

SUPREME COURT OF VIRGINIA

Afzall ex rel. Afzall v. Commonwealth

639 S.E.2d 279 · Decided January 12, 2007

SUMMARY

The Virginia Supreme Court considered whether sovereign immunity barred a declaratory judgment action challenging the Commonwealth's Medicaid lien under Code § 8.01-66.9. The court held that the statute did not expressly waive sovereign immunity for such an action and that the trial court lacked subject matter jurisdiction. The appeal was dismissed, and final judgment was entered for the Commonwealth.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Harry L. Carrico
JURISDICTION	Virginia
DECIDED	January 12, 2007
DISPOSITION	dismissed
PROCEDURAL POSTURE	Adam Afzall appealed the dismissal of his motion for declaratory judgment concerning the amount of the Commonwealth's Medicaid lien. On appeal, the Commonwealth raised sovereign immunity for the first time.
STANDARD OF REVIEW	Subject matter jurisdiction is reviewed de novo, and lack of subject matter jurisdiction may be noticed by the court sua sponte.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Virginia
PARTIES	Adam Afzall, by his parents and next friends, Sophia and Stephen Afzall v. Commonwealth

TOPICS

- subject matter jurisdiction
- declaratory judgment
- appellate procedure
- statutory interpretation
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- health law
- statutory interpretation
- remedies

QUESTIONS PRESENTED

1. Whether the Commonwealth could raise sovereign immunity for the first time on appeal.
2. Whether Code § 8.01-66.9 expressly waived the Commonwealth's sovereign immunity and authorized a declaratory judgment action seeking judicial review of the Commonwealth's Medicaid lien.
3. Whether the trial court had subject matter jurisdiction to adjudicate Adam Afzall's declaratory judgment claim.

HOLDINGS

1. The Commonwealth may raise sovereign immunity for the first time on appeal because, when applicable, sovereign immunity deprives the court of subject matter jurisdiction.
2. Code § 8.01-66.9 does not expressly waive the Commonwealth's sovereign immunity or authorize a declaratory judgment action seeking judicial review of action taken under the statute.
3. The trial court lacked subject matter jurisdiction because sovereign immunity barred the declaratory judgment action against the Commonwealth.

KEY QUOTATIONS

“Such subject matter jurisdiction cannot be waived by the Commonwealth or given to a court by agreement or inaction of the parties.” (282)

“Consequently, we conclude the bar of sovereign immunity applies in this case because the Commonwealth has not waived that defense in the context of a declaratory judgment action within the purview of Code § 8.01-66.9.” (284)

FACTUAL BACKGROUND

Adam Afzall, an infant, was severely injured by a negligent third party, and DMAS paid \$419,809.56 for part of his treatment. After the negligence action settled, the Commonwealth asserted a lien for the full amount of its payments. Adam's counsel tendered \$277,791.94, deducting a proportionate share of legal fees and costs, but the Commonwealth demanded the full lien. Adam then sought a declaratory judgment interpreting Code § 8.01-66.9 to require deduction of attorney fees and costs from the Commonwealth's recovery.

PROCEDURAL HISTORY

DMAS paid \$419,809.56 toward Adam Afzall's medical care after he was injured by a negligent third party. After Adam settled his negligence action, the Commonwealth asserted a lien for the full amount of DMAS's payments; Adam sought a declaration that a proportionate share of his attorney fees and costs should be deducted from the lien. The trial court rejected his statutory interpretation and dismissed the motion. The Supreme Court of Virginia held that sovereign immunity barred the declaratory judgment action, concluding that the trial court lacked subject matter jurisdiction, and dismissed the appeal with final judgment for the Commonwealth.

DISPOSITION

dismissed

CASES CITED

- Commonwealth v. Luzik, 259 Va. 198, 524 S.E.2d 871 (2000)
- Hinchey v. Ogden, 226 Va. 234, 307 S.E.2d 891 (1983)
- Elizabeth River Tunnel District v. Beecher, 202 Va. 452, 117 S.E.2d 685 (1961)
- Board of Supervisors v. Board of Zoning Appeals, 271 Va. 336, 626 S.E.2d 374 (2006)
- Humphreys v. Commonwealth, 186 Va. 765, 43 S.E.2d 890 (1947)
- Alliance to Save the Mattaponi v. Commonwealth, 270 Va. 423, 621 S.E.2d 78 (2005)
- Messina v. Burden, 228 Va. 301, 321 S.E.2d 657 (1984)
- Virginia Board of Medicine v. Virginia Physical Therapy Ass'n, 13 Va. App. 458, 413 S.E.2d 59 (1991)
- Virginia Board of Medicine v. Virginia Physical Therapy Ass'n, 245 Va. 125, 427 S.E.2d 183 (1993)
- Kenley v. Newport News General & Non-Sectarian Hospital Ass'n, 227 Va. 39, 314 S.E.2d 52 (1984)