

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

**In Re: V.P.H., a disabled adult,
by P.D., her mother and guardian and
conservator, Petitioner Below, Petitioner**

v.) **No. 11-0168** (Monroe County 09-C-89)

**West Virginia Department of Health and
Human Resources, Intervenor-Respondent
Below, Respondent**

**FILED
June 21, 2012**

released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION¹

The Petitioner, V.P.H., appeals the circuit court's September 24, 2010, order granting summary judgment to the Intervenor, West Virginia Department of Health and Human Resources ("DHHR"). For the reasons set forth in this Opinion, we reverse the circuit court and remand this matter for further proceedings.

V.P.H. sustained catastrophic brain injuries when she was ejected from a vehicle during an automobile accident. P.D., who is the Petitioner's mother, guardian and conservator, reached a settlement with the responsible driver's liability insurance carrier, State Farm Insurance Company, for \$100,000, which was the policy limit under the driver's liability insurance policy. The Petitioner reached a separate settlement with Nationwide Insurance Company for \$200,000 in underinsurance benefits, and \$1,000 in medical payments coverage, bringing the total settlement amount to \$301,000. The settlements did not make allocations among specific types of damages, *e.g.*, medical expenses (past or future) or pain and suffering.

The Petitioner filed a summary proceeding requesting judicial approval of the settlements. DHHR moved to intervene, seeking reimbursement for its Medicaid lien

¹This matter was originally selected and presented under Rule 20 of the *Revised Rules of Appellate Procedure*. However, in light of our recent decision in *In Re: E.B., a minor*, ___ W.Va. ___, ___ S.E.2d ___ (No. 101537, Sept. 20, 2011), the issue of first impression has been decided, and we therefore find disposition of this appeal is more appropriately made pursuant to Rule 21(d) of the *Revised Rules of Appellate Procedure*.

pursuant to *W.Va. Code*, § 9-5-11 [2009]. DHHR stated that V.P.H. had received extensive medical treatment, and that the DHHR's Bureau for Medical Services – West Virginia's designated State Medicaid Agency – paid \$146,555.49 in medical expenses for V.P.H. DHHR informed the court that it had initially offered to reduce its lien to \$96,238.76, which reflected a *pro rata* reduction for Petitioner's attorney fees and expenses. After further negotiations with Petitioner's counsel, DHHR offered to reduce its Medicaid lien to \$76,741. The Petitioner objected to paying the Medicaid lien asserted by DHHR, but offered to pay DHHR \$29,000 in full settlement of the lien.

Unable to reach a mutual resolution, the Petitioner asked the circuit court to approve the settlement, stating that while she contested the amount of the asserted Medicaid lien, there was no dispute regarding the remainder of the settlement proceeds, and that she was willing to place the amount asserted by DHHR (\$76,741) in an escrow account until the court determined the amount that should be paid to satisfy the Medicaid reimbursement lien.

The circuit court held a hearing, approved the settlement, and ordered that the \$76,741 be placed in an escrow account pending further hearing. Subsequent efforts to resolve the dispute over the lien failed, and the parties both filed motions for summary judgment requesting the court to rule on the amount of reimbursement due DHHR, if any.

The Petitioner, in support of her motion, asserted that West Virginia's Medicaid lien reimbursement statute, *W.Va. Code*, § 9-5-11 [2009], "is not enforceable after the United States Supreme Court decision in *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006)." In the alternative, the Petitioner argued that when parties fail to reach an agreement as to the amount of a Medicaid lien, the court must hold a hearing consistent with *Ahlborn* to determine the amount that DHHR can be reimbursed for the medical expenses it has paid.

In response, DHHR asserted that V.P.H. "assigned her right to recovery of medical expenses paid on her behalf by West Virginia Medicaid," and that the DHHR was entitled to recover the entire \$76,741 placed in escrow.

On September 24, 2010, the circuit court granted DHHR's motion for summary judgment, finding that the DHHR had a clear right to be reimbursed the \$76,741 because the issues in *Ahlborn* were distinguishable from those in the Petitioner's case:

The Court believes the *Ahlborn* case is distinguishable from [the Petitioner's]. First, in *Ahlborn*, the [DHHR] did not participate in any settlement negotiations and asserted a lien for the total amount of medical payments made by the [DHHR]. In [the Petitioner's] case, the DHHR

participated in settlement negotiations and reduced the medical payments twice . . . from \$146,556.49 to \$96,238.76 and then further reduced it to \$76,741.00.

The Court believes *W. Va. Code*, § 9-5-11 is enforceable and will not set it aside and apply equitable rules [as argued for by the Petitioner]. The Court does not believe the lien is excessive. [V.P.H.] assigned her right to recovery of medical expenses paid on her behalf by West Virginia Medicaid in the amount of \$146,556.49. The DHHR reduced the lien twice to a final lien amount of \$76,741.00. The amount of the lien does not exceed the amount of medical expenses for the injury and/or disability of [V.P.H.] and the Court believes the DHHR is entitled to this lien amount.

We have previously held that “[a] circuit court’s entry of summary judgment is reviewed *de novo*.” Syllabus Point 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). The issues raised in this appeal were recently addressed by this Court in *In Re: E.B., a minor*, ___ W.Va. ___, ___ S.E.2d ___ (No. 101537, June ___, 2012). In that decision we held that the DHHR can be reimbursed only from the past medical portion of a settlement. In addition, the *E.B.* opinion established that, when a settlement is not allocated and the parties are unable to reach an agreement as to the amount to be reimbursed to DHHR for its Medicaid lien, the circuit court is required to hold an evidentiary hearing and allocate the settlement between past medical expenses and all other damages. The record before us shows that the parties do not agree on the amount of the DHHR’s Medicaid lien, and the circuit court failed to hold an evidentiary hearing to allocate V.P.H.’s settlement proceeds among her various items of damages, including past medical expenses paid by Medicaid. Accordingly, the order of the circuit court granting summary judgment to the DHHR is reversed, and this matter is remanded for a hearing consistent with this Court’s recent decision in *In Re: E.B., a minor, id.*

Reversed and Remanded.

Issued: June 21, 2012

Concurred in by:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh