

No.: 121365

**IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

AKEEM MANAGO, a Minor by His Mother and
Next Friend, APRIL PRITCHETT,
Plaintiff and Petitioner-Appellee,

v.

THE COUNTY OF COOK,
Respondent-Appellant
(Chicago Housing Authority, a Municipal
Corporation, and H.J. Russell and Company,
Defendants).

Appeal from the
Circuit Court of Cook County
No. 08 L 13211

Honorable Thomas L. Hogan,
Judge Presiding.

**AMICUS BRIEF OF THE ILLINOIS TRIAL LAWYERS
ASSOCIATION**

Oral Argument Requested

AMICUS COUNSEL FOR
Illinois Trial Lawyers Association
MARK ROULEAU
Law Office of Mark Rouleau
ARDC 6186135
4777 E. State St. - #7
Rockford, IL 61108
815/229

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Introduction

This case is a matter of grave public importance because several very broad reaching public policies are implicated by the Appellate panel's decision. On appeal the minor's trial counsel did not file a brief defending the trial courts decision and the Appellate Court undertook de novo review of the matter.

There are competing and conflicting public policies involved in the resolution of this case. The public policies involved are:

- 1) The duty of the courts to protect the rights of minors involved in litigation.
- 2) The right to full and fair compensation under our tort laws for claims and causes of action held by a minor plaintiff.
- 3) The obligation of parents to provide for the medical care of their minor children.
- 4) The public policy interest involved in the Health Care Services Lien Act (770 ILCS 23/1 et seq.); and lastly
- 6) Minor's due process rights in being required to satisfy a lien for amounts that the minor could not bring suit against the tortfeasor for; and for which no evidentiary hearing was conducted.

Legal Framework

The issues in this case are presented in an intricate legal framework involving several statutes as well as common law duties and obligations.

Health Provider Lien (Hospital Lien)

Health Care providers and professionals as defined in the act are given a lien in claims or causes of action brought by an injured person for the amount of the for the health care provider's reasonable charges.

The statutory framework provides in part:

§ 10. Lien created; limitation.

(a) Every health care professional and health care provider that renders any service in the treatment, care, or maintenance of an injured person, . . . shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges up to the date of payment of damages to the injured person. The total amount of all liens under this Act, however, shall not exceed 40% of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action. (770 ILCS 23/10)

§ 20. Items to which lien attaches. The lien of a health care professional or health care provider under this Act shall, from and after the time of the service of the lien notice, attach to any verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person. If the verdict, judgment, award, settlement, or compromise is to be paid over time by means of an annuity or otherwise, any lien under this Act shall be satisfied by the party obligated to compensate the injured person to the fullest extent permitted by Section 10 before the establishment of the annuity or other extended payment mechanism. (770 ILCS 23/20)

The Family Expense Statute (750 ILCS 65/15) & Common Law Parental Duties

In Clark v. the Children's Mem'l Hosp., 2011 IL 108656, 955 N.E.2d 1065, 353

Ill.Dec. 254 (Ill., 2011) our Supreme Court stated:

“The Family Expense Act is a codification and expansion of common law doctrine of necessities, under which a wife or minor child could obtain necessary goods or services on credit and the husband or father was liable, based on his duty to support his family. See, e.g., Hunt v. Thompson, 4 Ill. 179, 180 (1840) (‘[A] parent is under an obligation to provide for the maintenance of his infant children, is a principle of natural law; and it is upon this natural obligation alone that the duty of a parent to provide his infant children with the necessities of life rests.’)” (2011 IL 108656 ¶50)

Under Illinois law the minor is prevented from bringing an action for the medical bills (Estate of Hammond v. Aetna Cas. (Aetna Life & Cas. Co.), App. 1 Dist.1986, 96 Ill.Dec. 270, 141 Ill.App.3d 963, 491 N.E.2d 84) unless assigned by the parent to the child. Even when the cause of action is assigned by the parent to the child (which did not happen in this instance) such claim is subject to defenses which are peculiar to the parent but not necessarily the minor, such as the parents contributory negligence (*see* Kennedy v. Kiss, App. 1 Dist.1980, 45 Ill.Dec. 273, 89 Ill.App.3d 890, 412 N.E.2d 624); and the statute of limitations (*see* Curtis v. Womeldorf, 145 Ill.App.3d 1006, 99 Ill.Dec. 807, 496 N.E.2d 500 (1986)).

Public Policies Involved

Courts Duty to Protect Minor Litigants

“It is the public policy of this state that the rights of minors are to be guarded carefully. (*Mastroianni v. Curtis* (1979), 78 Ill.App.3d 97, 33 Ill.Dec. 723, 397 N.E.2d 56.) Every minor plaintiff is a ward of the court when involved in litigation, and the court has a duty and broad discretion to protect the minor's interests. (Burton v. Estrada (1986), 149 Ill.App.3d 965, 103 Ill.Dec. 233, 501 N.E.2d 254.) See also Kingsbury v. Buckner (1890), 134 U.S. 650, 680, 10 S.Ct. 638, 648, 33 L.Ed. 1047, 1059 (Citing Illinois law the Supreme Court stated: "The court, whose duty it is to protect the interests of the infant, should see to it that they are not bargained away by those assuming, or appointed, to represent him.") See also Cushing v. Greyhound Lines, Inc., 2013 IL App (1st) 103197 (Ill. App., 2013).

Full & Fair Compensation

Our Supreme Court recently stated that the fundamental premise of tort law is that of just compensation for any loss or injury proximately caused by the tortfeasor. Clark v. The Children's Mem'l Hosp., 2011 IL 108656, 955 N.E.2d 1065, 353 Ill.Dec. 254 (Ill., 2011) (2011 IL 108656 at ¶29). The Court cited to its decision in Best v. Taylor Machine Works, 179 Ill.2d 367, 406, 228 Ill.Dec. 636, 689 N.E.2d 1057 (1997) explaining “[t]here is universal agreement that the compensatory goal of tort law requires that an injured plaintiff be made whole”; and further citing to the “Restatement (Second) of Torts § 903, cmt. a, at 453–54 (1979) for the proposition that “compensatory damages are designed to place [a plaintiff] in a position substantially equivalent in a pecuniary way to that which he would have occupied had no tort been committed”.

Where a court interprets the Family Expense Act (750 ILCS 65/15) as placing a lien against a minor’s cause of action for monies owed by the minor’s parents and for which the minor could not bring a cause of action the minor is denied full and fair compensation for the injuries suffered by the minor this violates the policy of placing the minor in a position substantially equivalent in a pecuniary way to that which the minor would have occupied but for the tort. The minor’s parent April Pritchett separately pursued a claim under the Family Expense Act (750 ILCS 65/15) for \$79,572.63 “the medical bills stipulated to by the parties” (2013 IL App (1st) 121365 ¶7 & 8) where the trial court found that the minor’s parent failed to establish a prima facie case “due to the lack of evidence presented by Pritchett establishing any expectation of having to pay the medical bills.” (2013 IL App (1st) 121365 ¶9). In this case (1) the parent sued for the medical bills and (2) the court denied recovery for the medical bills. Placing a lien upon the minor’s claim which was independent of his mother’s

claim for those bills is unjust and violates the all of the public policies involved in this matter excepting the protection of a creditor.

The public policy involved is further compounded where in many cases the amount that the minor recovers is limited by the solvency of the judgment debtor or insurance policy limits on the recovery. In such a case imposing the expenses for which the minors parents are responsible upon the minors recovery is unjust to the minor and denying the minor of due process.

Parental Obligation

The general public does not have a duty to completely support a child where the parent is capable of contributing to such support. In Interest of Nelsen, App. 2 Dist.1977, 12 Ill.Dec. 18, 54 Ill.App.3d 412, 369 N.E.2d 515. “A parent is under an obligation to provide for the maintenance of his infant children, is a principle of natural law; and it is upon this natural obligation alone that the duty of a parent to provide his infant children with the necessities of life rests.” Clark v. The Children's Mem'l Hosp., 2011 IL 108656, 955 N.E.2d 1065, 353 Ill.Dec. 254 (Ill., 2011) at §50. Thus, the obligation to pay the medical expenses is on the parent, and the cause of action to recover for the medical expenses lies in the parent, not in the child. Billy v. Meyer (1965), 60 Ill.App.2d 156, 163, 208 N.E.2d 367.

Competing Interests

The interplay between the various public policies must first begin with a careful reading of the Health Care Services Lien Act (770 ILCS 23/1 et seq.) section 10 which allows for several potential interpretations. It appears that the panel of the Appellate Court that entered the decision, for which rehearing is sought, gave the statute the most expansive

reading possible under the circumstances. The court undertaking a de novo review of the case held that the lien attached to the minor's recovery in spite of the fact that the minor's parent had brought a family expenses act claim seeking to recover the medical bills. The panel reasoned that the Health Care Services Lien Act allowed for liens to be placed upon "any verdict or judgment [award, settlement, or compromise] recovered by the injured person" (2013 IL App (1st) 121365 ¶29) without any causal connection or financial obligation to pay the underlying bills. Thus the panel concluded that although the minor's mother pursued a claim for the medical bills the hospital lien could attach to any judgment, award, settlement, or compromise that the minor might ever recover for any and all causes of action until the end of time or the lien claim was satisfied. One can only imagine the problems that this may cause with medical provider liens being asserted in a plethora of causes of action not involving personal injury, conceivably even where the statute of limitations for the direct claim to collect for the medical services had long since expired. The Uniform Fraudulent Transfer Act (740 ILCS 160/2) defines as follows:

"Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

The Uniform Commercial Code Article 2A (810 ILCS 5/2A-103) defines lien in the following manner:

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

For an equitable lien to exist there must be "(1) a debt, duty, or obligation owing by one person to another, and (2) a res to which that obligation attaches." Lewsader v. Wal-

Mart Stores, Inc., (Ill.App. 4 Dist. 1998) 694 N.E.2d 191, 296 Ill.App.3d 169 quoting Paine/Wetzel, 174 Ill.App.3d at 393, 123 Ill.Dec. at 815, 528 N.E.2d at 360; see also Leveyfilm, Inc. v. Cosmopolitan Bank & Trust, (Ill.App. 1 Dist. 1995) 653 N.E.2d 875, 274 Ill.App.3d 348.

Here the appellate panel read the Health Provider Lien provisions as creating a lien against the minor's recovery even though the minor had no debt or obligation to the health provider for payment of the medical treatment and the minor did not have the ability to bring an action for those sums. There was no debt or obligation of Akeem Mango to the hospital.

It is incomprehensible that the legislature intended to strap a child with the obligations of that child's parents where the child lacks the right to sue for those damages. Reimers v. Honda Motor Co., Ltd., App. 1 Dist.1986, 104 Ill.Dec. 165, 150 Ill.App.3d 840, 502 N.E.2d 428, appeal denied 108 Ill.Dec. 424, 114 Ill.2d 557, 508 N.E.2d 735; Dewey v. Zack, App. 2 Dist.1995, 209 Ill.Dec. 465, 272 Ill.App.3d 742, 651 N.E.2d 643. A hospital would not be able to sue the minor for the medical treatment provided to that minor. Estate of Hammond v. Aetna Cas. (Aetna Life & Cas. Co.), App. 1 Dist.1986, 96 Ill.Dec. 270, 141 Ill.App.3d 963, 491 N.E.2d 84; Kennedy v. Kiss (1980), 89 Ill.App.3d 890, 894, 45 Ill.Dec. 273, 412 N.E.2d 624; and 2 Williston on Contracts, § 240, at 51 (3rd ed. 1959).

The legislature was certainly aware of the existing case law that defined a minor's parent as the injured party for purposes of causes of action involving medical bills. See, Beck v. Yatvin, (Ill.App. 1 Dist. 1992) 603 N.E.2d 558, 235 Ill.App.3d 1085; and Peterson v. Hinsdale Women's Clinic, 664 N.E.2d 209, 278 Ill.App.3d 1007, 215 Ill.Dec. 812 (Ill. App. 1 Dist., 1996) both discussing the amendments to the statute of limitations and their impact on a parent's cause of action pursuant to the Family Expense Statute. In Claxton by Claxton v.

Grose, (Ill.App. 4 Dist. 1992) 589 N.E.2d 954, 226 Ill.App.3d 829, the Appellate Court held that a parent was an “injured person” with respect to his claims for medical bills under the family expense act where his son was bitten by a dog in an animal control act claim. Where medical treatment is provided to a minor the injured person for purposes of a Health Care Services Lien is that minor’s parent. Therefore the lien extends to and attaches to the claims and causes of action of the parent and not the child, as the child is not the “injured person” with respect to claims involving the medical bills. To interpret the statute otherwise is to impress an obligation upon a child for sums of money that the child could never recover absent a parent’s transfer of their rights to the child. In the instant case where the party seeking to enforce the lien against the child’s recovery is a governmental entity (Stroger Hospital f/k/a Cook County Hospital see Addison v. Health and Hospital Governing Commission of Cook County, App. 1 Dist.1977, 14 Ill.Dec. 7, 56 Ill.App.3d 533, 371 N.E.2d 1060) the issue of a Constitutional Taking comes into play, not to mention the circumvention of the Illinois Frauds Act (740 ILCS 80/1 requiring promises to answer for the debt of another to be reduced to writing, see Opdahl v. Johnson, 306 Ill.App. 145, 28 N.E.2d 308 (1940)). The imposition of a lien constitutes a constitutional taking because it deprives the person subject to the lien of a significant property interest. See, Roberts v. Total Health Care, Inc., 675 A.2d 995, 109 Md.App. 635 (Md. App., 1995); Harris County v. Progressive National Bank, 93 S.W.3d 381; County of Burleson v. General Electric Capital Corp., 831 S.W.2d 54.

The legislature could not have intended for minors to be held responsible for their parent’s obligations to pay for their medical care especially in cases such as this where the parent brought an action to recover those very same medical bills.

Shifting the obligation to the minor to pay for their medical bills violates several other important public policies. It could potentially undermine the policy supporting the parent-child tort immunity doctrine (based upon parental authority and responsibility), the public policy that every child has the rights of physical, mental, emotional and monetary support from his or her parents (See 750 ILCS 45/1.1); and creates the strong potential for a multiplicity of claims and lawsuits for the very same medical bills initiated both by parents and children, potentially in different courts.

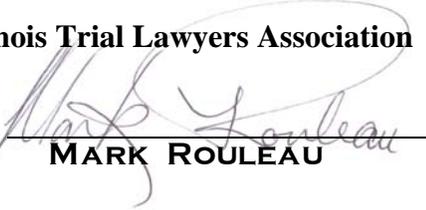
To allow the governmental hospital lien to prevail would without any proof by the hospital that the charges are the fair, reasonable, and customary charges violates the concept of procedural due process at its most elementary level. It dispenses with the right to a hearing at which the evidence is presented. As the dissent stated there is no evidence in the case at bar as to the reasonableness of the charges. Without such a hearing the governmental hospital is allowed to take from the child's recovery, any amount the hospital asserts is owed by the child's parent, up to the statutory maximum amount for such a lien, without any proof whatsoever. If that was the legislature's intent then the lien statute is clearly unconstitutional. "However, as between two possible constructions of a statute, one rendering it as constitutional, and the other as unconstitutional, this court will favor the construction rendering it constitutional." Mulligan v. Joliet Regional Port Dist., (Ill. 1988) 527 N.E.2d 1264, 123 Ill.2d 303. This same principle must apply when evaluating the other competing public policies such as whether the legislature intended for the lien statute to function as a taking of assets belonging to a child to reimburse a debt owed to the government (Stroger Hospital) by the child's parents. That a "child shall be punished for the sins of the parents,-- shocks every sense of justice and right." Robinson v. Ruprecht, 191 Ill. 424, 61 N.E. 631 at

634 (1901); In re Estate of Bartolini, (Ill.App. 1 Dist. 1996) 674 N.E.2d 74, 285 Ill.App.3d 613.

Conclusion

A minor has a right to fair and full compensation from the tortfeasor for the losses suffered by the minor without being subject to liens for charges that the minor was not allowed to collect from his tortfeasor. Allowing the hospital to collect a lien for medical treatment from the child where the child was not allowed to seek compensation from the tortfeasor for those expenses deprives the child of his right to fair and full compensation from the tortfeasor. The court has an obligation to protect the rights of minors involved in litigation, which in this case requires the court to prevent a dissipation of the minor's assets to pay for the debts of his parents, or at the very minimum to require an evidentiary hearing regarding the claims of the government hospital regarding its asserted lien. The Court has the duty to interpret the Health Provider Lien Statute in such a manner that it does not require a taking of assets from persons who are prohibited from legally bringing claims for the medical bills upon which the lien is based.

Illinois Trial Lawyers Association

By: 

MARK ROULEAU

MARK ROULEAU 291
Law Office of Mark Rouleau
ARDC 6186135
4777 E. State St. - #7
Rockford, IL 61108
815/229-7246