IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION AT KNOXVILLE

FILED

March 18, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

THE UNIVERSITY OF TENNESSEE,	)	KNOX CIRCUIT
	)	
Plaintiff/Appellee	)	NO. 03A01-9611-CV-00345
	)	
v.	)	
	)	DALE C. WORKMAN,
PRUDENTIAL INSURANCE CO., et al.,	)	JUDGE
	)	
	)	
Defendant/Appellant	)	AFFIRMED as MODIFIED

Robert R. Davies, Fansler & Williams, Knoxville, for the Appellant

Beauchamp Brogan and Rhonda Alexander, Knoxville, for the Appellee

O P I N I O N

_____INMAN, Senior Judge

I

On March 11, 1991, David A. Dugan was driving an automobile owned by Diana K. Burns and insured by Prudential Property & Casualty Company which afforded coverage, *inter alia*, for medical expenses incurred by an insured, an insured operator, or a passenger in the insured vehicle as a result of bodily injury arising out of the operation and use of the vehicle. While driving Burns' vehicle with her permission, Dugan was injured when he ran into the rear of a tractor trailer and was admitted to the University of Tennessee Medical Center in Knoxville for treatment of his injuries. He was discharged two days later, after the incurrence of medical bills in the amount of five thousand sixty and 76/100ths dollars ($5,060.76).

As authorized by T.C.A. § 29-22-101, *et seq.*, the plaintiff timely perfected a hospital lien "upon any and all causes of action, suits, claims, counterclaims, or demands on account of illness or injuries giving rise to such cause of action or claims

which necessitated said hospital care" to the defendant Dugan for Five Thousand Sixty and 76/100ths dollars ($5,060.76).

II

After the filing and perfection of the lien, Prudential Insurance Company, without satisfying the amount of the University's hospital lien, paid Dugan Five Thousand Sixty and 76/100ths Dollars ($5,060.76) pursuant to the medical payment provisions of the insurance policy heretofore referenced. It was revealed during argument that Prudential was aware of the lien.

The plaintiff alleges that Prudential impaired its lien by paying the proceeds directly to Dugan and seeks to recover, as damages, the full amount of its charges. Prudential denies that the subject statute is applicable. Summary judgment was granted to the plaintiff on stipulated facts. Our review is *de novo* with no presumption of correctness. *Union Carbide Corp. v. Huddleston,* 854 S.W.2d 91 (Tenn. 1993).

III

The controlling statute provides:

> **29-22-101. Lien created -- Application -- Priority.--** (a) Every person, firm, association, corporation, institution, or any governmental unit, including the state of Tennessee, any county or municipalities operating and maintaining a hospital in this state, shall have a lien for all reasonable and necessary charges for hospital care, treatment and maintenance of ill or injured persons upon any and all causes of action, suits, claims, counterclaims or demands accruing to the person to whom such care, treatment or maintenance was furnished or accruing to the legal representative of such person in the case of his or her death, on account of illness or injuries giving rise to such causes of action or claims and which necessitated such hospital care, treatment and maintenance.
>
> (b) The hospital lien, however, shall not apply to any amount in excess of one-third (a) of the damages obtained or recovered by such person by judgment, settlement or compromise rendered or entered into by such person or his or her legal representative by virtue of the cause of action accruing thereto.
>
> (1) The lien herein created shall be subject and subordinate to any attorney's lien whether by contract, suit or judgment upon such claim or cause of action and shall not be applicable to accidents or injuries within the purview of the Tennessee Workers' Compensation Law, compiled in chapters 9-12 of title 50. Any such lien arising out of a motor vehicle accident shall not take priority over a mechanic's lien or prior recorded lien upon a motor vehicle involved in said accident.

The appellant questions the applicability of the Hospital Lien Law to contractual medical payments. Stated otherwise, does the Hospital Lien Law apply to contracts between an injured insured and his insurance company? Appellant argues that according to the caption of the 1970 act, its application is limited to the imposition of a lien on a recovery for damages in an action *in tort* and that the legislative history of the act reflects the legislative intent.

To the contrary, the appellee insists that the plain language of the statute " a lien . . . for hospital care . . . of ill or inured persons upon any . . . claim . . . accruing to the person to whom such care . . . was furnished . . . on account of illness or injuries giving rise to such . . . claims and which necessitated such hospital care . . . . allows the imposition of the lien against contractual benefits." We agree.

IV

Assuming, arguendo, a measure of uncertainty as to the applicability of the statute to contractual provisions, we think T.C.A. § 29-22-102(e)(1) effectively clarifies the statutory intent. This statute provides, as paraphrased, that "If at the time an insurance carrier . . . pays a claim filed by a policyholder . . . against such carrier . . . ." thus reflecting the intent to authorize the imposition of a lien to receive payment of hospital charges against contractual coverage.

Finally, we note that the statute nowhere excepts contractual coverage from its terms. It would be anomalous to limit the application of the statute solely to settlements or judgments in tort claims when the patient/plaintiff/claimant was entitled to contractual benefits arising from an illness or injury for which he was hospitalized and for which he received policy benefits on account of the injuries and hospital care.

V

T.C.A. § 29-22-101(b) provides that the lien "shall not apply to any amount in excess of one-third of the damages obtained or recovered," which, *prima facie*, limits its application. The appellant argues that the judgment onerated it with the full amount of the plaintiff's charges and, thus is contrary to the statute. The trial judge held that because the plaintiff's lien was impaired, T.C.A. § 29-22-104(b)(1), which

provides that ". . . any settlement [of a claim or demand] in the absence of a . . . satisfaction of the lien . . . shall prima facie constitute an impairment of such lien, and the [hospital] shall be entitled . . . to damages on account of such impairment, . . . " was applicable, thus justifying the judgment for the full amount of the hospital charges as damages for the impairment. We cannot agree. While the appellant ignored the lien at its peril, it cannot be onerated with liability for the full amount of the hospital's charges in light of subsection (b).

The judgment is accordingly modified. Costs are assessed to the appellant.

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William H. Inman, Senior Judge

CONCUR:

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Houston M. Goddard, Presiding Judge

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Herschel P. Franks, Judge