

ORIGINAL

IN THE SUPREME COURT OF OHIO

Patricia A. Manton,
Petitioner,

v.

Richard Jaques,
Respondent

- * Case No. 09-0820
- * On Appeal from the Lucas County Court of Appeals, Sixth Appellate District
- * Court of Appeals Case No. L-08-1096
- *

MEMORANDUM IN OPPOSITION TO JURISDICTION

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I. INTRODUCTION

(A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment. However, evidence of the life insurance payment or disability payment may be introduced if the plaintiff's employer paid for the life insurance or disability policy, and the employer is a defendant in the tort action.

R.C. 2315.20

An examination of the statute reveals that the General Assembly made a policy decision regarding the collateral source rule in Ohio. The statute provides that defendants in tort actions *will not* be able to introduce evidence of collateral source payments, where the source of those payments has a right of subrogation.

In other words, the General Assembly struck a balance among the three parties present in modern tort litigation--the plaintiff, the defendant and the subrogee. Some portions of the statute favor the defendant, while others favor the subrogee and the plaintiff. In the matter *sub judice*, the Defendant/Petitioner was properly precluded from introducing evidence of the collateral source payments because the payor of the collateral benefits is a subrogee. Thus, the Court of Appeals properly read and applied the statute to the facts in this particular case.

II. THERE ARE NO PROPER GROUNDS FOR JURISDICTION

A. Grounds upon which jurisdiction may be granted for a discretionary appeal

The Ohio Supreme Court hears discretionary appeals in civil matters where either a "substantial constitutional question is involved," or where "the case is one of public or great general interest." S. Ct. Prac. R. III. Petitioner has not argued that this case presents a

constitutional question. Therefore, proper grounds for jurisdiction would lie only if Petitioner can demonstrate that her cause is one of public or great general interest. Williamson v. Rubich, (1960) 171 Ohio St. 253, 254.

B. This is not a case of public or great general interest

The phrase “public or great general interest” entered this Court’s legal lexicon as a result of the Constitutional Convention of 1912. During the course of the debates, Delegate Hiram Peck said:

The words “In cases of public or great general interest,” have been partially construed, and what the committee means is cases of “public interest” in which the public is interested--state, county or city, some public body--or of “great general interest,” cases which involve questions affecting a good many people and that have aroused general interest.

PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1912, C.B. Galbreath, Secretary, Clarence E. Walker, Reporter, F.J. Heer Printing Co., Columbus, OH (1912), Vol. I, p. 1030.

Thus, the framers of the Ohio Constitution determined that “public interest” referred to cases in which some governmental agency was involved and “great general interest” referred to cases in which many Ohioans would have a general interest.

Since the Constitutional Convention of 1912, this Court has interpreted the phrase, “in cases of public or great general interest,” to include (1) “[n]ovel questions of law or procedure” Noble v. Colwell, (1989) 44 Ohio St. 3d 92, 94; (2) the application or extension of constitutional rights or principles, State v. Bolan, (1971) 27 Ohio St. 2d 15, 17; (3) “the duty and authority of public officials in a situation likely to recur” In re Popp, (1973) 35 Ohio St. 2d 142, 144 (*quoting the lower appellate court’s decision in the matter*); (4) the duty and authority of private institutions (patient’s right to her hospital records) Wallace v. University Hospitals of Cleveland, (1961) 171 Ohio St. 487, 489; and (5) the resolution of a conflict between the

courts of appeals even where no such conflict has been certified, Flury v. The Central Publishing House of Reformed Church in the United States, (1928) 118 Ohio St. 154, 159.

The matter at bar does not present any novel questions of law or procedure. There are no questions regarding the extension of constitutional rights or principles. There are no questions regarding the duty and authority of either a public official or a private institution. Finally, there are no conflicts among the Courts of Appeals.

Simply put, there is nothing in this appeal which makes it a matter of public or great general interest. As this Court held over fifty years ago, “[a]n unambiguous statute is to be applied, not interpreted.” Sears v. Weimer, (1944) 143 Ohio St. 312, SYLLABUS, ¶ 5. The simple application of a clearly written statute is not a matter of public or great general interest.

III. ARGUMENT IN OPPOSITION TO PETITIONERS PROPOSITIONS OF LAW

Petitioner’s Proposition of Law No. 1

Because no one pays the difference between amounts originally billed and amounts accepted as full payment, those amounts are not “benefits” under the collateral source rule. Hence evidence of such write-offs is not precluded by R.C. 2315.20, and such evidence is admissible on the issue of reasonableness and necessity of charges for medical treatment and hospital care.

Building on the holding in *Sears*, this Court has “stated on numerous occasions that if the meaning of a statute is clear on its face, then it must be applied as it is written.” Lake Hospital System, Inc. v. Ohio Insurance Guaranty Association, (1994) 69 Ohio St. 3d 521, 524. In this case the statute, on its face, clearly precludes defendant from introducing *any* evidence (including so-called “write-offs”) of any amount payable as a benefit to the plaintiff by a subrogated collateral source.

The statute provides, in pertinent part:

(A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from

an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, **except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation** R.C. 2315.20 (bolding added).

By using the word “evidence,” as opposed to using the phrase “benefit paid” or some other similar phrase, the General Assembly has also *precluded* all evidence of “write-offs” where the payor has a subrogated interest. Thus, the amount written off is *not* admissible evidence where the collateral source payor has a protected right of subrogation. The amount written off would be admissible evidence *only* where the collateral source payor has no subrogation interests which need to be protected.

Therefore, the Petitioner’s proposition of law is incorrect because it fails to consider the entire statute. This Court has held, “words in a statute do not exist in a vacuum. We must presume that in enacting a statute the General Assembly intended for the entire statute to be effective.... Thus, all words should have effect and no part should be disregarded.” D.A.B.E., Inc. v. Toledo-Lucas Co. Board of Health, 96 Ohio St. 3d 250, 254; 2002 Ohio 4172, ¶ 19.

Finally, “[i]t has been held, too often to need any citation of authority, that in seeking legislative intention courts are to be guided by what the legislative body said rather than what we think they ought to have said.” State ex rel Foster v. Evatt, (1944) 144 Ohio St. 65, 104. In the matter *sub judice*, the statute is clear. There is no ambiguity requiring judicial interpretation. When all the words of the statute of given their proper meaning and effect there can only be one result--viz. that evidence of write-offs is not admissible where the collateral benefit subrogee has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation.

Petitioner's Proposition of Law No. 2

Even if the Court of Appeals is correct in ignoring Robinson, amounts written off are still entirely admissible under R.C. 2315.20 because no contractual right of subrogation can exist for amounts that have never been paid.

The Petitioner would have this Court ignore the word "evidence" and its clear meaning. As noted above, the statute allows both the amount paid by the collateral source and the write-off *unless* "the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation..." R.C. 2315.20. In other words, where the source of collateral benefit payments has a right of subrogation, evidence of collateral source payments is not admissible. Because evidence of the write-off amount is evidence of the amount of the collateral source payment, it is not admissible.

The Petitioner's contention that the write-offs are admissible because there is no right of subrogation to amounts that have not been paid is inapposite. The statute uses the word "evidence."

As noted above, the plaintiff must introduce the amount billed in order to prove damages. To suggest that the write-off amounts are not evidence of the amount paid by the collateral source is to suggest that no one on any jury in the State of Ohio is capable of simple subtraction. As is readily demonstrated by a simple example, evidence of the amount written off is also necessarily evidence of the amount paid by the collateral source.

If we assume a case where the medical bills are \$30,000.00 and the amount accepted by the medical providers is \$10,000.00, then the amount written-off must be \$20,000.00. For purposes of this example, we must also assume that the \$10,000.00 was paid by an insurance provider which has a contractual right of subrogation. Thus, under the Petitioner's theory,

the plaintiff would have to introduce the \$30,000.00 billed for the medical care and the defendant would introduce the \$20,000.00 write-off. The problem with the Petitioner's argument is that it is clearly counter to R.C. 2315.20. Evidence of the collateral benefit paid by the protected subrogee (i.e. the \$10,000.00) is clearly discernable by simple subtraction. The jury would simply take \$30,000.00 – \$20,000.00 to arrive at \$10,000.00 as the amount paid by the subrogee. The unavoidable conclusion is that evidence of the write-off amount *is* evidence of the collateral source payment made by the subrogee.

The statute clearly and unequivocally forbids introduction of evidence of collateral source payments where that source has a protected subrogation interest. Thus, by allowing the introduction of write-offs, as Petitioner suggests, the courts would be allowing evidence of the collateral source payment in every case regardless of the rights of the subrogee. R.C. 2315.20 clearly forbids that outcome. Once again, the Petitioner is misreading a simple straightforward statute.

IV. CONCLUSION

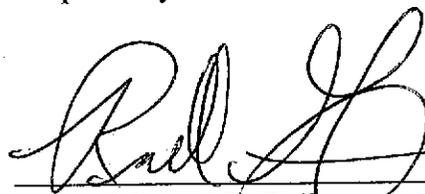
The General Assembly made a policy decision when it passed R.C. 2315.20. That policy decision (as expressed in R.C. 2315.20) favors defendants in some instances and subrogees in others. Petitioner would have this Court ignore the clear language of the statute and completely abrogate the protections afforded subrogees by R.C. 2315.20.

“The purpose of this statute [R.C. 2315.20] was to set forth Ohio’s statement of law on the collateral-source rule. *This new collateral-benefits statute does not apply in this case, however, because it became effective after the cause of action accrued and after the complaint was filed.*” Robinson v. Bates, (2006) 112 Ohio St. 3d 17, 21, n.1; 2006 Ohio 6362, ¶ 10(a) (emphasis added). The *Robinson* Court explicitly held that (1) the statute sets forth Ohio’s

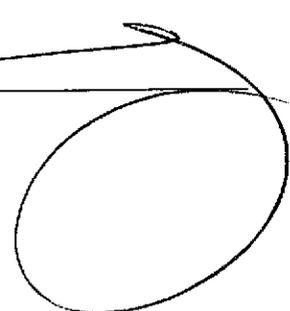
statement of law on the collateral source rule, and (2) that the *Robinson* decision did not apply to the new statute but only to the old common law collateral source rule. Yet, the Petitioner asks this Court to substitute its own rule for the legislature's statute.

In essence, the Petitioner is asking the Court to legislate from the bench. The Petitioner is unwilling to accept the clear language of the statute and is asking this Court to rewrite the law. The Court should decline this invitation and refuse to grant jurisdiction to Petitioner's appeal.

Respectfully submitted



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CERTIFICATION

This is to certify that a copy of the foregoing **Memorandum in Opposition to Jurisdiction** was sent this 2nd day of June, 2009, via ordinary U.S. mail, postage pre-paid, to:

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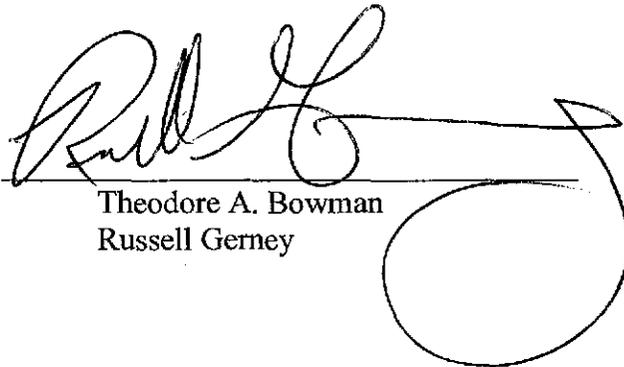
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