DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Q.H. c/o A.H. v. Sunshine State Health Plan, Inc.

No. 4D20-741 · No. No. 4D20-741 · Decided October 7, 2020

SUMMARY

The Florida Fourth District Court of Appeal denied a prevailing child's motion for appellate attorney's fees after reversing an agency decision involving Medicaid-related medical necessity and EPSDT benefits. The court held that the agency's conduct did not constitute a gross abuse of discretion, that the cited statutory fee provisions did not apply, and that equitable considerations did not warrant creating an exception to the American rule.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	GROSS, J.; CIKLIN, J.; ARTAU, J.
JURISDICTION	Florida
DECIDED	October 7, 2020
DOCKET	No. 4D20-741
DISPOSITION	other
PROCEDURAL POSTURE	After the court reversed the case on the merits in a separate opinion, the prevailing appellant moved for appellate attorney's fees under sections 120.595(5), 57.105(5), and 57.111, Florida Statutes, and under equitable doctrines.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Q.H. c/o A.H., a child v. Sunshine State Health Plan, Inc.

TOPICS

remedies · appellate procedure · administrative law · statutory interpretation

PRACTICE AREAS

appellate attorney's fees · administrative law · health law · appellate procedure

QUESTIONS PRESENTED

1. Whether the prevailing appellant was entitled to appellate attorney's fees under section 120.595(5), Florida Statutes, based on a frivolous, meritless, abusive, or grossly abusive appeal or agency action.
2. Whether section 57.105(5), Florida Statutes, authorized an appellate fee award in this appeal from an administrative proceeding.
3. Whether the appellant qualified as a small business party entitled to fees under section 57.111, Florida Statutes.
4. Whether equitable considerations or an exception to the American rule required an award of appellate attorney's fees.

HOLDINGS

1. The appellant was not entitled to discretionary appellate attorney's fees because AHCA's position was not unjustified and its reliance on published prior-authorization criteria did not constitute a gross abuse of agency discretion.
2. Section 57.105(5) did not apply because this appellate proceeding was not an administrative proceeding under chapter 120 and the judges of the district court were not administrative law judges; the appellant also failed to establish compliance with the statutory and rule-based safe-harbor requirement.
3. The appellant was not entitled to fees under section 57.111 because the child did not meet any statutory definition of a small business party.
4. Equitable considerations, including the parties' financial disparity, did not authorize an appellate fee award because no recognized exception to the American rule applied and the court would not create a broad new exception.

KEY QUOTATIONS

> *"Under the American rule, "a court may only award attorney's fees when such fees are expressly provided for by statute, rule, or contract.""* (at 3)

> *"However, an award of fees under this doctrine "must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees.""* (at 3)

FACTUAL BACKGROUND

The appeal concerned the interaction between federally authorized benefits and the Agency for Health Care Administration's prior-authorization criteria. Although the merits opinion concluded that AHCA should have taken a more expansive view of medical necessity under the EPSDT, the court found that AHCA's reliance on its published prior-authorization criteria was not a gross abuse of discretion. The appellant also relied on financial disparity and lack of financial means to seek fees under equitable principles.

PROCEDURAL HISTORY

The underlying matter arose from an administrative proceeding before the Florida Agency for Health Care Administration, with lower tribunal case number AHCA 20-FH0016. The Fourth District had reversed the case on the merits in a separate opinion, and it denied the appellant's subsequent motion for appellate attorney's fees on all asserted grounds.

DISPOSITION

other

CASES CITED

- Residential Plaza At Blue Lagoon, Inc. v. Agency for Health Care Admin., 891 So. 2d 604, 607 (Fla. 1st DCA 2005)
- Pro Tech Monitoring, Inc. v. State, Dep't of Corr., 72 So. 3d 277, 282 (Fla. 1st DCA 2011)
- Bane v. Bane, 775 So. 2d 938, 940 (Fla. 2000)
- Reiterer v. Monteil, 98 So. 3d 586, 587 (Fla. 2d DCA 2012)
- Topalli v. Feliciano, 267 So. 3d 513, 518 (Fla. 2d DCA 2019)
- Barbara Moakley v. Sheri Smallwood, Moakley v. Smallwood, 826 So. 2d 221, 226-227 (Fla. 2002)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT Q.H. c/o A.H., Appellant, v. SUNSHINE STATE HEALTH PLAN, INC., Appellee. No. 4D20-741 [October 7, 2020] CORRECTED OPINION Appeal from the State of Florida, Agency for Health Care Administration, L.T. Case No. AHCA 20-FH0016. Morgan L. Weinstein of Weinstein Law, P.A., Fort Lauderdale, and Maria T. Santi of Health and Medicine Law Firm, Miami, for appellant.

Craig H. Smith and Paige S. Comparato of Hogan Lovells US LLP, Miami, for appellee. Nicholas A. Merlin, Senior Attorney, Tallahassee, for amicus curiae Agency for Health Care Administration. On Motion for Appellate Attorney’s Fees GROSS, J. By a separate opinion, we have reversed the case, so the appellant/child has prevailed in the appeal.

The child moves for appellate attorney’s fees on four substantive grounds: (1) section 120.595(5), Florida Statutes; (2) section 57.105(5), Florida Statutes; (3) section 57.111, Florida Statutes; and (4) equitable considerations.

We deny the motion on all grounds, and consider each in turn. Section 120.595(5) Section 120.595(5), Florida Statutes (2020), states in relevant part: When there is an appeal, the court in its discretion may award reasonable attorney’s fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency’s discretion.

A “gross abuse of the agency’s discretion” occurs when: (1) there was “no justification for the position” taken by the agency, such that the “appeal should have never ensued,” Residential Plaza

At Blue Lagoon, Inc. v. Agency for Health Care Admin., 891 So. 2d 604, 607 (Fla. 1st DCA 2005); or (2) the agency's action was so contrary to the fundamental principles of administrative law that it constituted a gross abuse of discretion, Pro Tech Monitoring, Inc. v. State, Dep't of Corr., 72 So.

3d 277, 282 (Fla. 1st DCA 2011). Here, the child has not shown that the agency's action was a gross abuse of discretion. This case involves difficult legal issues concerning the interaction between the benefits authorized under a federal statute and the agency's prior authorization criteria. It cannot be said that there was "no justification" for the agency's position or that it was contrary to fundamental principles of agency law.

In short, while the majority opinion on the merits concluded that the AHCA should have taken a more expansive view of medical necessity under the EPSDT, the AHCA's reliance on its published prior authorization criteria does not meet the standard of a gross abuse of discretion.

Thus, we deny the child's motion for appellate fees on this ground. Section 57.105(5) Section 57.105(5), Florida Statutes (2020), provides: In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4).

Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this 2 subsection.

In this case, section 57.105(5) does not apply because this appeal is not an "administrative proceeding" under chapter 120, nor are the judges of this court "administrative law judges." Furthermore, the child has not established that she complied with the 21-day safe harbor provision in section 57.105(4) or in Florida Rule of Appellate Procedure 9.410(4). Section 57.111 Section 57.111(4)(a), Florida Statutes (2020), provides that "an award of attorney's fees and costs shall be made to a prevailing small business party in any adjudicatory proceeding or administrative proceeding pursuant to chapter 120 initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust." Here, the child does not fall within any of the definitions of a "small business party." See § 57.111(3)(d), Fla. Stat. (2020).

Therefore, the child is not entitled to fees under this section. Equitable Considerations Finally, the child argues that equitable considerations require that Sunshine Health "pay her appellate attorney's fees and costs due to her lack of financial means and [the] disparity in the means available to [her] in comparison to [Sunshine Health]." Citing exceptions to the American rule, the child argues that “[t]he American Rule can and does yield when competing policy or equitable considerations outweigh the principles on which it is based.” Under the American rule, “a court may only award attorney’s fees when such fees are expressly provided for by statute, rule, or contract.” Bane v. Bane, 775 So.

2d 938, 940 (Fla. 2000) (internal quotation marks omitted). Courts are hesitant to create exceptions to the American rule. Reiterer v. Monteil, 98 So. 3d 586, 587 (Fla. 2d DCA 2012). The “small list” of exceptions to the American rule includes the common fund doctrine and the inequitable conduct doctrine. Topalli v. Feliciano, 267 So. 3d 513, 518 (Fla. 2d DCA 2019).

Under the inequitable conduct doctrine, courts have “the inherent authority to impose attorneys’ fees against an attorney for bad faith conduct.” Moakley v. Smallwood, 826 So. 2d 221, 226 (Fla. 2002). However, an award of fees under this doctrine “must be based upon an 3 express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys’ fees.” Id. at 227.

In this case, none of the recognized exceptions to the American rule apply. There is no basis for concluding that the arguments in the answer brief were made in bad faith. Indeed, the child has not specifically argued that Sunshine Health has engaged in inequitable or bad faith conduct in this appeal, nor has the child contended that this case falls within any recognized exception to the American rule.

We decline to create a broad new exception to the American rule based on the vastly different financial situations of the parties. Motion denied. CIKLIN and ARTAU, JJ., concur. * * * Not final until disposition of timely filed motion for rehearing. 4