[Cite as *Qualchoice Health Plan, Inc. v. Progressive Quality Care, Inc.*, 2011-Ohio-483.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95046

QUALCHOICE HEALTH PLAN, INC.

PLAINTIFF-APPELLANT

vs.

PROGRESSIVE QUALITY CARE, INC., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-621705

BEFORE: Keough, J., Kilbane, A.J., and Sweeney, J.

RELEASED AND JOURNALIZED: February 3, 2011

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KATHLEEN ANN KEOUGH, J.:

{¶ 1} Defendant-appellant, Progressive Quality Care, Inc. ("Progressive"), appeals from the judgment of the trial court finding it liable to plaintiff-appellee, QualChoice Health Plan, Inc. ("QualChoice"), in the

amount of $752,509.36, as well as prejudgment interest at the statutory rate from April 23, 2006 for one portion of the judgment, and from January 21, 2007 for another portion of the judgment. Once again we dismiss for lack of a final appealable order.

I

{¶ 2} In April 2007, QualChoice filed a four-count complaint for breach of contract, suit on account, unjust enrichment, and quantum meruit, against Progressive and ten other companies affiliated with Progressive. QualChoice sought to recover unpaid premiums and administrative expenses relating to two group health insurance policies under which it provided health insurance to Progressive's and the other defendants' employees.

{¶ 3} QualChoice subsequently filed an amended complaint. As identified in the amended complaint, the defendants are Progressive Quality Care, Inc.; Progressive Parma Care Center, LLC; Progressive Rolling Hills, LLC; Progressive Park, LLC; Progressive Fountainview, LLC; Progressive Pines, LLC; CBG Therapy and Consulting, LLC; Amherst Alliance, LLC; Progressive Morning Care, LLC; and Progressive Green Meadows, LLC. Eitan Flank, appellant Progressive's chief executive officer, testified at trial that the defendants are separate corporations that operate independently utilizing the common management services of appellant Progressive.

{¶ 4} On the day of trial, the parties agreed to a bench trial before a

retired judge pursuant to R.C. 2701.10.[1] The judge subsequently conducted a four-day trial and on February 18, 2010, issued a verdict and opinion ordering that appellant Progressive was liable to QualChoice as set forth above. The opinion made no mention of the nine other defendants named on the amended complaint and stated that findings of fact and conclusions of law would follow.

{¶ 5} On March 16, 2010, Progressive filed a notice of appeal; this court subsequently dismissed Progressive's appeal "per Civ.R. 54(B)."

{¶ 6} On March 30, 2010, the trial judge issued findings of fact and conclusions of law. In his findings of fact and conclusions of law, the trial judge found that QualChoice and appellant Progressive entered into an agreement for Qual- Choice to provide health insurance "to employees of Progressive Quality Care, Inc." under a contingent premium arrangement. The judge made various findings of fact regarding the agreement and concluded that under the terms of the contract, Progressive was liable to QualChoice for contingent premiums in the amount of $752,509.36, as well as prejudgment interest. Like the verdict, the findings of fact and conclusions of law made no findings or conclusions regarding QualChoice's claims against

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[1] R.C. 2701.10 provides that the parties to a civil action may, upon unanimous agreement, choose to have the action submitted for determination to a retired judge of their choosing. Any judgment rendered by the retired judge under this section "shall have the same force and effect as if it had been entered or made by an active judge of the court."

the nine other defendants named in the amended complaint.

{¶ 7} Appellant Progressive then filed another notice of appeal from the trial court's verdict and findings of fact and conclusions of law.

{¶ 8} In May 2010, after QualChoice began transferring its judgment to counties where the various Progressive companies named in the amended complaint are located, the ten Progressive defendants filed a motion to stay execution. Among their arguments for a stay pending appeal, the defendants argued that the trial judge's judgment applied only to appellant Progressive, not to the other nine defendants named in the amended complaint, and that QualChoice had not pleaded or proven joint and several liability. In response, QualChoice moved to amend the judgment to impose joint and several liability.

{¶ 9} The trial judge held a hearing on the motions. At the hearing, QualChoice withdrew its motion to amend the judgment. It argued that the parties' stipulation that "the captioned matter in its entirety will be submitted, tried and adjudicated by [a retired judge] under Ohio R.C. 2701.10" indicated that the "entire matter" would be adjudicated and, therefore, the defendants' argument that the trial court's verdict and findings of fact and conclusions of law did not apply to all defendants was "in violation of that agreement."

{¶ 10} The trial judge subsequently granted appellant Progressive's

motion to stay conditioned upon its filing a supersedeas bond in the amount of $931,382.78. The judge denied the motion as moot with respect to the other nine defendants, stating "there is no judgment currently pending against them which requires a stay, and the Court has declined to issue judgment or find liability against any entity other than Progressive Quality Care, Inc."

II

{¶ 11} On appeal, Progressive contends that the trial court erred in (1) finding there was an enforceable contract between the parties in the absence of a signed agreement; (2) interpreting the terms of the purported contract in QualChoice's favor; (3) concluding that QualChoice was not barred from recovery by virtue of its breach of the contract terms; (4) awarding administrative fees in the absence of proof of the value of the administrative services and because QualChoice had "unclean hands" in light of its substandard administration and contract performance which barred any recovery; and (5) awarding prejudgment interest. We cannot consider Progressive's arguments, however, as we lack a final, appealable order.

{¶ 12} Courts of appeals have jurisdiction over "final orders" of lower courts. Section 3(B)(2), Article IV of the Ohio Constitution. "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial" when it "affects a substantial right in an action that in effect

determines the action and prevents a judgment." R.C. 2505.02(B). "For an order to determine the action and prevent a judgment for the appealing party, it must dispose of the whole merits of the cause * * *." *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 347, 2006-Ohio-8, 839 N.E.2d 911, ¶20.

{¶ 13} When there are multiple claims and/or multiple parties to an action, an order of a court is a final, appealable order only if the requirements of both R.C. 2505.02 and Civ.R. 54(B) are met. *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus. Under Civ.R 54(B), when more than one claim for relief is presented in an action, a court may enter final judgment as to fewer than all the claims "only upon an express determination that there is no just reason for delay." In the absence of such a determination, "any order * * * which adjudicates fewer than all the claims * * * shall not terminate the action as to any of the claims or parties." Id.

{¶ 14} In the absence of a final, appealable order, the appellate court lacks jurisdiction to review the matter and must dismiss the case. *N. Shore Auto Financing, Inc. v. Block*, 176 Ohio App.3d 205, 2008-Ohio-1708, 891 N.E.2d 793, ¶5, citing *St. Rocco's Parish Fed. Credit Union v. Am. Online*, 151 Ohio App.3d 428, 2003-Ohio-420, 784 N.E.2 200, ¶9.

{¶ 15} Here, it is apparent the trial court heard the "entire matter" and

rendered judgment against appellant Progressive Quality Care, Inc.[2] But the trial court's judgment did not dispose of QualChoice's claims against the remaining nine defendants named in the amended complaint. Further, neither the trial court's verdict nor its findings of fact contained the "no just cause for delay" language of Civ.R. 54(B) that would allow an appeal of a final judgment entered as to fewer than all of the claims and/or parties. Accordingly, lacking a final, appealable order pursuant to R.C. 2505.02 and Civ.R. 54(B), we have no jurisdiction to consider appellant's appeal and, therefore, dismiss the appeal.

Dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

MARY EILEEN KILBANE, A.J., and
JAMES J. SWEENEY, J., CONCUR

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[2]Thus, the Certificates of Judgment issued by the clerk of the Cuyahoga County Common Pleas Court under R.C. 2329.92 (which allows a judgment to be transferred to another court) indicating that judgment was issued on February 18, 2010 in favor of QualChoice and against all ten defendants named in the amended complaint are clearly incorrect.