**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**May 24, 2011**

**A. John Voelker**
**Acting Clerk of Court of Appeals**



**Appeal No. 2010AP2457** **Cir. Ct. No. 2010SC759**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT III**

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**CARDIOVASCULAR ASSOCIATES OF NORTHERN WI, SC,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD E. YOUNG AND MARILYN YOUNG,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Richard and Marilyn Young appeal a small claims judgment awarded to Cardiovascular Associates of Northern WI, SC, for the cost

of medical services rendered to Richard.[1] The Youngs argue the circuit court erred by granting the judgment because Cardiovascular Associates is equitably estopped from seeking payment from them. We disagree and affirm.

## BACKGROUND

¶2 The following facts are undisputed and are taken from the trial testimony and exhibits. Cardiovascular Associates is a medical clinic specializing in the treatment of cardiovascular diseases. Richard was referred to Cardiovascular Associates by his primary care physician.

¶3 When Richard arrived at Cardiovascular Associates for his first appointment, the receptionist asked him for his health insurance information, and he responded that he was covered by Medicare and the Veterans Administration (VA). At the receptionist's request, Richard provided his insurance cards. The receptionist took the cards, "said something to the effect that, 'I'll look or take care of it,'" and walked away. Five to seven minutes later, the receptionist returned and said, "Have a seat, the doctor will see you." Based on the receptionist's words, Richard believed "everything [was] all taken care of" regarding his health insurance.

¶4 After Richard saw the doctor, he was sent to another receptionist to schedule a follow-up appointment. The second receptionist told Richard she was confused about how to process medical bills with the VA. A woman in the next

[1] The chief judge of the court of appeals converted this from an appeal decided by one judge to a three-judge panel by order dated March 23, 2011. *See* WIS. STAT. RULE 809.41(3).

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

cubicle said, "Send Mr. Young in here, I'll take care of it." That woman scheduled further treatment for Richard at Cardiovascular Associates.

¶5 Between July 11 and December 31, 2008, Richard had several office visits at Cardiovascular Associates and underwent a number of tests. The bill for these services amounted to $2,949.02. A claim for payment was submitted to the VA, but the VA denied it, stating, "Veteran did not receive prior authorization before treatment or services were provided." After reconsideration, the VA again denied the claim because "VA facilities were feasibly available to provide the care."

¶6 Cardiovascular Associates initiated a small claims action against the Youngs, seeking payment of Richard's outstanding medical bills plus court costs. At trial, Richard argued that, when the receptionists took his insurance cards, told him they would "take care of it," and scheduled him for further appointments, Cardiovascular Associates assumed responsibility to obtain preauthorization from the VA for any treatment it provided. However, Cathy Bandock, Cardiovascular Associates' financial counselor, testified that the clinic "do[es] not pre-authorize with the [VA] …. The referring physician is expected [to do that] and/or the patient." The circuit court granted judgment in favor of Cardiovascular Associates, and the Youngs appeal.

## DISCUSSION

¶7 The Youngs contend that, because Cardiovascular Associates led Richard to believe it would obtain VA preauthorization for his treatment, it is equitably estopped from seeking payment from the Youngs. Equitable estoppel requires proof of: "(1) action or non-action, (2) on the part of one against whom estoppel is asserted, (3) which induces reasonable reliance thereon by the other, ...

(4) which is to his or her detriment." ***Milas v. Labor Ass'n of Wis., Inc.***, 214 Wis. 2d 1, 11-12, 571 N.W.2d 656 (1997). The party asserting equitable estoppel must prove each element by "clear, satisfactory and convincing evidence." ***Id.*** at 12 n.14. When the facts are undisputed, whether equitable estoppel has been established is a question of law that we review independently. ***Id.*** at 8.

¶8 As a threshold matter, the parties dispute whether a patient can use equitable estoppel as a defense "in a case involving a dispute over payment for medical services after one party's actions resulted in loss of [insurance] coverage[.]" We need not address this issue because, even assuming equitable estoppel is available as a defense, the Youngs have not proven the elements of equitable estoppel.

¶9 Specifically, the Youngs have failed to prove the third element—reasonable reliance. When the receptionists asked for Richard's insurance information, he presented his cards and stated that he was covered by Medicare and the VA. In this context, it was not reasonable for Richard to rely on the receptionists' statements—"I'll look or take care of it" and "I'll take care of it"—as guarantees that his insurance would cover treatment at Cardiovascular Associates. These statements were ambiguous, particularly in light of the fact that Richard never told Cardiovascular Associates about the need for preauthorization and did not ask anyone at Cardiovascular Associates to obtain preauthorization. The receptionists' statements just as likely meant that Cardiovascular Associates would submit a claim to the VA, not that Cardiovascular Associates was warranting that Richard's treatment would be covered.

¶10 Furthermore, Richard could not reasonably rely on the receptionists' acts of taking his insurance cards and scheduling him for further treatment.

Nothing about these acts reasonably suggested Cardiovascular Associates was promising that the VA would pay for Richard's treatment. Again, the most Richard should have expected, based on these acts, was that Cardiovascular Associates would submit a claim to the VA.

¶11 Moreover, while the Youngs assert that Cardiovascular Associates assumed a duty to obtain preauthorization for Richard's treatment, Richard never told Cardiovascular Associates about the need for preauthorization. Richard did not ask anyone at Cardiovascular Associates to obtain preauthorization, nor did anyone at Cardiovascular Associates promise to do so. On these facts, it was not reasonable for Richard to assume that Cardiovascular Associates would get his treatment preauthorized.

¶12 Because Richard's reliance was not reasonable, the Youngs have not proven the elements of equitable estoppel. Accordingly, the circuit court properly granted judgment in favor of Cardiovascular Associates.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.