

[Cite as *Pike Therapy Ctr. v. Allstate Ins. Co.*, 2009-Ohio-4330.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO
:
PIKE THERAPY CENTER
Plaintiff-Appellant : C.A. CASE NO. 23074
vs. : T.C. CASE NO. 08CVF00564
:
ALLSTATE INSURANCE CO. (Civil Appeal From
Defendant-Appellee : Municipal Court)

.

O P I N I O N

Rendered on the 21st day of August, 2009.

.

John P. Lowry, Atty. Reg. No. 0034595, 36 East Seventh Street,
Suite 1510, Cincinnati, OH 45202

George D. Jonson, Atty. Reg. No. 0027124, 36 East Seventh Street,
Suite 2100, Cincinnati, OH 45202

John D. Poley, Atty. Reg. No. 0000051, 43 Rogge Street, Dayton,
OH 45409

James F. McCarthy, III, Atty. Reg. No. 0002245, 255 E. Fifth
Street, Suite 2400, Cincinnati, OH 45202
Attorneys for Plaintiff-Appellant

Daniel J. Funk, Atty. Reg. No. 0062931, 400 South Main Street,
North Canton, OH 44720
Attorney for Defendant-Appellee

.

GRADY, J.

{¶ 1} Plaintiff, Pike Therapy Center, appeals from a

summary judgment in favor of Defendant, Allstate Insurance Company ("Allstate").

{¶ 2} On January 11, 2008, Zachary Watkins was injured in an automobile accident that was caused by Allstate's insured.

Watkins received medical treatment from Dr. Murdock at Pike Therapy Center. In return for Dr. Murdock's agreement to not require payment from Watkins, Watkins executed an assignment in favor of Pike Therapy Center of a portion of any future proceeds he would receive as a result of the automobile accident.

{¶ 3} Dr. Murdock sent a copy of the assignment to Allstate.

Subsequently, Allstate entered into a settlement agreement with Watkins on behalf of its insured. Allstate paid the full amount of the settlement directly to Watkins, who did not pay Pike Therapy Center.

{¶ 4} On April 17, 2008, Pike Therapy Center and Dr. Murdock commenced an action against Allstate in the small claims division of the municipal court, seeking \$795.00 plus interest. Pike Therapy Center and Allstate filed motions for summary judgment. On October 9, 2008, the trial court granted summary judgment in favor of Allstate and denied Pike Therapy Center's motion for summary judgment. Pike Therapy Center filed a notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 5} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S CROSS MOTION FOR SUMMARY JUDGMENT AND BY GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT."

{¶ 6} The assignment of error raised by Pike Therapy Center must be overruled on the authority of the recent decision of the Ohio Supreme Court in *West Broad Chiropractic v. American Family Insurance*, ____ Ohio St.3d ____, 2009-Ohio-3506.

{¶ 7} In *West Broad Chiropractic*, Kristy Norregard was injured in an automobile accident. Norregard sought treatment for her injuries at West Broad Chiropractic. *Id.* at _8. At that time, in exchange for her treatment, Norregard executed an assignment of her right to receive compensation from the tortfeasor's insurance company for injuries she sustained in the automobile accident. *Id.* West Broad gave notice of the assignment to American Family Insurance, which had insured the driver of the other automobile. *Id.* at _9. Prior to filing any lawsuit, Norregard settled her claim for injuries with American Family, which disbursed the settlement proceeds directly to Norregard. *Id.* at _10.

{¶ 8} West Broad commenced an action against American Family, seeking a declaration that the assignment was valid and enforceable and that American Family was obligated to pay

West Broad for the treatment provided to Norregard. Id. at _11. The trial court held that the assignment was enforceable, and it entered judgment for West Broad. Id. The Tenth District Court of Appeals reversed the judgment of the trial court. Id. at _12. On certification of a conflict between that decision and the decisions of other appellate districts, the Supreme Court affirmed the Tenth District's decision, and held:

{¶ 9} "A person who has been injured in an accident but who has not yet established liability for the accident and a present right to settlement proceeds may not assign the right to future proceeds of a settlement if the right does not exist at the time of the assignment." Id. at _5.

{¶ 10} Watkins had neither established that the other driver is legally liable for Watkins' injuries and losses nor acquired a present right to any settlement funds at the time of his assignment in favor of Pike Therapy. The assignment is therefore unenforceable against Allstate. The trial court did not err in granting summary judgment in favor of Allstate and overruling Pike Therapy's motion for summary judgment.

{¶ 11} The assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, J. and FROELICH, J., concur.

Copies mailed to:

John P. Lowry, Esq.
George D. Jonson, Esq.
John D. Poley, Esq.
James F. McCarthy, III, Esq.
Daniel J. Funk, Esq.
Hon. James D. Piergies