

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Highmark West Virginia, Inc. v. Jamie, 221 W. Va. 487

655 S.E.2d 509 (2007) · No. No. 33309 · Decided November 20, 2007

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed the dismissal of Dr. Sharooz Jamie's second amended counterclaim in a dispute over alleged health-insurance overpayments and billing practices. The court held that Counts 1 through 4, alleging contract-related claims and fraud, were sufficiently pleaded to survive a Rule 12(b)(6) motion, while Counts 5 through 9 were properly dismissed. The dismissal was therefore affirmed in part, reversed in part, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	November 20, 2007
DOCKET	No. 33309
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting Highmark's Rule 12(b)(6) motion and dismissing with prejudice Dr. Jamie's Second Amended Counterclaim. The circuit court later denied a Rule 59(e) motion to alter or amend and entered Rule 54(b) final judgment to facilitate the appeal.
STANDARD OF REVIEW	De novo review applies to an appeal from a Rule 12(b)(6) dismissal. A claim should not be dismissed unless it appears beyond doubt that the claimant can prove no set of facts in support of the claim that would entitle the claimant to relief; pleadings are construed in the light most favorable to the claimant.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Sharooz S. Jamie, M.D. v. Highmark West Virginia, Inc., d/b/a Mountain State Blue Cross Blue Shield

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QUESTIONS PRESENTED

1. Whether the circuit court properly dismissed Counts 1 through 9 of Dr. Jamie's Second Amended Counterclaim under West Virginia Rule of Civil Procedure 12(b)(6).
2. Whether Counts 1 through 3 adequately alleged claims arising from the Participation Agreement for purposes of surviving a motion to dismiss.
3. Whether Count 4 adequately pleaded fraud with the particularity required by West Virginia Rule of Civil Procedure 9(b).
4. Whether Counts 5 through 9 stated legally sufficient claims for fraudulent underpayment, fraudulent charging of deductibles or copayments, negligence, or defamation.

HOLDINGS

1. An appellate court reviews a Rule 12(b)(6) dismissal de novo and should not dismiss a claim unless it appears beyond doubt that the claimant can prove no set of facts in support of the claim that would entitle the claimant to relief.
2. Counts 1 through 3 adequately stated claims arising from the Participation Agreement and should not have been dismissed under Rule 12(b)(6).
3. Count 4 adequately alleged fraud and should not have been dismissed under Rule 12(b)(6).
4. Counts 5 through 9 were insufficient under Rule 12(b)(6) and remained dismissed with prejudice.

KEY QUOTATIONS

"In actions resulting in an appeal from a Rule 12(b)(6) dismissal, review by this Court is de novo." (513)

"The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (513-14)

"The complaint is to be construed in the light most favorable to the plaintiff." (514)

FACTUAL BACKGROUND

Dr. Jamie entered into a 1991 Participation Agreement with Mountain State to provide covered medical services to Mountain State plan members. The Agreement incorporated billing requirements and authorized Mountain State to audit records and make automatic remittance adjustments to recover overpayments. Mountain State alleged that Dr. Jamie had been overpaid approximately \$115,165 for claims submitted between 2002 and 2004 and recouped approximately \$56,000 through remittance adjustments. Dr. Jamie disputed the overpayments, terminated the Agreement, and asserted a Second Amended Counterclaim concerning withheld or reduced payments, billing practices, fraud, negligence, and defamation.

PROCEDURAL HISTORY

Highmark sued Dr. Jamie to recover alleged medical-claim overpayments and asserted related fraud and unjust-enrichment claims. Dr. Jamie filed a Second Amended Counterclaim alleging breach of contract, statutory violations, breach of the implied covenant of good faith and fair dealing, fraud, negligence, and defamation. The Circuit Court of Wood County dismissed all nine counts with prejudice, denied reconsideration, and entered Rule 54(b) judgment. The Supreme Court of Appeals affirmed in part, reversed in part, reinstated Counts 1 through 4, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Circuit Court of Wood County for further proceedings, with Counts 1 through 4 of the Second Amended Counterclaim reinstated. Counts 5 through 9 remained dismissed with prejudice.

CASES CITED

- Wickland v. American Travellers Life Insurance Co., 204 W. Va. 430, 513 S.E.2d 657 (1998)
- Cogar v. Lafferty, 219 W. Va. 743, 639 S.E.2d 835 (2006)
- Judy v. Grant County Health Department, 210 W. Va. 286, 557 S.E.2d 340 (2001)
- James M.B. v. Carolyn M., 193 W. Va. 289, 456 S.E.2d 16 (1995)
- Longwell v. Board of Education of the County of Marshall, 213 W. Va. 486, 583 S.E.2d 109 (2003)
- Holbrook v. Holbrook, 196 W. Va. 720, 474 S.E.2d 900 (1996)
- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Chapman v. Kane Transfer Co., 160 W. Va. 530, 236 S.E.2d 207 (1977)
- Sticklen v. Kittle, 168 W. Va. 147, 287 S.E.2d 148 (1981)
- Flowers v. City of Morgantown, 166 W. Va. 92, 272 S.E.2d 663 (1980)
- Fass v. Newsco Well Service, 177 W. Va. 50, 350 S.E.2d 562 (1986)
- John W. Lodge Distributing Co. v. Texaco, 161 W. Va. 603, 245 S.E.2d 157 (1978)
- Price v. Halstead, 177 W. Va. 592, 355 S.E.2d 380 (1987)
- Stand Energy Corp. v. Columbia Gas Transmission, 373 F. Supp. 2d 631, 644 (S.D.W. Va. 2005)
- Rosenbaum v. Price Construction Co., 117 W. Va. 160, 184 S.E. 261 (1936)
- Kessel v. Leavitt, 204 W. Va. 95, 511 S.E.2d 720 (1998)
- Chamberlaine v. McBee, 177 W. Va. 755, 356 S.E.2d 626 (1987)
- Hager v. Exxon Corp., 161 W. Va. 278, 241 S.E.2d 920 (1978)
- Lengyel v. Lint, 167 W. Va. 272, 280 S.E.2d 66 (1981)
- Kidd v. Mull, 215 W. Va. 151, 595 S.E.2d 308 (2004)
- Poling v. Pre-Paid Legal Services, Inc., 212 W. Va. 589, 575 S.E.2d 199 (2002)
- Cordial v. Ernst & Young, 199 W. Va. 119, 483 S.E.2d 248 (1996)

- Pocahontas Mining Co. Limited Partnership v. OXY USA, Inc., 202 W. Va. 169, 503 S.E.2d 258 (1998) (concurring opinion)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)
- Burch v. Nedpower Mount Storm, 220 W. Va. 443, 647 S.E.2d 879 (2007)
- Harless v. First National Bank in Fairmont, 169 W. Va. 673, 289 S.E.2d 692 (1982)

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