

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER SC01-1397

025
FILED
THOMAS D. HALL
AUG 14 2001

CLERK, SUPREME COURT
BY _____

ROLANDO VILLAZON, as Personal
Representative of the Estate of SUSAN
COHEN VILLAZON, deceased,

Petitioner,

vs.

PRUDENTIAL HEALTH CARE PLAN,
INC.,

Respondent.

ON PETITION FOR REVIEW OF A DECISION
FROM THE THIRD DISTRICT COURT OF APPEAL

RESPONDENT'S AMENDED BRIEF ON JURISDICTION

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INTRODUCTION¹

The Third District Court of Appeal's opinion in this case is not in conflict with the opinion of the Fourth District Court of Appeal in Estate of Frappier v. Wishnov, 678 So.2d 884 (Fla. 4th DCA 1996), as both District Courts held that claims based upon an ERISA plan's administration are preempted. In fact, both courts used the same rule of law to reach their conclusions. In addition, the Third District's opinion is not in conflict and is based on the same rule of law applied by other District Courts which have examined claims predicated on contractual and statutory non-delegable duty.

STATEMENT OF THE CASE AND FACTS

The trial court granted Summary Judgment in favor of PRUDENTIAL holding that Plaintiff's claims for vicarious liability and non-delegable duty directly related to PRUDENTIAL'S administration of the health plan, and therefore, were preempted under § 514 of ERISA. As a separate and independent ground, the trial court also granted Summary Judgment based on well established state law holding that an Independent Practice Association Health Maintenance Organization

¹ Throughout the Brief, Respondent will be referred to as "PRUDENTIAL" or "Defendant." ROLANDO VILLAZON will be referred to as "Petitioner" or "Plaintiff." The Opinion by the Third District Court of Appeal will be designated by an "A".

("IPA HMO"), such as PRUDENTIAL, is not responsible for the acts of independently practicing health care providers, and that there is no basis under Florida law to hold an IPA HMO liable on theories of statutory or contractual non-delegable duty. The Third District affirmed the ruling of the trial court on each of these two separate and independent grounds, and did not certify a conflict with any decision of another District Court.

The uncontroverted evidence adduced by PRUDENTIAL for the trial court established that Plaintiff's late wife, Susan Villazon, was a member, through her employer, of PRUDENTIAL. (A.2). Plaintiff's theories of liability against PRUDENTIAL were premised on PRUDENTIAL's administration of the health plan through which PRUDENTIAL allegedly influenced the manner in which the health care providers rendered care and treatment. (A.2).²

The uncontroverted evidence also established that PRUDENTIAL, as an IPA HMO, entered into contracts with independent contracted physicians, who had their own independent practices and who agreed to provide covered services for a

² "At the summary judgment hearing, Plaintiff argued that PRUDENTIAL, as part of the management of health care benefits, decides who provides the benefits, when those benefits are provided, where the benefits are provided, and why those benefits need to be provided. Plaintiff also alleged that PRUDENTIAL controlled the referral process, and required that authorization be obtained prior to the performance of certain tests and procedures." (A.2).

contracted rate. (A.6). PRUDENTIAL never contracted with Susan Villazon to render any medical services, and only contracted to provide such care through the use of these independently contracted health care providers. (A.7). PRUDENTIAL did not exercise any control over the medical judgments and decisions made in the care and treatment of patients, including Susan Villazon. (A.7).

Petitioner's jurisdictional brief only seeks review of the Third District's decision that ERISA preempts Plaintiff's vicarious liability claims and the Third District's decision that there is no cause of action against PRUDENTIAL for breach of non-delegable duty under state law.¹

SUMMARY OF ARGUMENT

This Court should not exercise discretionary jurisdiction to review the decision by the Third District in this case, holding that Plaintiff's claims for vicarious liability were preempted under ERISA. Petitioner argues erroneously that the Third District's decision is in direct conflict with the Fourth District's decision in Frappier. Not only is the Third District's decision not in conflict with Frappier, it is

³ Petitioner does not seek review of the Third District's decision pertaining to actual agency or apparent agency based on state law grounds. Nor does Petitioner seek review of the Third District's decision that Petitioner claims predicated on non-delegable duty are preempted by ERISA.

supported by Frappier. Both courts used the same rule of law to reach their conclusions, to wit; claims based on an ERISA plan's administration are preempted.

Frappier was decided on a Motion to Dismiss, while this case was decided on a Motion for Summary Judgment, after evidence was adduced to demonstrate that Plaintiff's claims for vicarious liability involved administration of an ERISA plan. The Third District correctly relied on Frappier for its holding, as Frappier recognized that claims based on an ERISA plan's administration are preempted, and in fact, held that the claims for direct negligence, corporate liability, and implied contract, necessarily involved the administration of the health plan, and therefore, are preempted. Frappier simply held that claims for vicarious liability should not be dismissed, on the basis of ERISA preemption, at the initial pleading stage. While Frappier did not address whether claims for vicarious liability can be found to be preempted at the Motion for Summary Judgment stage when evidence is adduced, the reasoning in Frappier supports this conclusion. In any event, Frappier does not conflict with the ruling of the Third District in this case.

Petitioner also argues erroneously that the Third District's holding conflicts with a long line of cases in which courts have recognized, in certain contexts, a cause of action under a theory of non-delegable duty created by statute or by

contract. Petitioner's argument completely ignores the specific facts in this case. The Third District did not hold that there could never be a cause of action stated under such a theory. Instead, the Third District held that there is no basis for such a claim based on non-delegable duty against PRUDENTIAL, an IPA HMO. The Third District applied the rule of law followed by all District Courts to conclude that there is no contractual non-delegable duty, as PRUDENTIAL never contracted to perform the actual care and treatment. Additionally, there is no District Court decision in Florida holding that there is a statutory non-delegable duty for an IPA HMO, and therefore, no conflict could exist. Therefore, this Court should not exercise jurisdiction to review the Third District's decision.

ARGUMENT

I. THE THIRD DISTRICT'S DECISION DOES NOT CONFLICT WITH THE DECISION IN FRAPPIER.

In Frappier, the court ruled that vicarious liability claims could not be dismissed on the basis of ERISA preemption, pursuant to a motion to dismiss the complaint.¹ The Frappier court also recognized that the claims for direct negligence, corporate liability, and implied contract, as pled, could only

¹ Petitioner is not arguing, and could not argue, that the Third District's opinion that the non-delegable duty claims were preempted is in conflict with Frappier, as that court specifically ruled that non-delegable duty claims are preempted by ERISA. Id. at 887.

be proven by evidence relating to the administration of the health plan, and therefore, held that those claims were preempted by §514 of ERISA. In holding that the vicarious liability claims should not be dismissed at the initial pleading stage, the Frappier court relied on §502 of ERISA and the case of Dukes v. United States Health Care Sys. of Pa., Inc., 57 F.3d 350 (3d Cir. 1995), which held that vicarious liability claims are not "completely preempted," and therefore, not subject to dismissal upon removal to federal court. The Dukes court also recognized that vicarious liability claims could be preempted by §514 of ERISA, upon remand to state court once evidence was adduced that demonstrated that the claims "related to" the administration of the health plan.

In the instant case, PRUDENTIAL did not seek dismissal of the vicarious liability claims at the motion to dismiss stage. Rather, PRUDENTIAL filed a Motion for Summary Judgment introducing evidence that Plaintiff's claims relate to the administration of the health plan. The Third District, citing to Frappier, and following the Fourth District's rationale in Frappier, held that claims that relate to the administration of a health plan are preempted, and therefore, upheld the Summary Judgment entered in favor of PRUDENTIAL. Accordingly, not only is the Third District's decision not in conflict with Frappier, but Frappier provides the basis for the decision in this case.

This Court in Nielsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960), citing to Florida Power & Light Co. v. Bell, 113 So.2d 697 (Fla. 1959), established the situations that would justify conflict jurisdiction, which include: (1) the announcement of a rule of law which conflicts with a rule previously announced; or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts. Id. at 734.

As demonstrated above, there is absolutely no conflict between the holding in Frapplier on the vicarious liability claim and the Third District's ruling in this case. The same rule of law was applied in both cases. If claims relate to the administration of the subject health plan, then these claims are preempted by ERISA. The Frapplier holding simply establishes that if the pleadings do not implicate the administration of the health plan, then a party should be at least be allowed to plead the cause of action. However, as the Third District correctly ruled, once the case is fully developed and the record demonstrates that all of the claims are based on the administration of the health plan, summary judgment based on ERISA preemption is appropriate.

II. THE THIRD DISTRICT'S DECISION DOES NOT CONFLICT WITH THE DECISION OF ANY OTHER DISTRICT COURT ON NON-DELEGABLE DUTY.

Contrary to Petitioner's argument, the Third District's ruling in this case that PRUDENTIAL did not have a contractual non-delegable duty is based on the same rule of law applied in the cases cited by Petitioner, in Atchley v. First Union Bank of Florida, 576 So.2d 340 (Fla. 5th DCA 1991); CISU of Florida, Inc. v. Porter, 457 So.2d 1118 (Fla. 1st DCA 1984); Irving v. Doctors Hosp. Of Lake Worth, Inc., 415 So.2d 55 (Fla. 4th DCA 1982); and Mills v. Krauss, 114 So.2d 817 (Fla. 2d DCA 1959), and therefore, the Third District's decision does not conflict with these cases.

In all of the cases relied upon by Petitioner, the non-delegable duty to perform a certain task was clear and certain through contract. In Atchley, supra, the defendant vendor contracted to specifically perform roof repairs. Similarly, in CISU of Florida, Inc., supra, the defendant lessor contracted to specifically perform roof repairs. In Irving, supra, the hospital's non-delegable duty arose out of an implied contract between the hospital and the patient, whereby the patient could properly assume that the treating doctors and staff were acting on behalf of the hospital. Id. at 61. Lastly, in Mills, supra, the defendant general contractor contracted to specifically undertake the task of repairing the premises. Id. at 821.

The rule of law followed in these cases is that when a party specifically undertakes, pursuant to a contract, to do something for another, the duty to perform that task may be delegated, but not the liability. In the cases cited by Petitioner, the defendants agreed to provide specific services without reference to those services being performed by a third party. Clearly, the key for the courts in these cases was that the defendant specifically had undertaken, pursuant to a contract, to do something for another.

In the instant case, the Third District applied this rule of law and concluded that in the context of an IPA HMO, wherein the contracts and all of the record evidence clearly and unambiguously demonstrate that the medical care was going to be rendered by independent practicing health care providers, a contractual non-delegable duty could not exist through which PRUDENTIAL could be held liable. The Third District, after reviewing the complete record and the relevant contracts, found that "PRUDENTIAL never contracted with Villazon's wife to render any medical services and only contracted to provide such care through the use of its primary care physicians and participating health care providers" (A.7). This finding by the Third District shows that this contractual arrangement is totally unlike the arrangement in Atchley, CISU of Florida, Inc., Irving, and Mills, and therefore, a non-delegable duty was never created.

Clearly, the Third District applied the same rule of law applied by the courts in the cases cited by Petitioner, but reached a different conclusion based on the facts of this case. Therefore, conflict jurisdiction is not appropriate. Nielsen, supra, and Florida Power & Light Co., supra.

Petitioner in the Summary of Argument also seems to suggest that the Third District's ruling that there is no liability under a statutory non-delegable duty is also in conflict with Atchley, CISU of Florida, Inc., Irving, and Mills. However, as developed above, these holdings do not address statutory non-delegable duties. In fact, the ruling by the Third District that there is no statutory non-delegable duty through which an IPA HMO can be held liable is the first by any District Court in Florida. Therefore, there is absolutely no conflict from which this Court can exercise conflict jurisdiction in regard to the Third District's holding regarding the absence of a statutory non-delegable duty in this case.

CONCLUSION

Based on the foregoing, this Court should not take discretionary jurisdiction to review the Third District's decision that Petitioner's claims based on vicarious liability theories were preempted by ERISA, and that there is no recognizable cause of action for breach of a non-delegable duty against PRUDENTIAL, an IPA HMO, under state law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail this 13 day of August, 2001 to: JAMES C. BLECKE, ESQUIRE, Deutsch & Blumberg, P.A., 100 North Biscayne Boulevard, New World Tower, Suite 2802, Miami, Florida 33132.

Respectfully submitted,
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CERTIFICATION OF COMPLIANCE WITH FONT STANDARDS

I CERTIFY that this Amended Brief on Jurisdiction complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2). This Brief has been prepared using Courier New, 12-point font.

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