

ORIGINAL

IN THE SUPREME COURT OF OHIO

TIMOTHY METCALFE, *et al.*,)
)
Appellants,)
)
vs.)
)
THE CITY OF AKRON, *et al.*,)
)
Appellees.)

Case No.: 14-0738
On Appeal from the Franklin County
Court of Appeals, Tenth Appellate District
Court of Appeals Case Nos.
13-AP-473, 13-AP-484, 13-AP-496

FILED
JUN 09 2014
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN OPPOSITION TO JURISDICTION
OF APPELLEE MEDICAL MUTUAL OF OHIO

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JUN 09 2014
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I. STATEMENT AS TO WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

This Court historically has recognized “questions of public or great general interest as distinguished from questions of interest primarily to the parties.” *Williamson v. Rubich*, 171 Ohio St. 253, 254, 168 N.E.2d 876,877 (1960). Contrary to Appellants’ contention, this case falls in the latter category for several reasons.

First, as evidenced by the decisions of both the Trial Court and the Tenth District Court of Appeals, this case involves a straightforward statutory construction of Ohio’s Coordination of Benefits (“COB”) statute. R.C. §3902.13. Both courts simply applied the plain meanings of the pertinent statutory provisions to conclude that the City of Akron’s (“Akron”) and the Ohio Police & Fire Pension Fund’s (“OP&F”) self-funded governmental health plans for police and fire retirees are not subject to Ohio’s COB statute. As such, the appellate court decision simply resolved that specific dispute between the parties and did not give rise to a question of great public interest.

Second, placed in context, both the Trial Court and Appellate Court decisions simply adhered to an interpretation of the COB statute that the Ohio Department of Insurance (“ODI”) historically has advanced for many years. (*See* discussion, *infra*). Consequently, there was no departure from existing administrative or other precedent so as to create a question of great public interest.

Finally, the absence of great general interest is reflected in ODI’s own lack of pursuing the matter on appeal to this Court. This appeal is being advanced by individual Appellants, not ODI. In the proceedings below, ODI had joined the individual Appellants in appealing the Trial Court’s decision to the Tenth District Court of Appeals. ODI has chosen not to continue that

path. Moreover, ODI has formally waived the filing of a Memorandum in Response to Appellants' Memorandum in Support of Jurisdiction. Accordingly, it appears ODI believes the matter resolved and does not believe this Court should take the case as a matter of public or great general interest.

Given the foregoing, Appellee Medical Mutual of Ohio ("Medical Mutual") respectfully requests that the Court decline jurisdiction in this case.

II. RESPONSE TO APPELLANTS' PROPOSITIONS OF LAW

While Appellants present four separate propositions of law, their fundamental contention is that Akron's and OP&F's self-funded retiree health plans are subject to Ohio's COB statute. The Tenth District Court of Appeals undertook not one, but two, comprehensive evaluations of all aspects of the relevant provisions of R.C. Chapter 39. (*See* Appendix to Appellants' Memorandum in Support of Jurisdiction). In doing so, Court of Appeals soundly and comprehensively dissected, and rejected, Appellants' strained efforts to manufacture statutory application where none exists. Indeed, Appellants' frustration in regard to the COB statute's non-application is more appropriately directed at the Ohio General Assembly, which certainly could have applied the COB statute to self-funded government plans had it desired to do so.

With regard to the substantive aspects of the statutory application, Medical Mutual joins in the arguments proffered by Akron in its Memorandum in Response and asks that the Court decline jurisdiction on the basis of those arguments.

In addition, while not expressly stated in their Memorandum, Appellants suggest that Medical Mutual is a "third-party payer" as defined in R.C. 3901.38(F), and its conduct should thus be subject to the COB statute, because Medical Mutual is an "insurance company." However, Medical Mutual was not acting in its capacity as an "insurance company" in this case.

Rather, Medical Mutual served only as a third-party claims administrator for the self-funded government plans. Medical Mutual did NOT provide insurance in connection with these plans.

In its decision, the Trial Court originally concluded that Medical Mutual was not subject to ODI's jurisdiction because the self-funded plans at issue are not subject to Chapter 39. The Tenth District Court of Appeals likewise noted that "for purposes of this action, MMO was merely the administrator of the self-insured health plans offered by Akron and OP&F." (Decision on Motion for Reconsideration at 9). As such, in noting the distinctive nature of Medical Mutual's role in administering the self-funded health plans, the Appellate Court acknowledged the reality that the basis for ODI's jurisdiction lies in the nature of the health plan at issue, not in the happenstance that Medical Mutual, in other situations, acts as an insurance company. Consequently, Medical Mutual does not qualify as a third-party payer subject to the COB statute in this situation since the plans themselves are not subject to the COB statute. In addition, ODI's jurisdiction cannot be based on Medical Mutual's status in unrelated situations.

In reaching these conclusions, the Trial Court and the Tenth District Court of Appeals simply followed the principle that "an administrative agency can exercise only such jurisdiction that statute confers upon it." *Jack Matia Chevrolet, Inc. v. General Motors Corp.* 10th Dist. Franklin, No. 06AP-360, 2007-Ohio-420, *P13. *See also Time Warner AxS v. PUCO* 75 Ohio St. 3d 229, 234, 661 N.E. 2d 1097, 1101 (1996) ("The commission, as a creature of statute, may exercise only that jurisdiction conferred on it by statute."). Accordingly, since the self-funded government benefit plans are not subject to Chapter 39 regulation, it is entirely logical to conclude that Medical Mutual's administration of those self-funded plans is not subject to Chapter 39 regulation.

Indeed, ODI repeatedly reached this same conclusion in response to consumer complaints about both public and private self-funded health plans. For example, in 2007, a participant in the OP&F pension fund filed a consumer complaint against Medical Mutual. ODI declined to address the complaint, stating:

We have reviewed your complaint, which involves a self-funded public employee retirement plan. Self-funded plans providing retirement health coverage are not regulated by state law.

In this case, Medical Mutual is acting as the administrator of your plan with Ohio Police and Fire Pension Fund. Therefore, we have no jurisdiction in this matter.

ODI consistently took this position on several occasions.

Thus, it is clear that ODI historically recognized that there are circumstances when it lacks jurisdiction to address a complaint where the health plan at issue is administered by Medical Mutual, even though Medical Mutual is an insurance company. As such, the fact that Medical Mutual may, in other situations, act in its capacity as an insurance company (and, indeed may be subject to the COB statute in those situations) does not and cannot create jurisdiction where the self-funded government plan itself is not subject to ODI jurisdiction under Chapter 39.

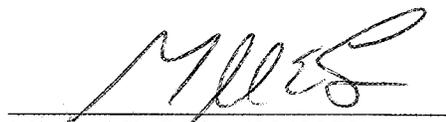
Indeed, the logical, albeit inappropriate, conclusion of such a contention is that, because Medical Mutual sometimes acts as an insurer or a third party administrator for other plans that may be subject to Ohio's insurance statutes, ODI can exercise jurisdiction over Medical Mutual for anything that Medical Mutual does, regardless of whether Medical Mutual's conduct in any particular circumstance is subject to Chapter 39 regulation. So, if Medical Mutual engages in insurance-related transactions outside of Ohio, can ODI attempt to regulate that conduct because Medical Mutual is sometimes an insurer or third-party administrator for purposes of Chapter 39? If Medical Mutual engages in non-insurance-related transactions in Ohio, can ODI regulate that

conduct because Medical Mutual is sometimes an insurer or third-party administrator for purposes of Chapter 39? The answer is obviously no.

CONCLUSION

The foregoing analysis demonstrates that this case does not involve a question of public or great general interest and that Appellants have not advanced legitimate propositions of law that warrant review and consideration by the Court. Accordingly, Appellee Medical Mutual of Ohio respectfully requests that this Court decline to exercise jurisdiction over Appellants' appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Copies of the foregoing Memorandum in Response of Appellee Medical Mutual of Ohio were served via regular U.S. Mail, postage pre-paid, this 6th day of June, 2014, upon the following:

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