

SUPREME COURT OF NORTH DAKOTA

Delano Grey Bear v. North Dakota Department of Human Services

651 N.W.2d 611 (N.D. 2002) · No. No. 20010241 · Decided August 23, 2002

SUMMARY

The Supreme Court of North Dakota held that a Medicaid recipient's statutory assignment under N.D.C.C. § 50-24.1-02.1 gave the Department of Human Services the right to recover from the entire third-party settlement, including amounts designated for pain and suffering, subject to the amount of Medicaid expenditures. The court upheld the Department's recoupment judgment and the award of attorney's fees and costs. It reversed the judgment against Robert V. Bolinske because the trial court lacked personal jurisdiction over him in the absence of service or a voluntary general appearance.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Neumann, Justice; Gerald W. Vande Walle, Chief Justice; Carol Ronning Kapsner, Justice; James M. Bekken, District Judge, sitting in place of Sandstrom, J.
JURISDICTION	North Dakota
DECIDED	August 23, 2002
DOCKET	No. 20010241
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a judgment dismissing Grey Bear's claims for intentional infliction of emotional distress and governmental bad faith and granting the Department summary judgment on its conversion counterclaim against Grey Bear and Bolinske.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo as a question of law. Denial of a motion to amend a judgment to include costs and determination of attorney's fees are reviewed for abuse of discretion. Summary judgment is appropriate when the resisting party fails to present competent evidence creating a genuine issue of material fact. Personal jurisdiction under the rules governing service and appearance is reviewed as a legal issue.
PRECEDENTIAL VALUE	published state supreme court opinion

PARTIES

Delano Grey Bear, Robert V. Bolinske v. North Dakota Department of Human Services

TOPICS

medicare medicaid

statutory interpretation

personal jurisdiction

summary judgment

civil procedure

PRACTICE AREAS

health law

Medicaid reimbursement

statutory interpretation

civil procedure

personal jurisdiction

QUESTIONS PRESENTED

1. Whether N.D.C.C. § 50-24.1-02.1 assigned to the Department the right to recover the entire third-party settlement, including amounts designated for pain and suffering, subject to the amount of Medicaid expenditures.
2. Whether the Department could recover the settlement directly from Grey Bear rather than pursue a separate claim against the third-party tortfeasor or insurer.
3. Whether the trial court abused its discretion by denying Grey Bear's motions and requests for a hearing concerning costs associated with obtaining the settlement.
4. Whether the trial court abused its discretion in awarding a 20 percent attorney-fee deduction from the settlement.
5. Whether the trial court had personal jurisdiction over Bolinske when he was not served with a summons and did not make a voluntary general appearance on his own behalf.

HOLDINGS

1. The statutory assignment gives the Department the right to recover any third-party settlement received by Grey Bear, including amounts designated for pain and suffering, but the Department's recovery is limited to the amount of Medicaid funds expended for Grey Bear's care and treatment.
2. The Department was authorized to refuse to pursue a separate malpractice claim and instead recover its Medicaid expenditures from the third-party settlement received by Grey Bear.
3. The trial court did not abuse its discretion by denying Grey Bear's requests for a hearing and motion to amend the judgment concerning costs.
4. The trial court did not abuse its discretion by awarding a 20 percent attorney-fee deduction.
5. The trial court lacked personal jurisdiction over Bolinske because he was not served with a summons and his limited participation did not constitute a voluntary general appearance on his own behalf.

KEY QUOTATIONS

"When read as a whole, N.D.C.C. § 50-24.1-02.1 assigns the Department any right of recovery the applicant may have for an injury, but limits what the Department may claim to the amount of medical costs incurred under this chapter for that injury." (617)

“We conclude the assignment under N.D.C.C. § 50-24.1-02.1 gives the Department the right to recover any settlement received by Grey Bear, even if designated for pain and suffering, but the statute specifies the Department's recovery must be for medical costs incurred under the chapter and limits the recovery to the amount of funds expended by the Department for the care and treatment of the applicant or recipient.” (617)

“We conclude the trial court lacked personal jurisdiction over Bolinske, and reverse the judgment against him.” (622)

FACTUAL BACKGROUND

Grey Bear, who had received Medicaid benefits after becoming paralyzed, assigned rights of recovery relating to third-party payments for medical costs to the Department. After complications from a 1994 surgery, he settled a medical-malpractice action for \$30,000, and his attorney sent part of the settlement to the Department. The Department sought the entire settlement, less attorney fees and expenses, while Grey Bear contended the assignment covered only medical expenses and not pain-and-suffering damages. The Department also added Grey Bear's attorney, Bolinske, as a counterclaim defendant, although Bolinske was never served with a summons.

PROCEDURAL HISTORY

Grey Bear sued the Department after it sought reimbursement from a medical-malpractice settlement for Medicaid benefits it had paid on his behalf. The Department counterclaimed against Grey Bear and amended the counterclaim to add his attorney, Bolinske, alleging conspiracy to convert Department funds. The trial court initially granted summary judgment to the Department; after vacating that judgment and the judge's recusal, the reassigned court again granted summary judgment. The Supreme Court affirmed the judgment favoring the Department on recoupment from Grey Bear but reversed the judgment against Bolinske for lack of personal jurisdiction.

DISPOSITION

other

CASES CITED

- Olander Contracting Co. v. Gail Wachter Invs., 2002 ND 65, 643 N.W.2d 29
- Consol. Tel. Coop. v. W. Wireless Corp., 2001 ND 209, 637 N.W.2d 699
- Krueger Estate v. Richland Cty. Soc. Serv., 526 N.W.2d 456 (N.D. 1994)
- Hecker v. Stark County Social Service Bd., 527 N.W.2d 226 (N.D. 1994)
- Mehl v. Mehl, 545 N.W.2d 777 (N.D. 1996)
- Link v. Town of Smithtown, 175 Misc. 2d 238, 670 N.Y.S.2d 692 (1997)
- Wilson v. State of Washington, 142 Wash. 2d 40, 10 P.3d 1061 (2000), cert. denied, 532 U.S. 1020 (2001)
- Waldman v. Candia, 317 N.J. Super. 464, 722 A.2d 581 (1999)
- Calvanese v. Calvanese, 93 N.Y.2d 111, 688 N.Y.S.2d 479, 710 N.E.2d 1079 (1999)
- Martin v. City of Rochester, 642 N.W.2d 1 (Minn. 2002)

- Arizona Health Care Cost Containment System v. Bentley, 187 Ariz. 229, 928 P.2d 653 (1996)
- Estate of Zins v. Zins, 420 N.W.2d 729 (N.D. 1988)
- Cass County Elec. Coop. v. Northern States Power Co., 518 N.W.2d 216 (N.D. 1994)
- In re Juran & Moody, Inc., 2000 ND 136, 613 N.W.2d 503
- Arkansas Dep't of Human Services v. Ferrel, 336 Ark. 297, 984 S.W.2d 807 (1999)
- John Miller Co. v. Harvey Mercantile Co., 45 N.D. 503, 178 N.W. 802 (1920)
- Vanover v. Kansas City Life Ins. Co., 553 N.W.2d 192 (N.D. 1996)
- Western Nat'l Mut. Ins. Co. v. Univ. of N.D., 2002 ND 63, 643 N.W.2d 4
- Selinger v. Selinger, 250 A.D.2d 752, 672 N.Y.S.2d 913 (1998)
- Textron, Inc. v. Whitfield, 380 So. 2d 259 (Ala. 1979)
- City of Medora v. Golberg, 1997 ND 190, 569 N.W.2d 257
- Klagues v. Maintenance Engineering, 2002 ND 59, 643 N.W.2d 45
- Moon v. Moon, 499 N.W.2d 597 (N.D. 1993)
- In re Estate of Ashbrook, 110 N.W.2d 184 (N.D. 1961)
- Code v. Gaunce, 315 N.W.2d 304 (N.D. 1982)
- Wallwork Lease & Rental Co. v. Schermerhorn, 398 N.W.2d 127 (N.D. 1986)
- Tooze v. Tooze, 78 N.D. 432, 50 N.W.2d 61 (1951)
- Messer v. Bender, 1997 ND 103, 564 N.W.2d 291
- Opp v. Matzke, 1997 ND 32, 559 N.W.2d 837
- State ex rel. Moug v. N.D. Auto., 322 N.W.2d 245 (N.D. 1982)
- Burgener v. Bushaw, 545 N.W.2d 163 (N.D. 1996)