Summary of SC92700, *Alice Roberts, et al. v. BJC Health System, d/b/a BJC Healthcare, et al.*

Appeal from the St. Louis circuit court, Judge Robert H. Dierker
Argued and submitted Nov. 13, 2012; opinion issued Jan. 29, 2013

Attorneys: The patients were represented by Sanford J. Boxerman, S. Todd Hamby, Sheila Greenbaum and Gary R. Sarachan of Capes, Sokol, Goodman & Sarachan PC in St. Louis, (314) 721-7701; and Charles S. Kramer and Randall D. Grady of Riezman Berger PC in St. Louis, (314) 727-0101.

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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: Patients treated by a doctor who pleaded guilty to federal charges related to creating billing overcharges by using improper coding sued the doctor and other healthcare defendants, alleging they were harmed by the overcharging scheme. They appeal the circuit court's dismissal of their claims after finding that they failed to present any evidence that they had suffered damages. In a 3-2 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the trial court's judgment. Although the potential liability for damages was sufficient to give the patients standing (legal ability) to sue, it was not sufficient to establish damages necessary to survive summary judgment. Their insurers paid the alleged overcharges, and any harm to the patients never materialized.

Chief Justice Richard B. Teitelman dissents. He would hold that the potential for liability is sufficient to allow the case to proceed at this stage, leaving open the possibility for further litigation to clarify whether the claim of potential liability is, in fact, purely speculative, noting an appropriate judgment could be entered at that time.

Facts: Certain patients received treatment by Dr. Richard Coin and his business at various other healthcare facilities. Improper coding of the surgical procedures led to allegedly fraudulent overcharges being billed to the insurers providing coverage for the patients' care. The patients were not billed for the alleged overcharges, but before their medical treatments, the patients had entered into contracts with the insurers to be held personally liable for any treatment costs not covered by insurance or other third-party payors. Coin and his business pleaded guilty to federal charges related to creating billing overcharges by using improper coding. The patients later brought suit, alleging they were harmed by the overcharging scheme. The healthcare defendants moved for summary judgment, alleging the patients lacked standing and could not show that they

suffered any injury-in-fact or damages necessary to prove their claims. The trial court granted summary judgment in favor of the healthcare defendants on all the patients' claims, finding the patients had failed to present any evidence that they had suffered damages because of the alleged overcharges. The patients appeal.

AFFIRMED.

Court en banc holds: The circuit court properly granted summary judgment to the healthcare defendants. The patients sufficiently demonstrated that they have standing (the legal ability to bring suit). Their assertions of their potential liability for the alleged overcharges demonstrates a legally cognizable interest in the litigation and a threatened injury. Establishing standing by showing such a threatened injury, however, does not establish that the patients showed the requisite damages necessary for their claims to survive summary judgment. In fact, because they did not show that they suffered any damages, summary judgment was proper. The legal liability they had for potential damages, based on their agreement to pay if their insurers did not, is not sufficient. The insurers were billed for and paid the alleged overcharges, and the patients' potential liability remained a speculative harm that did not materialize. They cannot proceed with claims to recover money that incontrovertibly they never lost.

The circuit court did not err in determining that the collateral source rule is inapplicable in this case. This rule prevents an alleged wrongdoer from attempting to introduce evidence at trial that the plaintiff's damages will be covered, in part or whole, by insurance or another source, but it cannot create damages for the patients where none existed. Further, the circuit court did not err in finding that the insurers were the "owners of any claims" in this case. Subrogation and assignment are not relevant concepts in this case, as the patients never had legal title to any claims related to their insurers' payments for alleged overcharges.

Dissenting opinion by Chief Justice Teitelman: The author would hold that the potential legal liability through the patients' contracts with the insurers is sufficient to allow the case to proceed. Assuming there are no cognizable damages because they have not yet materialized assumes there is an absence of damages and begs the question of whether potential liability is sufficient, particularly given that there appears to be nothing from preventing the insurers from suing to recoup the overcharges from the patients. If further litigation establishes conclusively that the patients' claim of potential liability in fact is purely speculative, then an appropriate judgment could be entered at that time.