

SUPREME COURT OF ALABAMA

Massey Chevrolet, Inc. v. Aderhold

23 So. 3d 43 (Ala. 2009) · No. 1080560 · Decided May 22, 2009

SUMMARY

The Alabama Supreme Court denied Travis Aderhold's petition for a writ of certiorari without opinion in a workers' compensation dispute concerning an employer's responsibility to pay for medical treatment authorized by a physician. Justice Murdock specially concurred, expressing no agreement with the Court of Civil Appeals' analysis regarding whether a non-authorized treating physician could bind the employer to pay for treatment by another physician.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Chief Justice Cobb; Justice Lyons; Justice Woodall; Justice Stuart; Justice Bolin; Justice Parker; Justice Shaw; Justice Murdock
JURISDICTION	Alabama
DECIDED	May 22, 2009
DOCKET	1080560
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Travis C. Aderhold petitioned the Supreme Court of Alabama for a writ of certiorari seeking review of the Alabama Court of Civil Appeals' decision concerning Massey Chevrolet's liability for medical treatment under the Alabama Workers' Compensation Act.
PRECEDENTIAL VALUE	Published disposition denying certiorari; no majority merits opinion and no merits holding stated.
PARTIES	Travis C. Aderhold, petitioner v. Massey Chevrolet, Inc.

TOPICS

- workers compensation
- writ of certiorari
- appellate procedure
- employment law

PRACTICE AREAS

- workers compensation
- employment law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Alabama should grant Aderhold's petition for a writ of certiorari challenging the Court of Civil Appeals' application of the Alabama Workers' Compensation Act to treatment authorized by a physician who was not the employee's authorized treating physician.

KEY QUOTATIONS

"[T]he employer is responsible for paying for the treatment choice made by the authorized treating physician so long as that choice falls within the parameters of what is "reasonably necessary" to treat the employee." (44)

"Consistent with this court's holding in Genpak [Corp. v. Gibson, 534 So.2d 312 (Ala.Civ.App.1988),] and the other cases cited above, because the treating physician prescribed treatment by Dr. Kelsey, and because there is no evidence indicating that that treatment did not fall within the parameters of what was 'reasonably necessary' as contemplated by § 25-5-77(a), [Ala.Code 1975,] that treatment was authorized under the Workers' Compensation Act." (45)

FACTUAL BACKGROUND

Aderhold received procedures and treatments from Dr. Charles Aprill in connection with a workers' compensation claim. The Court of Civil Appeals held that Massey Chevrolet was responsible for paying for that treatment to the extent it had been authorized by Dr. Chris Nichols. Justice Murdock noted that Dr. Nichols was not Aderhold's authorized treating physician; Dr. Brendt Peterson was the authorized treating physician.

PROCEDURAL HISTORY

The Alabama Court of Civil Appeals held that Massey Chevrolet was liable for procedures and treatments administered by Dr. Charles Aprill to the extent those procedures and treatments were authorized by Dr. Chris Nichols. Aderhold petitioned the Supreme Court of Alabama for certiorari review. The Supreme Court denied the writ without opinion; Justice Murdock concurred specially and expressed reservations about the Court of Civil Appeals' analysis.

DISPOSITION

writ_denied

CASES CITED

- Ex parte Massey Chevrolet, Inc., 23 So. 3d 33 (Ala. Civ. App. 2009)
- Overnite Transportation Co. v. McDuffie, 933 So. 2d 1092 (Ala. Civ. App. 2005)
- Ex parte Southeast Alabama Medical Center, 835 So. 2d 1042 (Ala. Civ. App. 2002)
- Ex parte Alabama Power Co., 863 So. 2d 1099 (Ala. Civ. App. 2003)
- Genpak Corp. v. Gibson, 534 So. 2d 312 (Ala. Civ. App. 1988)

OPINION

PER CURIAM.

23 So.3d 43 (2009) Ex parte Travis C. Aderhold (In re MASSEY CHEVROLET, INC. v. Travis C. ADERHOLD). 1080560. Supreme Court of Alabama. May 22, 2009. *44 Richard E. Browning and Katherine M. Browning of Richard E. Browning, P.C., Mobile, for petitioner. Submitted on petitioner's brief only. Prior report: Ala.Civ.App., 23 So.3d 33. SMITH, Justice. WRIT DENIED.

NO OPINION. COBB, C.J., and LYONS, WOODALL, STUART, BOLIN, PARKER, and SHAW, JJ., concur. MURDOCK, J., concurs specially. MURDOCK, Justice (concurring specially). I concur in denying the petition for a writ of certiorari filed by Travis Aderhold. I do not wish, however, to be understood as necessarily agreeing with the analysis in the opinion of the Court of Civil Appeals in this case.

Ex parte Massey Chevrolet, Inc., [Ms. 2071082, January 23, 2009] 23 So.3d 33 (Ala.Civ.App.2009). The Court of Civil Appeals held that Aderhold's employer, Massey Chevrolet, Inc., was liable under the Alabama Workers' Compensation Act for paying for procedures and treatments administered to Aderhold by Dr. Charles Aprill to the extent that those procedures and treatments were authorized by Dr. Chris Nichols.

Dr. Nichols, however, was not Aderhold's authorized treating physician. Consequently, the Court of Civil Appeals has gone further than previous decisions of that court and of this Court in its holding in this case. In reaching its decision, the Court of Civil Appeals correctly quoted *Overnite Transportation Co. v. McDuffie*, 933 So.2d 1092 (Ala.Civ.App.2005), as follows: "[T]he employer is responsible for paying for the treatment choice made by the authorized treating physician so long as that choice falls within the parameters of what is 'reasonably necessary' to treat the employee.

See Ex parte Southeast Alabama Med. Ctr., 835 So.2d 1042, 1046 n. 4 (Ala.Civ.App.2002). This principle has been applied repeatedly in cases in which the "treatment" recommended by the authorized physician is a treatment to be administered by a second physician." Ex parte Massey Chevrolet, Inc., 23 So.3d at 36 (quoting *Overnite Transportation*, 933 So.2d at 1096 (emphasis added)).

The Court of Civil Appeals also noted the holding in Ex parte Alabama Power Co., 863 So.2d 1099, 1102 (Ala.Civ.App.2003), that "the [authorized treating] physician is empowered under the [Workers' Compensation] Act to treat the employee for so long as is reasonably necessary and to refer the employee to other medical providers for reasonably necessary treatment." 23 So.3d at 37.

Dr. Nichols was not Aderhold's "authorized treating physician" under the Act; Dr. Brendt Peterson was Aderhold's authorized treating physician. I do not wish to be understood, therefore, as having

concluded for purposes of this case that Dr. Nichols had the authority to bind Massey Chevrolet to pay for treatment by another physician.

The authority upon which the Court of Civil Appeals bases its conclusion, including those authorities quoted above, would apply to Dr. Aprill only if he had been authorized by Dr. Peterson to treat Aderhold. In Overnite Transportation, the employer authorized Dr. John Hackman to serve as the employee's treating physician. Dr. Hackman, in turn, referred the employee to Dr. Edwin Kelsey for pain management.

The Court of Civil Appeals held as follows: *45 "Consistent with this court's holding in Genpak [Corp. v. Gibson, 534 So.2d 312 (Ala.Civ.App.1988),] and the other cases cited above, because the treating physician prescribed treatment by Dr. Kelsey, and because there is no evidence indicating that that treatment did not fall within the parameters of what was 'reasonably necessary' as contemplated by § 25-5-77(a), [Ala.Code 1975,] that treatment was authorized under the Workers' Compensation Act."2 "2 This case does not present the arguably different question of whether McDuffie would be entitled to reimbursement of the cost of being treated by a physician to whom Dr. Kelsey, in turn, might have referred him."

933 So.2d at 1097 (emphasis added). Massey Chevrolet has not sought certiorari review of the Court of Civil Appeals' decision. I concur in the decision to deny the petition for certiorari review filed by Aderhold, the employee.