



IN THE DISTRICT COURT OF GARFIELD COUNTY

FILED

GARFIELD COUNTY, OKLA.

STATE OF OKLAHOMA

DEC 12 2005

EARLINE COX, PERSONAL REPRESENTATIVE FOR THE ESTATE OF AUGUST KENNEDY, DECEASED,

Plaintiffs,

vs.

TIMOTHY W. TESKE, D.O., AN INDIVIDUAL; NORTHWEST OKLAHOMA ORTHOPAEDIC CLINIC, INC., AN OKLAHOMA CORPORATION; NORTHWEST OKLAHOMA ORTHOPAEDIC CLINIC ASSET MANAGEMENT, LLC, AN OKLAHOMA LIMITED LIABILITY COMPANY; NORTHWEST OKLAHOMA ORTHOPAEDIC CLINIC, P.C., AN OKLAHOMA PROFESSIONAL CORPORATION; DANIEL D. WASHBURN, M.D., AN INDIVIDUAL; SPRINGS INTERNAL MEDICINE ASSOCIATES, INC., AN OKLAHOMA CORPORATION; GREGORY F. WALTON, M.D., AN INDIVIDUAL; GREGORY F. WALTON, M.D., P.C., AN OKLAHOMA PROFESSIONAL CORPORATION,

Defendants.

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Case No.: CJ-2005-268-01

MOTION TO DETERMINE LIEN INTEREST

COMES NOW, Plaintiff Earline Cox, with her Motion to Determine Lien Interests and states as follows:

- 1. Plaintiff, Earline Cox, as Personal Representative of the Estate of August Kennedy, filed the above-styled action as a wrongful death action against all defendants.
2. August Kennedy, deceased, was admitted to St. Mary's Regional Medical Center on July 6th, 2003 for injuries she had sustained in an automobile accident. August Kennedy received medical care for those injuries from St. Mary's and by independent doctors for approximately

three weeks, until July 27th, 2003, when due to the alleged negligence of the hospital and doctors, August Kennedy lost her life.

3. As a result of August Kennedy's hospitalization for the injuries sustained in the automobile accident, August Kennedy incurred medical charges which were in large part paid by the Oklahoma Health Care Authority through Medicaid.

4. The Plaintiff has negotiated a settlement with Defendants, Universal Health Services, Inc., a Delaware Corporation; UHS of Delaware, Inc., a Delaware Corporation; UHS of Oklahoma, Inc., an Oklahoma Corporation; St. Mary's Regional Medical Center, Inc., an Oklahoma Corporation; Collectively, d/b/a: St. Mary's Regional Medical Center, for an amount which must remain confidential pursuant to a confidentiality agreement.

5. Medicaid has asserted a lien interest in the amount of Twenty-two Thousand Five Hundred Sixty-one dollars and Thirty-two cents (\$22,561.32). The Plaintiff argues that the lien amount should not attach to the settlement proceeds obtained from St. Mary's et. al, because the claim for which the proceeds were obtained was not a claim against an auto accident tortfeasor, but a claim against medical providers for malpractice. Any money Medicaid paid was for the medical expenses derived from care to August Kennedy for her injuries sustained in the automobile accident, not the alleged medical malpractice.

ARGUMENT AND AUTHORITY

The issue is whether the Oklahoma Health Care Authority, as a Medicaid provider, is entitled to satisfaction of their lien asserted against settlement proceeds obtained from a medical malpractice tortfeasor for proceeds paid to Saint Mary's Regional Medical Center for care given as a result of August Kennedy's injuries from her automobile accident.

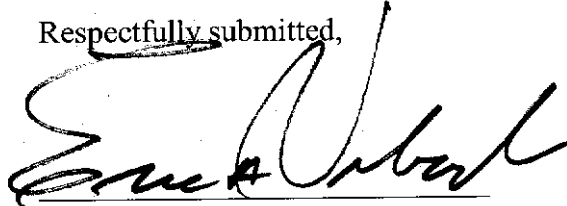
The Oklahoma Supreme Court has addressed a similar issue with distinguishable facts in Nicholas v. Morgan, 58 P. 3rd 775 (Okla. 2002). In the Nicholas case the State Insurance Fund paid a sum in Worker's Compensation benefits to or on the behalf of an injured worker. The injured worker's attorney failed to list all injuries in the Worker's Compensation claim and failed to investigate and timely commence a third-party tort claim. The injured worker sued his attorney for legal malpractice. The Court held that the State Insurance Fund was entitled to their statutory reimbursement on the funds the injured worker obtained through his action for legal malpractice. The Court reasoned that the injured worker's malpractice claim against his attorney was derived from his claim against the third party tortfeasor, who was not sued timely. The Court further reasoned that the damages the injured worker sought against his attorney are the same damages that he would have sought to recover for his personal injury in a timely filed suit against the third-party tortfeasor. The Court argued he would reap a double recovery if he was able to retain the proceeds of his malpractice action free from any claim for reimbursement by the State Insurance Fund.

As stated above, the facts and issue in this case are distinguishable from those in Nicholas. Here, suit was brought against medical care providers for medical malpractice. There is no third-party tortfeasor that would have or should have been sued for the recovery of any of August Kennedy's damages. The Oklahoma Health Care Authority through Medicaid paid for a portion of August Kennedy's medical bills and is asserting a lien against her estate's settlement proceeds obtained through the medical malpractice action. The monies she obtained through the medical malpractice action are not the same monies she would have received from a third-party tortfeasor. She is not getting a double recovery. The monies paid by the Oklahoma Health Care

Authority are simply not related to the medical malpractice action and thus should not be attached to the medical malpractice settlement proceeds.

Wherefore, Plaintiff respectfully requests that this Court find any lien asserted by the Oklahoma Health Care Authority against any settlement proceeds obtained through the Plaintiff's medical malpractice action does not attach.

Respectfully submitted,

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Eric A. Urbach, OBA # 18863

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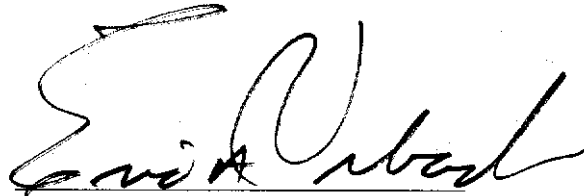
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that on this ___ day of December 2005, a true and correct copy of the foregoing document was served upon the parties herein by mailing same, to the following counsel of record:

Oklahoma Health Care Authority
4545 N. Lincoln Boulevard, Suite 124
OKC, OK 73105

Hilton H. Walters
Jamie K. Bruehl
Bank One Center, Suite 2730
Oklahoma City, Oklahoma 73102

A handwritten signature in black ink, appearing to read "Eric A. Urbach". The signature is written in a cursive style with a large initial "E" and "U".

Eric A. Urbach