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Summary of Allstate Ins. Co. v. Thorpe, 123 Nev. Adv. Op. No. 52

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Insurance Law – Payment

Summary

The Court considered whether NRS 690B.012² granted private rights of action to medical service providers who administered care to people insured under contracts of “casualty insurance,”³ which would allow medical providers to sue the person’s insurer, if that insurer failed to pay claims on time. The district court held that the Doctors enjoyed a private right of action under the statute, but dismissed the Doctors’ claims, because they first needed to exhaust their administrative remedies with the Nevada Insurance Commissioner before seeking relief in district court. The Insurance Companies appealed.

Disposition/Outcome

Reversed in part and affirmed in part. The district court erred in granting declaratory relief by finding a private right of action in favor of the Doctors under NRS 690B.012. The Nevada Department of Insurance (NDOI) has exclusive jurisdiction to resolve the claims brought under the statute. The Legislative intent behind NRS 690B.012 precludes private actions originating in district court claiming awards of statutory damages and interest.

Factual and Procedural History

In November of 2004, a medical doctor and a group of chiropractic doctors filed suit in district court, alleging that the appellants, ten casualty insurance companies, failed to promptly pay them for medical services provided to patients insured by the appellants. In their second amended complaint, the Doctors sought declaratory relief, alleging that the Insurance Companies violated NRS 690B.012, Nevada’s prompt pay statute.⁴ The declaratory relief claims required that the district court determine if the Doctors had a private right of action to recover individual and class damages under the prompt-pay statute. Lastly, the Doctors sought injunctive relief and claimed rights to recover damages under theories of negligence and unjust enrichment based on the statute.

¹ By Kristina Escamilla.

² NEV. REV. STAT. 690B.012 (2007) is Nevada’s “prompt-pay” statute. It requires casualty insurers to approve and pay, or deny, casualty claims, including claims for medical payment benefits, within a limited timeframe. In addition, an insurer must pay interest on any untimely claims payments.

³ NEV. REV. STAT. 681A.020(1)(2007) defines “casualty insurance” under Title 57 to include vehicle insurance, liability insurance, workers’ compensation and employer’s liability insurance, burglary and theft insurance...and other miscellaneous coverage. Not all of these forms of insurance contain provisions for medical, hospital, and surgical benefits. See NEV. REV. STAT. 681A.020(2)(2007).

⁴ “In their totality, the declaratory relief claims fell within two general categories: (1) allegations seeking determinations that the Insurance Companies violated the prompt-pay statute, and (2) allegations that the Doctors’ claims for payment under their patients’ casualty coverages created a controversy under the prompt-pay statute that was ripe for judicial determination.” 123 Nev. Adv. Op. 52, p. 6.

The Insurance Companies moved to dismiss the action with prejudice for lack of subject-matter jurisdiction. They argued (1) the statute did not give the Doctors a private right of action to bring suit in district court; (2) under the statute, patient claims are personal and are not, as a matter of law, assignable for the Doctors to pursue; and (3) even if such rights are assignable, the Doctors did not provide any indication that they had obtained assignments from their patients.

The district court found that the Doctors had a private right of action for claims arising under NRS 690B.012, but dismissed the Doctors' complaint without prejudice because it found that "primary" jurisdiction over the Doctors' claims rested with the Nevada Insurance Commissioner.⁵ The Insurance Companies appealed the decision.

Discussion

The Insurance Companies argued that NRS 690B.012 does not give the Doctors a private right of action to sue in the district court for violations of the statute. The statute does not expressly create a cause of action, so the Court referred to legislative intent.⁶ After the Court reviewed the statute, it determined that the NDOI has exclusive jurisdiction to enforce the prompt-pay statute's provisions and individuals with a pecuniary interest in the statute's enforcement are restricted to seeking administrative relief under it first. Therefore, the statute did not provide a private right of action to sue in the district court.

The court noted that NRS 679B.120(3) gives the Insurance Commissioner the express authority to "enforce the provisions of [the Nevada Insurance] code, which ultimately includes claims brought under NRS 690B.012."⁷ If the parties are unsatisfied with the decision after conducting a hearing with the Commissioner, NRS 679B.370 grants the parties a right to seek judicial review in the manner provided by The Nevada Administrative Procedure Act.⁸ The court concluded that the NDOI has exclusive jurisdiction in this matter because (1) the Doctors' claims relate to the Commissioner's enforcement of Nevada insurance law and (2) the statutory scheme remedies any "failure of the Commission to act in accordance with statutory duties."⁹

The Insurance Companies also argued that the Doctors did not have standing to bring to bring an action in district court under NRS 690B.012, but they did not suggest that the Doctors could not bring a claim before the NDOI. At the same time, the Insurance Companies claimed the Doctors lacked standing because the statutory claims were either non-assignable as a matter of law or, if there was assignability, the Doctors

⁵ The district court did not decide the issue concerning whether the Doctors possessed assignments of their patient's rights because it said this issue was premature.

⁶ When the court determines whether a statute creates an implied private right of action it is a question of law, and is reviewed de novo.

⁷ In addition, NEV. REV. STAT. 686A.015(1) grants the Insurance Commissioner "exclusive jurisdiction in regulating the subject of trade practices in the business of insurance" in Nevada.

⁸ 123 Nev. Adv. Op. 52, p. 10.

⁹ *Id.*

did not establish that they had obtained assignments to bring claims concerning their patients' rights under the statute. As a result, the court found it necessary to determine if the Doctors even had standing to bring claims before the NDOI.

NRS 690B.012 is silent on who can bring the claim. NRS 679B.310(2)(b) says that the Insurance Commissioner will hold a hearing "upon written application...by a person aggrieved by any...failure of the Commissioner to act."¹⁰ NRS 679B.370 and 679B.370(2) permit aggrieved individuals with a pecuniary interest to seek judicial review if they are unsatisfied with the Commissioner's order or if the Commissioner refused to hear the matter.¹¹

The Court held that because individuals with a pecuniary interest at stake may petition for judicial review under NRS 679B.370, it follows that these are the same type of people who are permitted to apply to the Commissioner for relief in the first instance, just as if they were aggrieved by the Commissioner's failure to enforce the Code. Therefore, medical providers with a pecuniary interest with the enforcement of the prompt-pay statute have a right to apply for a hearing with the NDOI under NRS 679B.310(2)(b).¹²

Conclusion

The Court held that the district court erred in finding that the Doctors had a private right of action under NRS 690B.012. The NDOI has exclusive original jurisdiction to hear claims under NRS 690B.012. Lastly, the Court held that the Legislature intended for medical providers alleging violation of NRS 690B.012 to have a right to apply for a hearing pursuant to NRS 679B.310, and if unsatisfied, to apply petition for judicial review.

¹⁰ NEV. REV. STAT. 679B.310(2)(b)(2007).

¹¹ NEV. REV. STAT. 679B.370(2007) permits an individual to petition for judicial review if the individual's "pecuniary interests [have been] directly and immediately affected" by the Commissioner's failure or refusal to hold a hearing in the first place. In addition, even if there was a hearing by the Commissioner, NEV. REV. STAT. 679B.370(2) permits an individual who was aggrieved by the Commissioner's order to petition for judicial review.

¹² Medical providers have a pecuniary interest in the prompt-pay statute because they are the ones who are directly affected when the Insurance Companies payments to the providers are late.