

Summary of SC90586, *State of Missouri, et al. v. Stephanie Spilton, LCSW*

Appeal from the St. Louis County circuit court, Judge Robert S. Cohen
Argued and submitted March 17, 2010; opinion issued June 29, 2010

Attorneys: Spilton was represented by Michael J. Sudekum and Alan S. Mandel of Schlueter, Mandel & Mandel LLP in St. Louis, (314) 621-1701, and the state was represented by Jeremiah J. Morgan and Stephanie Gwillim of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A licensed clinical social worker sued for more than 300 violations of the state's Medicaid fraud laws appeals the trial court's judgment granting the state summary judgment and awarding it more than \$1.8 million in damages, civil penalties and treble damages. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the judgment. The social worker failed to demonstrate there is any issue of material fact – either that she knowingly violated the statute or that she is subject to civil penalties as a result – that precludes summary judgment. The statute authorizing the civil penalties against her was not unconstitutionally vague, does not violate the Eighth Amendment prohibition against excessive fines and does not violate due process.

Facts: Licensed clinical social worker Stephanie Spilton has been a licensed Missouri Medicaid service provider since 2001. In 2005, Medicaid fraud investigators in the state attorney general's office began investigating claims Spilton submitted the previous year. The investigation revealed that Spilton had committed 325 separate violations of section 195.905(1), RSMo Supp. 2009, which prohibits knowingly presenting a false claim for reimbursement. The state filed suit against Spilton, alleging Medicaid fraud, breach of contract, unjust enrichment and fraudulent misrepresentation. In March 2007, Spilton signed a statement that she was responsible for illegal activities and confessed in an interview with Medicaid fraud investigators that she “created patient records” to corroborate the claims she had submitted to the state for reimbursement. In October 2008, however, in her response to the state's motion for summary judgment, she asserted her Fifth Amendment privilege against self-incrimination. In July 2009, the circuit court granted the state's motion for summary judgment as to Medicaid fraud, which provided the state with complete relief. The court awarded the state actual damages, civil penalties and treble damages totaling more than \$1.8 million. Spilton appeals.

AFFIRMED.

Court en banc holds: (1) Spilton has failed to demonstrate there is a genuine issue of material fact that would preclude summary judgment for the state. Subdivision (1) of section 191.905.1 prohibits “knowingly” presenting a claim for health care payment that falsely represents that the payment claimed was medically necessary if, in fact, it was not, and subsection 12 provides for civil penalties of \$5,000 to \$10,000 per knowing violation. It is well-settled Missouri law the state can rely on circumstantial evidence to demonstrate the “knowing” element of fraud. Here,

the state included in its motion for summary judgment both circumstantial and direct evidence that Spilton violated section 191.905.1(1). It produced more than 300 copies of claims she submitted that stated, among other things, that she provided individual therapy she did not provide, that she spent longer periods of time with patients than she actually spent, that she followed Medicaid procedures when she did not and that she treated children she did not see. The state also produced Spilton's statement in which she admitted responsibility for illegal acts and her confession to the investigators. Spilton did not deny a single allegation made by the state, and because this is a civil case, it was proper for the court to adopt an adverse inference from Spilton's assertion of the Fifth Amendment privilege in her response to the state's motion for summary judgment. Because there is no genuine issue of material fact as to whether Spilton knowingly violated the statute, she is liable for the civil penalties set forth in section 191.905.12. There is nothing left for the jury to resolve, so summary judgment was proper.

(2) Section 191.905.12 is not unconstitutionally vague, does not impose excessive fines in violation of the Eighth Amendment to the United States Constitution and does not violate due process. A statute that provides a range of penalties, thereby allowing for judicial discretion in imposing penalties, is not constitutionally deficient. The statute clearly puts all individuals on notice that if they violate subdivisions (1) through (3) of section 191.905.1, they will be liable for at least \$5,000 per violation. As applied to Spilton, subsection 12 was neither vague nor enforced arbitrarily. She received the lowest possible penalty allowed by the statute. Further, the legislature is granted wide latitude to decide the severity of civil penalties for violations of the law – so long as it does not shock the moral sense of reasonable persons – and statutes that provide for treble damages in addition to actual damages are not unconstitutional. Spilton has failed to meet her burden to show the fines imposed are excessive.