual relationship with a private provider does not change the analysis or negate the state's involvement. 619 N.W.2d at 208.

We hold that the full-recovery rule of Minn. Stat. § 62A.095 does not apply to a government-sponsored health plan. Accordingly, the district court correctly held that respondent may recover pursuant to its subrogation rights.

II. The district court did not err when it held that Minnesota rather than Wisconsin law governs this dispute.

Choice-of-law questions are questions of law subject to de novo review. *Danielson v. Nat'l Supply Co.*, 670 N.W.2d 1, 4 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003). A choice-of-law analysis is only necessary if there is a conflict of laws, which occurs when "the choice of one forum's law over the other will determine the outcome of the case." *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 604 N.W.2d 91, 93-94 (Minn. 2000). If there is a conflict and the law of either forum may be constitutionally applied, we balance five choice-influencing considerations: (1) predictability of result; (2) maintenance of interstate order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law. *Danielson*, 670 N.W.2d at 6.

Minnesota law and Wisconsin law differ as to whether an insured is entitled to a full recovery for her injuries before a government-subsidized health insurance plan may

exercise its subrogation rights. Respondent is entitled to exercise its subrogation rights under Minnesota law but not under Wisconsin law. Because there is a conflict of laws in this case, we analyze the five choice-influencing considerations below.

a. Predictability of Result

Predictability of result "addresses whether the choice of law was predictable *before* the time of the transaction or event giving rise to the cause of action." *Danielson*, *Id.* at 7. Because automobile accidents are unplanned, the contract aspects of an insurance agreement are more relevant than the tort aspect of a case. *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 470 (Minn. 1994). Courts should consider "what the parties' reasonable expectations should have been at the time of contracting." *Id.* at 471. The predictability factor primarily applies when parties desire "advance notice of which state law will govern in future disputes." *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 454 (Minn. App. 2001). The supreme court has noted that it is often difficult to predict what law will apply to a certain case, but stressed that this is a valid consideration because it is "desirable for the courts of different states to reach similar conclusions on the choice of law in a given dispute." *Jepson*, 513 N.W.2d at 471 (finding it unlikely that most other courts would apply Minnesota law on the facts of the case before it). By striving to reach uniform choice-of-law results in different jurisdictions, this factor seeks to avoid forum shopping. *Nodak*, 604 N.W.2d at 94.

This factor does not weigh as strongly as it would if the parties had bargained for a choice-of-law provision in the insurance agreement. That is, they did not seek advance notice of which state law would govern in future disputes. However, on the facts of this

case, it is likely that most states would apply the law of Minnesota. Appellant, a Minnesota resident, filed suit in Minnesota. She was covered by a Wisconsin medical plan administered by a Minnesota corporation and the accident giving rise to the medical expenses at issue occurred in Minnesota. In short, most connections in this case are with Minnesota. Since the court of another state would probably apply Minnesota law, the predictability-of-result factor favors application of Minnesota law.

b. Maintenance of Interstate Order

This factor addresses whether the application of Minnesota law would manifest disrespect for Wisconsin or impede the interstate movement of people and goods. *Jepson*, 513 N.W.2d at 471. Ideally, the courts of different states will "strive to sustain, rather than subvert, each other's interests in areas where their own interests are less strong." *Id.* Evidence of forum shopping, or a decision that would tend to promote forum shopping, would indicate disrespect for Wisconsin law. *Danielson*, 670 N.W.2d at 7-8. In *Nodak*, an insurance subrogation case involving an automobile accident in North Dakota between Minnesota and North Dakota residents carrying insurance policies issued in their respective states, the Minnesota Supreme Court concluded that the presence of laws pertaining to no-fault benefits recovery in both states rendered this factor neutral, rather than favoring either state's law. *Nodak*, 604 N.W.2d at 95.

In this case, there is no evidence of forum shopping—indeed, appellant brought suit in Minnesota but seeks the application of Wisconsin law. Neither party contends on appeal that application of either state's law will tend to promote forum shopping. Appellant does, however, argue that application of Minnesota law will manifest

disrespect toward Wisconsin's sovereignty because of Wisconsin's interest in regulating the terms of contracts between Wisconsin governmental entities and their employees. Although Wisconsin has an interest in the application of its law to the facts of this case, so does Minnesota. Minnesota has an important interest in regulating the terms of health plans that are issued to Minnesota residents and administered by Minnesota corporations. Minnesota also has an interest in regulating the ramifications of injuries sustained as a result of automobile accidents on Minnesota roads, where medical treatment is provided in Minnesota.

Because both states have legitimate interests in this area, and because both states have laws pertaining to subrogation rights and an injured party's right to full recovery, this factor does not favor the application of either state's law.

c. Simplification of the Judicial Task

"[T]his factor is primarily concerned with the clarity of the conflicting laws." *Id.* Simplification of the judicial task is not a significant factor if either state's law can be applied without difficulty. *Jepson*, 513 N.W.2d at 472.

Minnesota courts are capable of applying the opinions of the Wisconsin Supreme Court, and Wisconsin caselaw is clear and can be easily applied to the facts of this case. In *Ruckel v. Gassner*, the Wisconsin Supreme Court held that "an insured must be made whole before the insurer may exercise subrogation rights against its insured, even when unambiguous language in an insurance contract states otherwise." 646 N.W.2d 11, 13 (Wis. 2002). The *Ruckel* court acknowledged that the made-whole doctrine may be overridden by statute. *Id.* at 13 n.2. *Ruckel* involved "a group insurance benefit plan

self-funded by the taxpayers of Mayville, a small school district," but the court expressly declined to create an exception because such policy arguments "are better addressed to a legislative body." *Id.* at 19. There is no statutory exception in Wisconsin law from the made-whole rule for government-sponsored health plans. Given the Wisconsin Supreme Court's clear statement that it will not create an exception to the made-whole doctrine, the application of Wisconsin law to the facts of this case is clear: appellant must be "made whole," or have a full recovery, before respondent may assert its subrogation rights.

Minnesota law is also clear and can be applied without difficulty to the facts of this case. The full-recovery mandate of Minn. Stat. § 62A.095 does not apply to a government-sponsored health plan. This factor is therefore neutral.

d. Advancement of the Forum's Governmental Interest

The forum's primary governmental interest is its interest as a "justice-administering state." *Milkovich v. Saari*, 295 Minn. 155, 170, 203 N.W.2d 408, 417 (1973) (quotation omitted). This factor is designed to ensure that Minnesota courts do not have to apply rules of law that are "inconsistent with Minnesota's concept of fairness and equity." *Danielson*, 670 N.W.2d at 8 (quotation omitted). The court is to consider the public policy of both forums. *Id.* Our supreme court has held "that when all other relevant choice-of-law factors favor neither state's law, the state where the accident occurred has the strongest government interest." *Nodak*, 604 N.W.2d at 96.

Neither rule of law offends Minnesota's concept of fairness and equity. Both Minnesota and Wisconsin employ full-recovery rules, which reflect the value judgment

that it is more fair for the insured to be made whole, or fully recover, before the insurer—who is paid to take on this risk—can collect via its subrogation rights.

"Minnesota places great value in compensating tort victims." *Jepson*, 513 N.W.2d at 472. Compensation of tort victims injured in Minnesota protects Minnesota health-care providers from rendering unpaid services and reduces the chance of an injured Minnesota resident being forced to seek public assistance as a result of her injuries. *Danielson*, 670 N.W.2d at 9. Minnesota also has an interest in enforcing the terms of a health plan administered in Minnesota and issued to a Minnesota resident. Similarly, Wisconsin values compensating tort victims, placing the tort victim's right to be made whole even above the subrogation rights of a government-sponsored health plan. Wisconsin also has an interest in enforcing the terms of a Wisconsin-sponsored health plan issued to an employee of the State of Wisconsin who works in Wisconsin, even if that person was injured in a neighboring state.

We believe that the Wisconsin rule of law is neither unfair nor repugnant to Minnesota's policy. However, given that this case involves a Minnesota resident who was tortiously injured in Minnesota and who received and continues to receive medical treatment in Minnesota, this factor favors applying Minnesota law.

e. The Better Rule of Law

The final choice-influencing consideration asks which state has the objectively better rule of law. *Jepson*, 513 N.W.2d at 472. This factor only applies when the first four are not dispositive. *Reed v. Univ. of N. Dakota*, 543 N.W.2d 106, 109 (Minn. App. 1996), *review denied* (Minn. Mar. 28, 1996). Because, on balance, two of the four factors

weigh in favor of applying Minnesota law and two are neutral, it is unnecessary to determine which state has the better rule of law.

In summary, first, predictability of result favors applying Minnesota law. Second, maintenance of interstate order is neutral. Third, simplification of the judicial task is neutral. Fourth, advancement of the forum's governmental interest favors applying Minnesota law. We therefore hold that Minnesota law governs this case.

Affirmed.