Summary of SC93134, *Jodie Nevils v. Group Health Plan Inc. and ACS Recovery Services Inc.*

Appeal from the St. Louis County circuit court; Judge Thea A. Sherry
Argued and submitted September 12, 2013; opinion issued February 4, 2014

Attorneys: Nevils was represented by Blake P. Green, Mitchell L. Burgess and Keith C. Lamb of Burgess & Lamb PC in Kansas City, (816) 471-1700; Don P. Saxton of Saxton Law Firm LLC in Kansas City, (816) 471-1700; Ralph K. Phalen of Ralph K. Phalen, Attorney at Law, in Kansas City, (816) 589-0753; and John Campbell and Erich Vieth of The Simon Law Firm PC in St. Louis, (314) 588-8101. GHP was represented by Thomas M. Dee, Mark G. Arnold, Melissa Z. Baris and Elizabeth A. Mushill of Husch Blackwell LLP in St. Louis, (314) 480-1500. ACS was represented by Winthrop B. Reed III, Richard A. Ahrens, Steven D. Hall, Neal F. Perryman and R. Bradley Ziegler of Lewis Rice Fingersh in St. Louis, (314) 444-7600.

Two parties submitted briefs as friends of the Court: The United States was represented by Acting Assistant Attorney General Stuart F. Delery; U.S. Attorney Richard G. Callahan; Assistant U.S. Attorney Nicholas P. Llewellyn, all of the U.S. attorney's office in St. Louis, (314) 539-7637; and Alisa B. Klein and Henry C. Whitaker, appellate staff attorneys for the U.S. Department of Justice civil division in Washington, D.C., (202) 514-3180. The Association of Federal Health Organizations was represented by David M. Ermer of Ermer Law Group in Washington, D.C., (202) 833-3400, and Christopher O. Bauman of Blitz, Bardgett & Deutsch in St. Louis, (314) 863-1500.

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 federal employee injured in an automobile accident appeals a circuit court's grant of summary judgment in favor of a health insurance company after the circuit court found federal law preempts state law barring subrogation (legal action against a third party that caused an insurance loss). In a decision written by Judge Richard B. Teitelman and joined by four other judges, the Supreme Court of Missouri reverses the trial court and remands (sends back) the case. Contrary to a prior Missouri appellate case whose holding was called into question by a more recent decision of the United States Supreme Court, the federal act in question does not, in fact, preempt the Missouri law barring subrogation of personal injury claims.

In an opinion joined by one other judge, Judge Paul C. Wilson concurs in result. Although he disagrees with the rationale of the principal opinion, he does not dissent because he would hold that the preemption language in the federal act is not a valid application of the supremacy clause of the federal constitution and, therefore, has no effect. Accordingly, the act does not bar the employee's suit, and the author concurs in the principal opinion's conclusion that the circuit court's judgment should be vacated and the case remanded for further proceedings.

Facts: The federal office of personnel management contracted with Group Health Plan Inc. (GHP) to provide health insurance to federal employees pursuant to the federal employee health benefits act. Under the contract, when an insured obtains a settlement or judgment against a

tortfeasor (one whose wrongful act injures another to whom the law provides a right to seek relief) for payment of medical expenses, GHP is directed to seek reimbursement or subrogation. Jodie Nevils, a federal employee with insurance through GHP, was injured in an automobile accident, and GHP paid his medical bills. After Nevils recovered a personal injury settlement from the one responsible for the accident, GHP – through its agent, ACS Recovery Services Inc. – asserted a lien of nearly $6,600 against Nevils' settlement, seeking reimbursement or subrogation for its payment of his medical bills. Nevils satisfied the lien but then filed a class action petition for damages on behalf of himself and others similarly situated (collectively, Nevils) against GHP, bringing state common law and statutory consumer fraud claims based on the premise that Missouri law does not permit the subrogation of tort claims. GHP removed the case to federal district court, which remanded the case to state court on the ground that there was no federal jurisdiction because a 1996 Missouri appellate case – *Buatte v. Gencare Health Sys., Inc.* – held that the federal act preempts Missouri law barring subrogation. ACS intervened, and the trial court ultimately entered summary judgment in favor of ACS and GHP (collectively, GHP). Nevils appeals.

REVERSED AND REMANDED.

Court en banc holds: Contrary to the holding in *Buatte*, the federal act does not preempt Missouri law barring subrogation of personal injury claims. Although Missouri law generally prohibits subrogation of personal injury claims, the preemption clause in the federal act at issue here provides that the terms of any contract under the act relating to the nature, provision or extent of coverage or benefits supersedes and preempts any state law relating to health insurance. The supremacy clause of the United States Constitution provides that state laws are preempted when in conflict with federal laws. The continued validity of *Buatte* was called into question by a 2006 United States Supreme Court decision. Although in that decision, the Supreme Court expressly declined to determine whether the federal act preempts state subrogation laws, two aspects of its analysis are relevant to Nevils' claim. First, the Supreme Court recognized that the federal act's preemption clause is subject to plausible, alternate interpretations, which implicates a prior Supreme Court decision that, when two plausible readings of a statute are possible, there is a duty to accept the reading that disfavors preemption. Second, the Supreme Court noted that, while the federal act contains a preemption clause displacing state law for issues relating to coverage and benefits, the act contains no provision addressing the subrogation or reimbursement rights of insurance carriers. This distinction is important because *Buatte* is premised on the conclusion that, pursuant to the act's preemption clause, the insurance company's contractual right to subrogation "relates to" the nature, provision or extent of coverage or benefits. But if an insured's coverage and benefits are separate from the insurer's subrogation right, then the right to subrogation does not "relate to" "coverage" and "benefits," and state subrogation law is not preempted. Here, the subrogation provision in favor of GHP creates a contingent right to reimbursement and bears no immediate relationship to the nature, provision or extent of Nevils' insurance coverage and benefits.

Concurring opinion by Judge Wilson: The author agrees the circuit court's judgment should be vacated and the case remanded for further proceedings, albeit for different reasons. He disagrees with the principal opinion's rationale, which preserves the primacy of Missouri law only by declaring that benefit repayment terms have no relationship to the nature or extent of

Nevils' benefits under the insurance contract and no relationship to payments regarding his benefits. But terms cannot contradict or conflict with one another unless they "relate" to the same subject. As this Court previously has recognized, an insured is concerned with the combined effect of conflicting terms – an insured does not care what his "benefits" are if he is not allowed to keep them. The author would hold instead that Congress intended the benefit repayment terms in the GHP contract with the office of personnel management to meet the relatedness test in the federal act's preemption clause because the benefit repayment terms plainly "relate to" the nature or extent of Nevils' benefits and, because they require payment, even more plainly "relate to" the payment of Nevils' benefits. But because there is no constitutional basis for making the terms of contracts with private parties "supreme" over state law, the author would hold that Congress's attempt in the federal act's preemption clause to give GHP's contractual benefit repayment terms preemptive effect over Missouri law prohibiting such terms is not a valid application of the federal constitution's supremacy clause's power. As such, the act does not bar Nevils' suit.