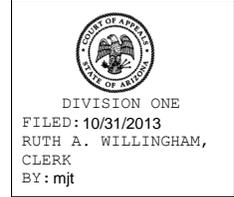


**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24**



**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

GREGORY PUCH, individually,) 1 CA-CV 12-0578
)
)
Plaintiff/Counterdefendant/) DEPARTMENT E
Appellee,)
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
KEY HEALTH MEDICAL SOLUTIONS, a) Rule 28, Arizona Rules of
California corporation,) Civil Appellate Procedure)
)
Defendant/Counterclaimant/)
Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CV2011-003623

The Honorable Arthur T. Anderson, Judge

AFFIRMED

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And

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T H O M P S O N, Judge

¶1 Key Health Medical Solutions (Key Health) appeals from the trial court's summary judgment in favor of Gregory Puch (Puch), the denial of its summary judgment motion, and from the subsequent award of attorneys' fees and costs to Puch. Finding no material unresolved questions of fact and no legal error, we affirm the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In August 2007, Puch was injured in an auto accident and taken to the hospital. At the hospital, Puch was determined to be eligible for Arizona's Medicaid program (AHCCCS), and was immediately given an identification number and assigned a health care plan. As part of his ongoing treatment for the accident, Puch was referred to Insight-Biltmore Advanced Imaging Center (Insight) for radiology studies in January and February 2008.

¶3 Puch, in his affidavit, swore that he provided Insight with his AHCCCS information when filling out his paperwork in January 2008 just as he had with all his providers. There is no evidence in the record to the contrary. At the same time, as part of the paperwork he was given at intake by Insight, Puch completed an assignment of proceeds/lien in favor of Key Health.¹

¹ At the time of the initial radiology study, Insight was not yet a registered AHCCCS provider, but subsequent contract negotiations between Insight and AHCCCS to cover pending AHCCCS

That assignment form contained language asserting that the patient had no insurance coverage of any kind, including government coverage, and agreed to a lien that patient's lawyer would pay out upon recovery. Puch's attorney signed the assignment. After two radiology appointments, the amount billed for Insight's services was \$4,435.90. Key Health purchased the two receivables from Insight in April 2008 and sought to recover that amount from Puch.

¶14 Puch received \$15,000 in settlement of the tort matter. Puch brought an interpleader action in superior court regarding the distribution of proceeds as between himself and several medical providers or companies attempting to collect for medical providers, including Key Health. Key Health filed an answer asserting that Puch was unable to avail himself of an interpleader because he had an interest in the monies at issue and filed a counterclaim asserting breach of contract and unjust enrichment.

¶15 Cross motions for summary judgment were filed by Puch and Key Health. The trial court granted Puch's motion finding that Key Health, as assignee, stepped into the shoes of Insight and, as such was expressly prohibited by section 15 of the

claims led to a backdated effective date of October 1, 2007 for the Program Participation Agreement (PPA). Key Health is not a medical care provider or under contract with AHCCCS.

AHCCCS PPA from billing or attempting to recover from Puch. Key Health's motion for summary judgment was denied.

¶16 The trial court awarded Puch his reasonable attorneys' fees pursuant to Arizona Revised Statutes (A.R.S.) § 12-341.01 (2012) in the amount of \$23,455. Because Key Health had previously rejected Puch's offer of judgment, the trial court awarded Puch double costs in the amount of \$1,339.92. Key Health filed a timely notice of appeal.

ISSUES

¶17 Key Health asserts three issues on appeal:

1. The trial court erred in granting summary judgment in favor of Puch and against Key Health;
2. The trial court should have enforced Key Health's lien against Puch as outlined in its motion for summary judgment; and
3. The trial court erred in awarding attorneys' fees and costs against Key Health.

DISCUSSION

Cross Motions for Summary Judgment

¶18 We review de novo whether a summary judgment was properly entered. *White v. State*, 220 Ariz. 42, 44, ¶ 5, 202 P.3d 507, 509 (App. 2008). Summary judgment is appropriate "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(a). Because the trial

court ruled on cross-motions for summary judgment, the facts are generally undisputed. Nevertheless, to the extent that the parties disagree or we are required to draw inferences from the undisputed facts, we view the evidence in the light most favorable to the party against whom the summary judgment was entered, in this case Key Health. See *Pioneer Annuity Life Ins. Co. v. Rich*, 179 Ariz. 462, 464, 880 P.2d 682, 684 (App. 1994).

¶19 Puch's motion for summary judgment focused on the fact that when he incurred the charges he was covered under AHCCCS and, as a registered AHCCCS provider, Insight was prohibited by contract and regulations from attempting to bill, charge or collect from him.² Arizona Administrative Code (A.A.C.) R9-22-

² A.A.C. R9-22-702. Charges to Members

A. For purposes of this subsection, the term "member" includes the member's financially responsible representative as described under A.R.S. § 36-2903.01.

B. Registered providers must accept payment from the Administration or a contractor as payment in full.

C. Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.

D. An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:

1. To collect the copayment described in R9-22-711;

2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the

702(A) provides that an AHCCCS provider shall not demand payment from a person claiming to be AHCCCS eligible.³ Section 15 of the PPA states the same. Puch argued that Key Health, as an assignee of Insight's, was limited to whatever remedies Insight would have had.

¶10 Key Health's motion for summary judgment argued it had a contractual right to recover under the assignment form filled

member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCCS;

3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member's AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied;

...

F. Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider's failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements. (Emphasis added.)

³ In the instant case, Insight apparently never did bill for the radiology services provided to Puch. AHCCCS generally does not pay providers directly for medical care, rather, as explained in *Arizona Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 229, 231 n. 1, 928 P.2d 653, 655 n.1 (App. 1996), AHCCCS will enroll a person who is eligible for AHCCCS benefits in one of the health plans or health care service organizations with which it contracts to provide care. The health plan or health care service is then responsible for either providing the health care or for subcontracting with other health care providers. See A.R.S. § 36-2904 (2009).

out by Puch because Puch never gave notice of his AHCCCS eligibility and that the failure to give such notice was a misrepresentation sufficient to negate the prohibition against collection pursuant to A.A.C. R9-22-702(A).

¶11 The trial court found that Puch provided undisputed evidence that the radiology services were provided by Insight at a time when Insight was a registered AHCCCS provider, subject to AHCCCS regulations, and the conditions of the PPA and that Key Health had conceded that applicable AHCCCS regulations prohibited Insight from billing Puch. The trial court, citing *Vig v. Nix Project II P'ship*, 221 Ariz. 393, 399, 212 P.3d 85, 91 (App. 2009), found that Key Health, as an assignee, stepped into the shoes of Insight and was limited in its recovery to whatever Insight could have recovered. The trial court concluded that at the time Key Health purchased the receivables there was nothing to sell. We agree.

¶12 Key Health points out that A.A.C. R9-22-702(D)(3) provides an exception to the general rule of A.A.C. R9-22-702(C) that providers may not attempt to collect directly from the member. A.A.C. R9-22-702(D) states recovery may be pursued when a patient makes a misrepresentation that results in a payment to a provider being reduced or denied. Key Health argues that Puch made just such a misrepresentation by signing the assignment

form it drafted that included language that the patient had no insurance coverage of any kind. We are not persuaded.⁴

ATTORNEYS' FEES

¶13 Key Health asserts that the trial court erred in awarding Puch attorneys' fees pursuant to A.R.S. § 12-341.01 because Puch's action was frivolous, not based in contract and because Key Health should have been the prevailing party. On appeal, Key Health and Puch each make a claim for an award of attorneys' fees pursuant to A.R.S. § 12-341.01. Finding no error by the trial court, we affirm the award of attorneys' fees below to Puch and further grant him his reasonable fees pursuant to A.R.S. § 12-341.01 on appeal in an amount to be determined after compliance with Rule 21.

⁴ As the trial court pointed out, the undisputed evidence is that Puch provided Insight with his AHCCCS card and ID number simultaneously on intake to the actual health care provider. Due to our resolution of this matter, we need not address whether A.A.C. R9-22-702(D)(3) would even apply to Key Health or whether signing a form denying the availability of insurance coverage was sufficiently "intentional" under the code to apply here.

CONCLUSION

¶14 For the foregoing reasons, the trial court is affirmed in all respects.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge