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10-27-2011

Summary of Cervantes v. Health Plan of Nev., Inc. et al., 127 Nev. Adv. Op. 70

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Nevada Law Journal

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Recommended Citation

DeVaney, Kelli M., "Summary of Cervantes v. Health Plan of Nev., Inc. et al., 127 Nev. Adv. Op. 70" (2011).
Nevada Supreme Court Summaries. 215.
<https://scholars.law.unlv.edu/nvscs/215>

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TORTS – Preemption of State Laws

Summary

An appeal of the Eighth Judicial District Court’s grant of summary judgment in a tort action.

Disposition/Outcome

The Court affirmed the Eighth Judicial District Court’s grant of summary judgment, holding that the Employee Retirement Income Security Act, section 514(a), preempted the Appellants’ state law claims because the selection and retention of the Endoscopy Center of Southern Nevada was based on an administrative decision by an ERISA plan.

Factual and Procedural History

In 2007, appellant Margerita Cervantes (“Cervantes”) allegedly contracted hepatitis C after receiving treatment at the Endoscopy Center of Southern Nevada (“ECSN”). Cervantes received treatment at ECSN as part of the health care benefits she received through the Hotel Employees and Restaurant Employees International Union Welfare Fund (“Culinary Union”).

The Culinary Union benefits were operated through a self-funded Employee Retirement Income Security Act (“ERISA”) health care plan. The Culinary Union contracted with respondents Health Plan of Nevada, Inc.; Sierra Health Services, Inc.; Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc.; and Prime Health (“HPN” collectively) as a managed care organization² (“MCO”) to assist in establishing a network of the plan’s chosen medical providers. Specifically, Sierra Health-Care Options was to be the network manager for the Plan’s provider network. The President of Sierra Health explained in an affidavit that the Culinary Union “would select certain outpatient providers with whom it wanted to contract and [HPN] would negotiate contracts with those providers. Thereafter, Prime Health would sign the contract on behalf of the [Culinary Union].”

Cervantes filed suit for negligence and negligence per se in district court, alleging HPN was responsible for her contracting hepatitis C because HPN referred her to a blatantly unsafe medical provider. Cervantes further alleged that HPN failed to maintain a quality assurance program as required by NRS chapter 695G and accompanying regulations.³

In its answer, HPN asserted several affirmative defenses and made a motion for summary judgment. In its motion for summary judgment, HPN argued that Cervantes’ claim was

¹ By Kelli M. DeVaney.

² NEV. REV. STAT. § 695G.050 (2007) defines a “managed care organization” as “any insurer or organization authorized pursuant to this title to conduct business in this State that provides or arranges for the provision of health care services through managed care.”

³ See NEV. REV. STAT. §§ 695G.010 – 695G.430 (2007) and NEV. ADMIN CODE §§ 695C.019 – 695C.090 (2007) for the relevant statutes and regulations governing MCOs.

preempted by ERISA sections 502(a) and 514(a).⁴ Cervantes' opposed HPN's motion and sought a continuance to discovery. The district court denied Cervantes' request and granted HPN's motion for summary judgment, finding that ERISA section 514(a) preempted Cervantes' claims.

Discussion

Justice Douglas wrote for the Court, sitting en banc. The Court reviewed the district court's grant of summary judgment de novo.⁵ The issue of whether federal law preempts state law is a question of law, so it was also reviewed de novo.⁶

Cervantes argued that the district court erred in concluding that her claims were preempted by ERISA section 514(a), because her claims were not related to the ERISA plan. She further argued that NRS chapter 695G and NAC chapter 695C only have an incidental effect on the plan. To support her argument, Cervantes cited two federal district court cases in which the courts concluded that ERISA section 514(a) preemption did not apply.⁷ Both cases involved patients who sued an MCO for negligence in directing them to ECSN, after the patients had contracted blood borne illnesses from their treatment at ECSN. While factually similar, the Court distinguished the two cases from this situation and was therefore not persuaded by Cervantes' arguments.⁸

The Court next considered the scope of ERISA section 514(a)'s preemptive effect and whether ERISA section 514(a) preempted the application of NRS Chapter 695G and its accompanying regulations. The Court noted that, to ensure that regulation of employee benefit plans would be a federal concern, Congress provided for expansive preemption of otherwise applicable state laws.⁹ These preemptive effects come from ERISA sections 502 and 514(a).¹⁰ However, the Court only analyzed ERISA section 514(a), as that was all that was necessary in this case.

Because the language of ERISA was unhelpful in determining the scope of the preemptive effect, the United States Supreme Court instructed courts to be guided by the purpose of ERISA.¹¹ As ERISA was intended to avoid multiplicity of regulation,¹² the United States Supreme Court explained that a law "relate[s] to" a covered employee benefit plan "if it [(1)] has a connection with or [(2)] reference to such a plan."¹³ Therefore, in determining whether ERISA

⁴ 29 U.S.C. §§ 1132(a), 1144(a)(2006).

⁵ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁶ *Nanopierce Tech. v. Depository Trust*, 123 Nev. 362, 370, 168 P.3d 73, 79 (2007).

⁷ *Insko v. Aetna Health & Life Ins. Co.*, 673 F.Supp.2d 1180 (D. Nev. 2009); *Sadler v. Health Plan of Nevada, Inc.*, 2:08-cv-00466-RLH-LRL (D. Nev. June 28, 2008).

⁸ The Court found that *Insko* was factually distinguishable because the ERISA plan purchased insurance from the MCO for its members rather than establish its own network of providers. *Insko*, 673 F.Supp.2d at 1183. The Court was not persuaded by the arguments in *Sadler* because the Sadler Court failed to distinguish between an entity acting as an HMO or MCO and an entity acting only as an administrative agent.

⁹ *Id.*

¹⁰ *Cleghorn v. Blue Shield of Cal.*, 408 F.3d 1222, 1225 (9th Cir. 2005).

¹¹ *Travelers*, 514 U.S. 645, 656 (1995).

¹² *Id.* at 657.

¹³ *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983).

section 514(a) preempts a state law, a court must look to the “actual operation of the state statute.”¹⁴

The Court stated that a law references an ERISA plan when it “acts immediately and exclusively upon ERISA plans” or “where the existence of ERISA plans is essential to the law’s operation.”¹⁵ The Court noted that the “reference to” analysis was not applicable to this case, as the NRS 695G.180 requirement that MCOs create a quality assurance programs is not predicated on the existence of an ERISA plan. Therefore, NRS 695G.180 does not “reference to” ERISA section 514(a).

The Court also stated that a law may also have an impermissible “connection with” an ERISA plan.¹⁶ The United States Supreme Court found that statutes that “mandate[] employee benefit structures or their administration” are preempted by ERISA section 514(a).¹⁷ The United States Supreme Court noted, though, that ERISA was not intended to displace health care regulations,¹⁸ and that a mere influence or indirect economic effect on an ERISA plan will not cause preemption by 514(a).¹⁹

To determine whether a state law had a forbidden “connection with” ERISA plans, the Court used the factors set forth by the Ninth Circuit in *Oper. Eng. Health & Welfare v. JWW Contracting Co.*²⁰ Based on these factors and persuasive decisions from the Third, Fifth, Ninth, and Tenth Circuits, the Court found that actions taken in the capacity of medical care providers fall within the traditional police powers of the state, whereas actions taken in the capacity of plan administrators are preempted by ERISA section 514(a).

Based on the distinction between the capacity of a medical care provider and the capacity of a plan administrator, a claim predicated upon NRS chapter 695G may be preempted if the MCO acted only as an administrator or agent of the ERISA plan. If so, application of the quality assurance statute would be a direct regulation of the ERISA benefit structure, requiring it to comply with Nevada law.

The question of whether Cervantes’ claims were preempted under the “related to” prong of ERISA section 514(a) depended on whether HPN merely facilitated the selection of providers by the Culinary Union, or if HPN leased out its existing network of providers. The Court found that the selection and retention of ECSN was an administrative decision because the Culinary Union selected its own providers. Moreover, HPN’s actions with ECSN were not independent of

¹⁴ De Buono v. NYSA-ILA Med. and Clinical Services Fund, 520 U.S. 806, 815 (1997).

¹⁵ Cal. Div. of Labor Standards Enforcement v. Dillingham Constr. N.A., Inc., 519 U.S. 316, 324-25 (1997).

¹⁶ *Id.* at 325.

¹⁷ *Travelers*, *supra* note 11 at 657-58.

¹⁸ *Id.* at 661.

¹⁹ *Id.* at 659-60.

²⁰ 135 F. 3d 671,678 (9th Cir. 1998). Factors to aid in determining whether a state law has a “connection with” ERISA plan include: “(1) whether the state law regulates the types of benefits of ERISA employee welfare benefit plans; (2) whether the state law requires the establishment of a separate employee benefit plan to comply with the law; (3) whether the state law imposes reporting, disclosure, funding, or vesting requirements for ERISA plans; and (4) whether the state law regulates certain ERISA relationships, including the relationships between an ERISA plan and employer and, to the extent an employee benefit plan is involved, between the employer and employee.” *Id.*

the ERISA plan. Furthermore, the quality assurance statute differs from the quality of care claims, which are traditionally left to state regulation, because the quality assurance statute would interfere with the plan's administrative decision making and would require additional monitoring of the ERISA plan. Consequently, the Court found that ERISA section 514(a) preempted Cervantes' state law claims.

Conclusion

When a plaintiff's claim is predicated on administrative decisions made in the course of administering an ERISA plan, preemption is appropriate. However, if the complaint stems from actions not performed in the capacity of the ERISA plan, plan administrator, or plan agent, claims will not be preempted by ERISA section 514(a), as the preemption would not further the purpose of uniformity and would unduly infringe on the traditional police powers of the state.