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No. — Original

FILED

JAN 28 1985

ALEXANDER L. STEVA
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

MARIE C. WEBBER,
Plaintiff,
v.

THE STATE OF OKLAHOMA,
and
HILLCREST MEDICAL CENTER, INC.,
an Oklahoma non-profit corporation,
and
OKMULGEE MEMORIAL HOSPITAL AUTHORITY,
an Oklahoma trust,
Defendants.

**MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT, COMPLAINT
AND BRIEF IN SUPPORT**

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Attorneys for Plaintiff

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an Oklahoma trust,
Defendants.

**MOTION FOR LEAVE TO FILE COMPLAINT
IN ORIGINAL JURISDICTION ACTION**

Pursuant to Rule 9 of the rules of this Court, plaintiff moves for leave to file the attached Complaint.

Brief in Support of this motion is also attached.

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PROOF OF SERVICE

I certify that, pursuant to the Rules 28(3) and (5) of the Rules of this Court, I served three (3) copies of this Motion For Leave To File Complaint In Original Jurisdiction Action with attached Complaint and Brief upon:

1. Honorable George Nigh, Governor of the State of Oklahoma, State Capitol, Oklahoma City, Oklahoma 73105
2. Michael C. Turpen, Attorney General of the State of Oklahoma, State Capitol, Oklahoma City, Oklahoma 73105
3. Hillcrest Medical Center, Inc., an Oklahoma non-profit corporation, c/o Frederick N. Schneider III, Attorney, World Building, Tulsa, Oklahoma 74103
4. Okmulgee Memorial Hospital Authority, an Oklahoma trust, c/o Bill Barksdale, Attorney, P.O. Box 266, Okmulgee, Oklahoma 74447

by placing such copies in separate sealed envelopes addressed to each of the above parties or their representatives at the addresses shown and depositing at the United States post office at Sapulpa, Oklahoma on January —, 1985.

/s/ JACK B. SELLERS
Jack B. Sellers

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COMPLAINT

1. This original action arises under Article III of the Constitution of the United States which provides in part:

“Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, . . .”

and involves deprivation of rights under Article 1, Section 10 of the Constitution of the United States which provides in part:

“No state shall pass any law impairing the obligation of Contracts”

and under the Fifth Amendment to the Constitution which provides in part:

“No person shall be deprived of property, without due process of law”

and under the Fourteenth Amendment to the Constitution which provides in part:

“ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of property without due process of law, nor deny to any person the equal protection of the laws.”

2. Plaintiff, a citizen of the United States residing in Oklahoma, purchased insurance to protect herself from injuries from motor vehicle collision caused by uninsured motorists. Thereafter, she was severely and permanently injured in such a collision.

3. The State of Oklahoma had enacted a law as follows:

“Every hospital in the State of Oklahoma which shall furnish emergency medical or other service to any patient injured by reason of an accident not covered by the Workmen’s Compensation Act, shall, *if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such*

patient, or by his heirs, personal representatives or next of kin in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient in such hospital up to the date of payment of such damages: Provided, however, that this lien shall be inferior to any lien or claim of any attorney or attorneys for handling the claim on behalf of such patient, his heirs or personal representatives; provided further, that the lien herein set forth shall not be applied or considered valid against any claim for amounts due under the Workmen's Compensation Act in this State. (Emphasis added.)" 42 O.S. Section 43

and defendants, Hillcrest Medical Center, Inc., and Okmulgee Memorial Hospital authority intervened in plaintiff's action against her uninsured motorist insurer carrier claiming that the benefits were theirs under this statute.

4. Plaintiff asserted the statute was violative of those parts of the Constitution set out in paragraph 1 above in that the statute impaired plaintiff's right to contract to protect herself against such injuries, and deprived her of her property without due process of law and deprived her of equal protection of law.

5. October 30, 1984, the Supreme Court of Oklahoma denied certiorari and earlier adverse opinion of Oklahoma Court of Appeals, was ordered withdrawn from publication and became final and plaintiff will be deprived of her substantial constitutional rights and property unless this Court acts.

6. WHEREFORE, plaintiff demands that the questioned statute be declared unconstitutional and its enforce-

ment enjoined and plaintiff restored to her rights and property.

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**BRIEF SUPPORTING MOTION FOR LEAVE TO FILE
COMPLAINT IN ORIGINAL JURISDICTION ACTION**

Under the Constitution of the United States of America Plaintiff had the absolute right to contract for her own protection, in this case, by buying insurance on her own vehicles which provided benefit to her for her damages should she be injured in a motor vehicle accident caused by an underinsured motorist.

Article 1, Section 10, of the Constitution of the United States provides in part:

“No state shall pass any Law impairing the Obligation of Contracts”

Plaintiff paid separate premiums for this protection. The benefits of this protection were her private property contracted and paid for by her.

As construed by the Oklahoma Supreme Court, the hospital lien statute of Oklahoma, 42 O.S.A. Section 43, destroys the insurance contract and delivers the proceeds to hospitals who had no relation thereto. The taking from plaintiff of her contracted protection and giving it to hospital lien claimants impair and destroy her right to contract for her own protection and deprives plaintiff of her substantial rights. Such construction also constitutes the taking of private property for private use which is prohibited by the Constitution of the United States.

The Fifth Amendment to the Constitution of the United States provides in part:

“No person shall be deprived of property, without due process of law”

The Fourteenth Amendment to the Constitution of the United States of America provides, in part:

“. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Such application of the Oklahoma hospital lien statute abridges the rights and privileges of Plaintiff, deprives her of property without due process of law and denies to her the equal protection of the laws.

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