STATE OF MICHIGAN

COURT OF APPEALS

S. WILLIAM PARIS,

Plaintiff-Appellant,

v

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
November 22, 2005

No. 255643
Wayne Circuit Court
LC No. 04-409568-CZ

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition, dissolving a temporary restraining order, and dismissing the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant administers a network of preferred provider organizations, with which plaintiff, an allergist, became affiliated in 1985. Defendant began expressing concerns about plaintiff's costs in total, and per patient, in 2003. Because plaintiff did not reduce his costs to defendant's satisfaction in the months that followed, defendant decided to disaffiliate plaintiff. Plaintiff protested through internal procedures, but defendant provided him with notice that his disaffiliation would be effective as of April 5, 2004.

Plaintiff filed suit seeking a permanent injunction against his disaffiliation, and requesting unspecified damages. The complaint refers to provisions of the Nonprofit Health Care Corporation Reform Act, MCL 550.1101 *et seq.*, with emphasis on § 502,[1] and asserts that disaffiliation would cause plaintiff to "lose . . . contracts and/or business expectancies."

The trial court temporarily enjoined defendant from proceeding with plaintiff's disaffiliation. However, after further proceedings, the court dissolved the temporary restraining

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[1] MCL 550.1502(3) states that a "health care corporation shall not restrict the methods of diagnosis or treatment of professional health care providers who treat members," then adds that this does not apply "to the reimbursement provisions of a provider contract or reimbursement arrangement, or to standards set by the corporation for all contracting providers."

order and dismissed the case, explaining that "there simply is no standing here to proceed against [defendant] and such an action should be . . . initiated by the Attorney General."

Plaintiff concedes that he has no private cause of action under the Nonprofit Health Care Corporation Reform Act,[2] but argues that the trial court erred in failing to recognize that he had a common law cause of action apart from it. We disagree.

"The elements of tortious interference with a contract are: (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Health Call of Detroit v Atrium Home & Health Care Services, Inc*, ___ Mich App ___; ___ NW2d ___ (2005). In this case, plaintiff points to no specific contract with a patient that was breached, let alone at defendant's unjustified instigation. Hence the facts of this case clearly do not establish this tort.

The elements of tortious interference with a business expectancy or relationship are

> (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. [*Id.*]

"Interference" for purposes of this tort involves "the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Badiee v Brighton Area Schools*, 265 Mich App 343, 367; 695 NW2d 521 (2005) (internal quotation marks and citations omitted). Defendant's conduct in terminating its participating-provider relationship with plaintiff was neither wrongful, nor done with malice, but was simply a legitimate exercise of defendant's business judgment.

Plaintiff points out that defendant pays for services through a schedule of prescribed, uniform rates, and argues that defendant thus cannot insist that a provider cut its costs except by requiring that that provider reduce the services being offered. Even if we were to accept this characterization as accurate, it nonetheless does not necessarily follow that any decision to reconsider a relationship with an expensive practitioner equals unwarranted interference with medical relationships.

The preamble of defendant's standard provider agreement states that defendant "retains the right, at its sole discretion, to determine persons eligible for this PROGRAM or for other program(s) and to reimburse or sanction TRUST PROVIDER under contract provisions pertaining to this PROGRAM and other BCBSM programs(s) . . . ." This language does not

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[2] See MCL 550.1619; *BPS Clinical Laboratories v Blue Cross Blue Shield (On Remand)*, 217 Mich App 687, 698; 552 NW2d 919 (1996).

purport to permit defendant to second-guess a participating provider's medical judgment, but rather grants defendant the power to reconsider whether a relationship with a particular provider comports with its business interests.

The twin imperatives of providing necessary services and holding down costs create an unavoidable tension. If it should not be resolved by letting the concern for costs compromise actual medical necessity, neither should it be resolved by indiscriminately financing a provider's unchallenged medical decisions. In managing this tension, defendant is free to reconsider its own business judgment without necessarily challenging plaintiff's medical judgment.

Indeed, before the trial court defendant stated, "We presume that [plaintiff] is only providing medically necessary services." Moreover, plaintiff reported by affidavit that defendant's agent specifically conceded that there was no suggestion that he acted fraudulently or otherwise inappropriately, but indicated that he "might not have a good 'fit' with the PPO Program," and thus that defendant "needed to evaluate whether it wanted to continue . . . affiliation." In any event, as defendant reminded the trial court, plaintiff remains "free to continue to treat Blue Cross patients," even if "not . . . within the PPO program."

Because plaintiff lacks standing to litigate claims directly pursuant to the Nonprofit Health Care Corporation Reform Act, including § 502 thereof, and because he points to no evidence to show that defendant engaged in *wrongful* interference with his practice, we affirm the trial court's decision to grant defendant summary disposition and dismiss the case.

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello