ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

JACKIE ABBOTT, et al. v. BANNER HEALTH NETWORK, et al.
CV-15-0013-PR

PARTIES:

Petitioners/Appellees/Defendants:

Banner Health Network; Dignity Health; Scottsdale Healthcare Corp.; Northwest Hospital LLC; Northern Arizona Healthcare Corp.; John C. Lincoln Health Network; University Medical Center Corp.; Carondelet Health Network; Tucson Medical Center; Oro Valley Hospital, LLC (collectively "the Hospitals")

Respondents/Appellants/Plaintiffs:

Jackie Abbott; Robert Bergansky; Raymond Brown; Nicholas Bigler; Richard Campuzano; Dalton Gormey; Tracy James; Stephanie Krueger; Zainab Mohamed; Robert Pierson; Lucas Smith; Robert Van Steenburgh; Amber Winters; Christina Yerkey, and Steven Young (collectively "the Patients")

FACTS:

The Hospitals accepted payments from the Arizona Health Care Cost Containment System ("AHCCCS") for treating the Patients. Pursuant to A.R.S. §§ 33-931 (2014) and 36-2903.01 (Supp. 2013), the Hospitals then recorded liens for the difference in the amount billed for services and the amount paid by AHCCCS. The Patients obtained personal injury settlements from third parties that related to the medical care provided. To access their settlement funds, the Patients, with the assistance of counsel, agreed with the Hospitals to have the persons holding the settlement funds pay the Hospitals reduced amounts in return for the Hospitals releasing their liens. These Patients as well as other patients who had not settled hospital liens brought this class action against the Hospitals on a number of theories, including that federal law preempted the liens. The Patients also argued that federal law prohibited any accord and satisfaction of such liens.

Each claim was based on the theory that the liens were invalid under federal law. In essence, the Patients were claiming that the liens amounted to balance billing in violation of federal Medicaid law. "'[B]alance billing' occurs when a provider . . . charges or collects . . . an amount in excess of the amount that is reimbursable under the applicable health insurance plan. In practice, this occurs when a provider . . . accepts partial payment from . . . [an] insurance plan, then bills the patient or other entity for the difference between that reimbursement and the provider's usual, customary, or standard charge." David J. Marchitelli, Annotation, *Propriety and Use of Balance Billing in Health Care Context*, 69 A.L.R. 6th 317 n.1 (2011). The Patients requested in part that the Hospitals be ordered to refund to the Patients the amounts paid to the Hospitals to release the liens. As an exhibit to their complaint the Patients attached "Provider Participation Agreements" between the Hospitals and AHCCCS in which the Hospitals agreed to comply with federal law:

"The Provider shall comply with all federal, State and local laws, regulations, standards, and executive orders governing performance of duties under this Agreement . . . ." Many of those agreements also specifically stated that "[t]he Provider agrees to abide by Arizona Administrative Code R9-22-702 prohibiting the Provider from charging, collecting, or attempting to collect payment from an AHCCCS eligible person."

The Hospitals moved to dismiss the complaint based on accord and satisfaction. The Hospitals argued the Patients obtained the lien releases after the Hospitals agreed to and accepted lower amounts in satisfaction of the liens, and the accord and satisfaction agreements were enforceable regardless of the merits of any underlying dispute over the liens. In negotiating the releases with attorneys for the Patients, the Hospitals documented with some of the Patients that: "The payment will constitute an accord and satisfaction, compromise and release of any claim as to the validity of the hospital's claim or the manner of its assertion." The Patients do not argue that the language of any of the agreements reserved any rights to challenge the legality of the liens.

The Patients opposed the motion, arguing that any such agreement was void because the liens, and thus, any accord and satisfaction agreements premised on the liens, are prohibited by federal law. The Patients argued that because the Hospitals accepted payments in full from AHCCCS, both placing a lien on an AHCCCS patient's personal injury recovery and any accord and satisfaction of such liens are unenforceable.

The superior court granted the Hospitals' motion and dismissed the Patients' claims. The court cited A.R.S. §§ 33-931 and 36-2903.01, authorizing the liens, and framed the issue as whether the Patients failed to state a claim because they settled the liens in question. The court determined "it [was] irrelevant whether federal law preempts Arizona law and prohibits hospitals from enforcing statutory liens on AHCCCS accounts . . . [because] [a]ccord and satisfaction does not turn on whether Plaintiffs would have prevailed on the merits of the dispute that was settled." Accordingly, the court concluded the accord and satisfaction agreements were "final and binding regardless of the validity of the underlying claims."

The superior court entered judgment, from which the Patients timely appealed. While the appeal was pending, the court heard summary judgment motions on the claims of other patients who had not entered into accord and satisfaction agreements with the Hospitals on the liens. The court determined that the state statutes permitting liens by an AHCCCS provider on third party claims brought by AHCCCS patients are preempted by and violated federal Medicaid law, an issue it did not reach as to the Patients who entered into the accord and satisfaction agreements.

The court of appeals reversed and remanded, holding that the accord and satisfaction agreements were void because federal law preempts Arizona law to the extent state law allows the liens. Because the liens themselves are void under federal law, the accord and satisfaction agreements are also unenforceable.

In reaching its preemption determination, the court of appeals relied in part upon the Arizona State Plan, which was not a part of the record below, for the proposition that AHCCCS "limits participation to providers who meet the requirements of 42 C.F.R. 447.15." State Plan for Medicaid § 4.19(f) at 62. While acknowledging that Attachment 4.19-A(I)(F) to the State Plan provides that prospective rates to be paid to hospitals by AHCCCS "represent payment in full for

covered services *excluding . . . third party payments*," the court stated "that section is merely one sentence in an attachment discussing detailed methods to establish rates for inpatient care and in no way trumps the requirements of 42 U.S.C. § 1396a(a)(25)(C) and 42 C.F.R. § 447.15. *See id.* at § 4.19(a) at 57." Op. ¶ 22 (emphasis added).

The court of appeals rejected the Hospitals' argument that the accord and satisfaction agreements are enforceable because there was a good faith dispute as to whether the state law is preempted by federal law, relying on *Brecht v. Hammons*, 35 Ariz. 383, 278 P. 381 (1929), *disapproved on other grounds by Ariz. Pub. Serv. Co. v. S. Union Gas Co.*, 76 Ariz. 373, 382, 265 P.2d 435, 444 (1954), and *Shelton v. Grubbs*, 116 Ariz. 230, 568 P.2d 1128 (App. 1977). "Such a good faith dispute cannot exist when, as here, the Hospitals expressly agreed to accept only AHCCCS payments for the services rendered and to abide by federal law. Because federal law prohibits the liens, the Hospitals cannot successfully contend there was a good-faith dispute about the merits of the liens." Op. ¶ 25.

Finally, the court of appeals held that "[g]iven the Hospitals' agreement to be bound by federal law and to accept payment in full from AHCCCS, they have not shown that their liens had any foundation in law or equity nor supported by sufficient consideration for the accord and satisfaction." *Id*. ¶ 33. The Hospitals sought review in the supreme court.

ISSUES FOR WHICH REVIEW WAS GRANTED:

1. Arizona has a strong policy favoring settlement, and settlements are final unless they are tainted by fraud or duress. After a claim is voluntarily settled, can one settling party (who was represented by counsel) later unwind the settlement by arguing that the original claim was illegal or preempted?

2. A.R.S. § 36-2903.01(G)(4) allows hospitals to enforce provider liens after accepting payment from AHCCCS. Federal law does not expressly prohibit providers from enforcing liens after receiving payment from Medicaid. Petitioners have settled liens asserted under § 36-2903(G)(4) for 30 years. Are these settlements supported by adequate consideration?

3. Can the Court of Appeals decide the merits of a claim when (1) the trial court dismissed the claim under Rule 12(b)(6) on an affirmative defense and (2) the merits were neither briefed in nor decided by the trial court?