

SUPREME COURT OF THE STATE OF FLORIDA

DAN RAY WARREN, ET AL.,

CASE NO.: SC 02-285

Petitioners,

L.T. CASE NO.: 5D00-3064

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE,

Respondent.

PETITIONER'S INITIAL BRIEF

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INTRODUCTION

The following reference words and symbols will be used throughout this brief:

“Petitioners” will designate Dan Ray Warren and Dr. Jack Rotstein.

“Petitioner Warren” will designate Dan Ray Warren.

“Petitioner Rotsein” will designate Dr. Jack Rotstein.

“Respondent” will designate State Farm Mutual Automobile Insurance.

“5th DCA” will designate the Fifth District Court of Appeals.

“Florida Statutes” unless otherwise indicated will designate Florida Statues (1999)

STATEMENT OF THE CASE AND FACTS

The Petitioner, Dan Ray Warren, was injured in a motor vehicle accident on March 22, 1999. He received treatment from the Petitioner, Jack Rotstein, M.D., on May 27, 1999 June 16, 1999 and July 6, 1999. Dr. Rotstein failed to submit statements for his medical services to State Farm Mutual Automobile Insurance until August 9, 1999, more than thirty (30) days after service was rendered. Because the statements were statutorily delinquent, State Farm Mutual Automobile Insurance denied payment to Dr. Rotstein, even though the treatment which had been rendered by the Plaintiff were reasonable charges for necessary medical treatment of injuries related to the subject accident of March 22, 1999.

The County Court ruled that the thirty (30) day billing requirement of Section 627.736(5)(B) was unconstitutional. The Court found that the Statute denied equal protection under the Florida Constitution to health care providers such as Dr. Rotstein, because the statute does not require any reasonable proof that the charges are not reasonable, necessary or related. The Statute also by differentiating health care provider bills from hospital and ambulance bills the Statute was not reasonably related to a legitimate legislative object. Therefore, violating due process provisions of the Florida Constitution in that it denied medical providers who are not hospitals or

ambulance companies access to the Court.

The question was then certified as a matter of great public importance by the County Court wherein upon appeal the 5th DCA reversed the County Court's decision and held Section 627.736(5)(b) to be constitutional.

SUMMARY OF THE ARGUMENT

The opinion of the 5th DCA was incorrect in that Florida Statute 627,736(5)(b) violates the constitutional right for equal protection, due process and access to the courts of appellees Rotstein and Warren. (See Appendix A)

The proper standard of review of the constitutionality of Florida Statute §627.736(5)(B), is the rational basis test, Florida Statute §627.736(5)(B), does violate the equal protection clause of the Florida Constitution because the distinction in the Statute between doctors and hospital emergency departments and ambulances “does not bear some relationship to a legitimate state purpose.” The Florida High School Activities Association, Inc., et al v. George Thomas, by and through his mother, 434 So. 2d 306 (Fla. 1983) at 308. Using this case as an example for determination, the Florida Legislature had no legitimate State purpose for distinguishing between private medical providers and hospital emergency departments and ambulance providers.

There is no rational legislative purpose for imposing the thirty (30) day billing requirement upon doctors but not hospital emergency departments and ambulance services.

As written the statute discriminates between one type of health care provider and another, and therefore takes away the fundamental right of the private health care provider from seeking proper relief from the courts. Article 1, Section 21 of the Florida Constitution provides as follows:

“The courts shall be open to every person for redress of any injury, and shall be administered without sale, denial or delay.”

The other illegal discrepancy is that services provided by a hospital emergency room department or ambulance service are not inherently different from treatment provided by a doctor. Therefore, the statute is discriminating between one type of health care provider and another.

If this act is declared constitutional, it would make these private medical providers, whom insured people see inside a hospital after they have been admitted for an automobile accident injury and these private physicians who give life-saving service to critically/seriously injured people in emergency rooms and/or operating rooms in hospitals “insurers” for medical bills incurred by the critically/seriously injured party,

thereby shifting the burden of loss from the PIP insurance carrier to the private physicians which should be a compelling argument to declare this portion of the statute unconstitutional.

Not only is there no rational legislative reason for imposing the thirty (30) day billing requirement, there is no rational purpose for excluding hospital emergency room departments and ambulance services from this requirement. Since the Statute does not provide this provision, it is making an illegal/unconstitutional classification between one type of health care provider and another.

ARGUMENT

Section 627.736(5)(b) WHICH EXEMPTS MEDICAL CHARGES FOR TREATMENT MAILED TO AN INSURER MORE THAN THIRTY (30) DAYS AFTER THE DATE OF TREATMENT SHOULD BE DECLARED UNCONSTITUTIONAL.

In Nationwide Mutual Fire Insurance Company v. M&M Diagnostics, Inc. 753 So. 2d 55 (5th DCA 1998) the Fifth District Court of Appeal held the “substantive” section of Florida Statute 627.736 unconstitutional based on the following rationale::

“The legislature has broad power to regulate business, especially the insurance business. See Hughes vs. Professional Ins. Corp., 14 So. 2nd 34 (Fla. 1st DCA 1962) [sic]. Such legislation, however must be reasonable related to a legitimate legislative objective, Lasky v. State Farm Ins. Co., 296 So. 2d9 (Fla. 1974).”

“Under Lasky the Court must determine whether this act reasonably related to a legitimate legislative objective. The act requires

a contest between a medical provider-assignee and an insurer to be resolved by arbitration while those between an insured and insurer may be resolved in court. In other words, the act allows access to the court for claims for or against the insured, but denies it for claims for or against the medical provider. It is readily apparent that the objective of the act is to deny the right to litigate certain legitimate claims in court based on who owns the claim. Given the people's right to redress wrongs in court provided by Article I, Section 21, Florida Constitution, such an objective cannot be considered a legitimate one. Therefore the act violates the parties' substantive due process rights under Article I, Section 9, of the Florida Constitution."

"For the forgoing reasons, Chapter 90-119, Section 42, Laws of Florida codified in section 627.736 (5), Florida Statutes, is hereby declared unconstitutional and unenforceable as being in violation of the due process provision of the Florida Constitution. Accordingly, Delta's request to order Pinnacle's claim to binding arbitration is denied."

In Kluger v. White, 281 So. 2nd 1 (Fla. 1973) the Florida Supreme Court held the legislature is without power to abolish common law or statutory right of access to courts without providing a reasonable alternative to protect peoples' rights unless it can show an overpowering public necessity for doing so and no alternative method of meeting such public necessity can be shown." (emphasis added)

Petitioner Warren contends that Florida Statute §627.736(5)(b) is unconstitutional because it improperly discriminates between two classes of similarly situated litigants - doctors and ambulances and hospitals. Specifically, it requires doctors to forfeit those safeguards traditionally afforded to those who litigate their disputes in court. See A.G. Edwards & Sons, Inc. v. Petrucci, 525 So.2d 918 (Fla.

2d DCA 1988); Affiliated Marketing, Inc. v. Dyco Chemicals & Coatings, Inc., 340

So 2d 1240 (Fla. 2d DCA 1976), cert. Den., 353 So. 2d 675 (Fla. 1977).

~~FLORIDA STATUTE~~

~~BY SUBJECTING THEM TO ARRANGING PARTICIPATION~~

627.428(1).” SEE ~~NATIONWIDE MUTUAL FIRE INSURANCE COMPANY~~

~~THEIR~~

~~TO THE COURTS~~

~~67~~

~~WARREN~~

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THE PUBLIC INTERESTS IN THE MATTER

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THE PUBLIC INTERESTS IN THE MATTER

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SECTION 7

REQUIREMENT

"BULK BILLING" BUT DID NOT. AS SUCH, IT MUST FAIL AND BE DEEMED

UNLAWFUL UNDER THE CONSTITUTION

REASONING

THE COURT HAS HELD THAT THE CONSTITUTIONAL PROVISIONS

REQUIRE THE LEGISLATURE TO PASS A BILL WITHIN THIRTY (30) DAYS

OF THE TIME IT IS INTRODUCED.

THE COURT HAS HELD THAT THE CONSTITUTIONAL PROVISIONS

DO NOT REQUIRE THE LEGISLATURE TO PASS A BILL

WITHIN THIRTY (30) DAYS OF THE TIME IT IS INTRODUCED

IF THE LEGISLATURE IS IN RECESS

AT THE TIME THE BILL IS INTRODUCED.

THE COURT HAS HELD THAT THE CONSTITUTIONAL PROVISIONS

DO NOT REQUIRE THE LEGISLATURE TO PASS A BILL WITHIN THIRTY (30) DAYS

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WHO ARE SUBJECT TO CIVIL JURISDICTION IN EMERGENCY ROOMS AND OPERATING ROOMS IN HOSPITALS

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IN ORDER TO BE ABLE TO ENFORCE WHICH SHOULD BE A COMPELLING ARGUMENT TO DECLARE THE PROVISION OF THE

STATUTE UNCONSTITUTIONAL.

ORDINANCE 67

AMBUANCES AND STAFF UNDER JURISDICTION IN EMERGENCY ROOMS

EMERGENCY ROOMS AND AMBUANCES

AND STAFF OF HOSPITALS AND CLINICS

OF DUE PROCESS, ACCESS TO THE COURTS AND EQUAL PROTECTION

ORDINANCE 67

CONSTITUTIONAL RIGHTS MUST BE PROTECTED TO ACCESS TO THE COURTS

CONSTITUTIONAL RIGHTS

ADMINISTERED WITHOUT

ANY ACCESS TO THE COURTS OR REASONABLE ACCESS TO THE COURTS

AUTOMOBILE ACCIDENT.

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THE COURT OF THE STATE OF CALIFORNIA

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ALTERNATIVE METHOD OF MEETING SUCH PUBLIC NECESSITY CAN

BE FOUND IN ARTICLE 1, SECTION 21 OF THE CALIFORNIA CONSTITUTION

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THE COURT OF THE STATE OF CALIFORNIA

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THE PROVISIONS OF THE CALIFORNIA CONSTITUTION

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CONCLUSION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this _____ day of September, 2002 to: Karen A. Barnett, Esq., 201 E. Kennedy Boulevard, Suite 1518, Tampa, FL 33602 and the original and seven (7) copies to the Clerk of the Court, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1927.

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the size and style of this brief is Times New Roman, 14 point, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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APPENDIX