No. 100 Original

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

MARIE C. WEBBER,
Plaintiff,

v.

THE STATE OF OKLAHOMA,
and

HILLCREST MEDICAL CENTER,
an Oklahoma nonprofit corporation,
and

OKMULGEE MEMORIAL HOSPITAL AUTHORITY,
an Oklahoma trust,
Defendants.

BRIEF FOR THE DEFENDANT STATE OF OKLAHOMA IN OPPOSITION

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ATTORNEY GENERAL OF OKLAHOMA

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QUESTIONS PRESENTED

Oklahoma Statute, Title 42, Section 43, enacted by the Oklahoma Legislature in 1969, creates a lien in favor of a hospital on amounts collected by a patient in a subsequent action for damages, said lien in the amount of the reasonable charges for treatment rendered the patient by the hospital.

The questions presented are whether this section violates Article I, Section 10 of the Constitution of the United States as constituting a law impairing the obligation of contracts, whether this section violates the Fifth Amendment by depriving Plaintiff of property without due process of law, and whether this section violates the Fourteenth Amendment in depriving Plaintiff of property without due process of law and in denying her equal protection of the laws.

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JURISDICTION

The original jurisdiction of this Court is invoked under Article III, Section 2, of the Constitution.

PROCEEDINGS BELOW

The State of Oklahoma adopts as its own the statement of the proceedings

below contained in the Joint Brief of Defendants in Opposition (Joint Brief, pp. 2-3).

STATEMENT

1. Marie C. Webber seeks leave to file her Complaint to enjoin enforcement of the State of Oklahoma's hospital lien statute. Okla. Stat. tit. 42, § 43 (1981). The Complaint asserts that the statute, in violation of Article I, Section 10 of the United States Constitution, impairs Plaintiff's right to contract to protect herself from injuries received in a collision with an uninsured motorist (Motion, pp. 2-4). Plaintiff further alleges that the statute in question deprived her of property without due process of law and denied her equal protection of law in violation of the Fifth and Fourteenth Amendments, respectively (Motion, pp. 3-4).

2. Okla. Stat. tit. 42, § 43 (1981), first enacted by the Oklahoma Legislature in 1969, does nothing more than create a lien in favor of hospitals who render medical service to a person injured by reason of an accident, if that person subsequently and successfully asserts a claim against the party responsible for the injuries. As was the case here below and as a condition to the lien's effectiveness, the creditor seeking to recover on the lien is still required, by Okla. Stat. tit. 42, § 44 (1981), to file notice of this lien with the respective county clerk, and give detailed notice of the lien's existence to all parties. Moreover, as with the two hospitals involved at bar, a party must still take affirmative measures to enforce collection on such liens. Plaintiff does not contend that her uninsured

motorist insurance was in effect at the time the hospital lien statute was enacted, nor does she contend that the measures taken by the hospitals to enforce their liens were constitutionally violative. At no time prior to this motion was the State of Oklahoma a party to the proceedings.

ARGUMENT

Rather than take a direct appeal or seek certiorari from the decision of the Oklahoma Supreme Court, Plaintiff seeks leave to file her Complaint in an original action. However, Plaintiff's Complaint seeking original jurisdiction falls without the provisions of 28 U.S.C. § 1251, which governs actions seeking such jurisdiction, see, Illinois v. City of Milwaukee, 406 U.S. 91, 92 S. Ct. 1308, 31 L. Ed. 712 (1971), and lacks as well the seriousness and dignity which

traditionally characterizes this Court's sparing invocation of original jurisdiction. Utah v. United States, 394 U.S. 89, 95, 89 S. Ct. 761, 22 L. Ed. 2d 99, 105 (1969). The State of Oklahoma contends that Plaintiff's decision to attempt to invoke the original jurisdiction does not take this case out from under the proper federal provisions which govern this Court's review of judgments rendered by the highest court of a State, 28 U.S.C. § 1257. Because this case is properly governed by 28 U.S.C. § 1257, it is likewise subject to the same attendant jurisdictional prerequisites and is therein lacking.

1. THE DECISIONS OF THE OKLAHOMA SUPREME COURT AND OKLAHOMA COURT OF APPEALS REST ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

It is a firmly-entrenched rule that this Court will not review for error the judgments of state courts that rest upon

independent and adequate state grounds. Herb v. Pitcairn, 324 U.S. 117, 65 S. Ct. 459, 89 L. Ed. 789 (1944); Murdock v. City of Memphis, 120 Wall. 590, 22 L. Ed. 429 (1875).

Plaintiff is troubled by the decision of the Supreme Court of Oklahoma on October 30, 1984, to deny certiorari and therefore leave intact the decision of Oklahoma Court of Appeals. However, the surviving Court of Appeals decision, though withdrawn from publication, rests firmly upon independent and adequate state grounds and not on an improper construction of federal constitutional law. The constitutionality of Okla. Stat. tit. 42, § 43 (1981), save for one seemingly passing comment, is not a part of the opinion (see Appendix).

The Court's decision rests predominately, if not exclusively, on Oklahoma

rules of statutory construction or on the Court's interpretation of the Oklahoma Constitution. Because neither the Oklahoma Court of Appeals, nor the Oklahoma "[S]upreme Court has passed on [Plaintiff's constitutional] questions, [this Court] may not do so." Illinois v. Gates, et ux., 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), quoting State Farm Mutual Automobile Insurance Co. v. DUEL, 324 U.S. 154, 160, 65 S. Ct. 573, 576, 89 L. Ed. 812 (1945).

2. THE OKLAHOMA STATUTE PASSES CONSTITUTIONAL MUSTER.

By way of an original action, Plaintiff asserts that Okla. Stat. tit. 42, § 43 (1981) violates Article I, Section 10 of the Constitution of the United States, and the Fifth and Fourteenth Amendments thereupon.

A. IMPAIRMENT OF CONTRACT.

"The threshold inquiry [in such cases] is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.'" Energy Resources Group v. Kansas Power & Light, 459 U.S. 400, 411, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983), quoting Allied Structural Steel Co. v. Spannus, Attorney General of Minnesota, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1977). Moreover, "a state regulation that restricts a party to the gain its reasonably expected from the contract does not necessarily constitute a substantial impairment. Energy Resources Group, supra at 411, citing United States Trust v. New Jersey, 431 U.S. 1, 22, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977). The State of Oklahoma submits that the Oklahoma hospital lien law does not constitute a

substantial impairment on Plaintiff's contract and with her insurer. Moreover, she could not have reasonably expected to retain the face amount of uninsured motorist coverage where she had substantial outstanding hospital bills. The statute in question does nothing more than provide a vehicle by which a hospital may subsequently recover from patients for services rendered to them.

Only when substantial impairment is present must the State justify the regulation by a significant and legitimate public purpose. United States Trust Co. v. New Jersey, supra. Such justification exists for Oklahoma's hospital lien statute.

By the earlier words of the Oklahoma Supreme Court in Vinzant v. Hillcrest Medical Ctr., 609 P.2d 1274 (Okl. 1981), the statute is:

> "[a]n attempt to lessen the burden imposed on hospitals by non-paying patients involved in accidents, . . . the legislatures of several states have enacted statutes which give a hospital a lien upon any recovery which the patient might receive from a tortfeasor causing the injuries for which treatment is given." 609 P.2d at 1277.

That this statute, by definition, cannot possibly address any general, social or economic problem, Energy Reserves Group, supra at 412, does not render it lacking in legitimate justification.

Moreover, there is no contention that this statute was enacted, or interpreted, after Plaintiff entered into her insurance contracts. Any adjustment in Plaintiff's contractual rights with her insurer occurs at the hands of the hospitals, and not the State of Oklahoma. Finally, this statute "is of a character appropriate to the public purpose justifying [its] adoption." Id. at 412.

B. DUE PROCESS

Citing both the Fifth and Fourteenth Amendments, Plaintiff challenges the Oklahoma hospital lien state on a due process--unlawful taking ground. As discussed above, this statute does nothing more than give life to the hospital lien, leaving it the creditor to take appropriate enforcement steps. At bar, the hospitals intervened in Plaintiff's suit against her own insurance carriers (Motion, p. 3). It can hardly be said that Plaintiff was denied proper notice or a fair hearing in this case, or that this statute creates some improper extra-judicial, self-help mechanism. See, Sniadach v. Family Finance Corp., 395 U.S. 37, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969). Mullane v. Central Hanover Trust Co., 389 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

C. EQUAL PROTECTION

Plaintiff's final assertion of error is that the statute is violative of the Fourteenth Amendment--Equal Protection Clause (Motion, p. 2). Yet, any injury created by the Oklahoma Legislature's classification in the hospital lien statute, even if present, falls upon the hospitals and not upon Plaintiff. By the terms of Okla. Stat. tit. 42, § 43 (1981), it applies to "[a]ny patient injured by reason of an accident . . . if such injured party shall assert or maintain a claim against another." The State of Oklahoma contends that this language contains no unconstitutional classification relative to Plaintiff. Moreover, any classification affecting Plaintiff, if present, impinges on no fundamental interest and deals purely with an economic matter. Hughes v. Alexendria Scrap

Corp., 426 U.S. 794, 96 S. Ct. 2481, 49 L. Ed. 2d 220 (1976), citing Williamson v. Lee Optical, 348 U.S. 483, 75 S. Ct. 461, 489, 92 L. Ed. 563 (1955). Any allegation that this statute improperly classifies hospitals separate and apart from other medical providers engenders in Plaintiff no basis for presenting that claim to this Court. Standing to challenge that classification lies with the affected health provider and not Plaintiff. Warth v. Seldin, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1973). Baker v. Carr, 369 U.S. 189, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962).

3. IN THE EXERCISE OF ITS DISCRETION, THIS COURT SHOULD DECLINE TO ENTERTAIN THIS SUIT.

At all times prior to Plaintiff's Motion for Leave to File a Complaint, the State of Oklahoma was not a party to this suit. As pointed out by the Defendant

hospitals in their joint brief, even if the State of Oklahoma is properly a party to this action, Article III of the United States Constitution does not grant original jurisdiction to the Supreme Court over controversy between a state and its own citizens (Joint Brief, p. 25, citing Florida Nursing Home v. Page, 616 F.2d 1355, 1359 (1980), cert. denied, 449 U.S. 872, rev'd on other grounds, 450 U.S. 147, rehearing denied, 451 U.S. 933, on remand, 648 F.2d 241 (1981)). This Court exercises its original jurisdiction sparingly and is particularly reluctant to take jurisdiction of a suit which is not within the exclusive original jurisdiction of the Court. United States v. Nevada, 412 U.S. 534, 538 (1973); Illinois v. City of Milwaukee, 406 U.S. 91 (1971); Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493, 91 S. Ct. 1005, 28

L. Ed. 2d 256 (1971). In the view of the State of Oklahoma, Plaintiff Webber has failed to show that the present case qualifies as one of the exceptional situations in which this Court should exercise its extraordinary original jurisdiction. Given the demands on this Court's original and appellate docket, the questions presented in this case are not of such urgent concern to the entire country as to require a definitive resolution by this Court in the first instance. Cf., South Carolina v. Katzenbach, 383 U.S. 301, 307, 86 S. Ct. 803, 15 L. Ed. 2d 769 (1966). Hence, in the exercise of its discretion, this Court should decline to entertain this suit.

CONCLUSION

The Motion for Leave to File a Complaint should be denied.

Respectfully submitted,

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APPENDIX

IN THE COURT OF APPEALS OF THE
STATE OF OKALHOMA

Division No. 1

No. 57,169

HILLCREST MEDICAL CENTER, INC.
an Oklahoma Non-Profit Corporation,
and OKMULGEE MEMORIAL HOSPITAL
AUTHORITY, a Trust,

Appellants,

v.

MARIE C. WEBBER,

Appellee.

February 1, 1983

OPINION

REYNOLDS, Presiding Judge:

* * *

Statutes must be interpreted to produce a reasonable result and to promote the general purposes for which they are enacted. AMF Tubescope Company v. Hatchel, 547 P.2d 374 (Okl. 1974). Words, phrases, and expressions will be

accorded their ordinary meaning when practical to do so. Alfalfa Electric Coop., Inc. v. First National Bank & Trust Co., 525 P.2d 644 (Okl. 1974).

The purpose of the uninsured motorist statute is to provide an injured person with the same protection the person would have obtained if the uninsured motorist had carried liability insurance. Markham v. State Farm Mutual Automobile Ins. Co., 464 F.2d 703 (10th Cir. 1982). Uninsured motorist insurance protects injured persons from the same types of economic losses as liability insurance. It is illogical to allow a hospital lien to attach to liability insurance funds from a tortfeasor but not to uninsured motorist insurance funds. The two types of insurance are designed to indemnify an injured party against precisely the same risks. Likewise, medical payment

insurance is structured to help insureds pay their medical costs.

A hospital lien attaches to "...any recover of sum...." 42 O.S. 1981 § 43. This includes funds from uninsured motorist coverage. Dade County v. Pavon, 266 So.2d 94 (Fla. 1972). It also attaches to funds from medical payment insurance.

Webber contends that the hospital lien statute creates a class distinction between hospitals and other health care providers in violation of Const. Art. 5 § 46, which states:

> "The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing;
>
> "The creation, extension or impairing of liens; ...."

The Oklahoma Supreme Court, in Burks v. Walker, 109 P. 544, 549 (Okl. 1909), has stated:

> "In order for a law to be general in its nature and to have a uniform operation, it is not person and

> every locality in the state. A law may be general and have a local application or apply to a designated class if it operates equally upon all the subjects within the class for which it was adopted. To determine whether or not a statute is general or specific, courts will look to the statute to ascertain whether it will operate uniformly upon all the persons and parts of the state that are brought within the relation and circumstances provided by it. And the operation is uniform if it affects alike all persons in like situation. But, where a statute operates upon a class, the classification must not be capricious or arbitrary, and must be reasonable and pertain to some peculiarity in the subject-matter calling for the legislation. As between the persons and places included within the operation of the law and those omitted, there must be some distinctive characteristic upon which a different treatment may be reasonably founded, and that furnishes a practical and real basis for discrimination. [Citations omitted.]"

The hospital lien statute is uniform in its operation. It gives all hospitals furnishing emergency medical and other services to an injured person a lien on the sums collected by the injured person.

It does not discriminate between hospitals in like situations. The statute deals with a practical problem of hospitals and is not arbitrary or capricious.

Hillcrest and Okmulgee Memorial have hospital liens upon any recovery which arose because Webber "...asserted against another for damages on account of..." her accidental bodily injuries. 42 O.S. 1981 § 43. There is nothing in 42 O.S. 1981 § 43 to indicate that the Legislature intended to exclude any fund source other than Workers' Compensation. No such exclusion will be created by this Court.

Webber's contentions that Hillcrest did not render "emergency" medical services will not be considered. This issue is not properly raised. The pre-trial stipulation signed by all the parties and the trial court recites that both Okmulgee Memorial and Hillcrest

rendered Webber emergency medical services.

The trial court's findings that Hillcrest has a judgment against Webber for 26,230.10, plus interest, and that Okmulgee Memorial has a judgment against Webber for $11,329.76, plus interest, is affirmed. The conclusion of the trial court that 42 Memorial has a judgment against Webber for $11,329.76, plus interest, is affirmed. The conclusion of the trial court that 42 O.S. 1981 § 43 is constitutional and not an arbitrary or capricious classification is affirmed.

The trial court's holding that the hospital liens of Hillcrest and Okmulgee Memorial do not attach to the proceeds of Webber's uninsured motorist and medical payment insurance is reversed. The liens held by Hillcrest and Okmulgee Memorial have priority over the claim of any assignee of Webber.