

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 22, 2014 Session

CHARLES LUIS BLACKBURN, ET AL. V. HENRY E. MCGEE

**Appeal from the Circuit Court for Davidson County
No. 12C2913 Joseph P. Binkley, Jr., Judge**

No. M2013-01676-COA-R3-CV - Filed March 17, 2014

Plaintiff in wrongful death action filed motion to quash Notice of Hospital Lien which had been filed in accordance with Tenn. Code Ann. §29-22-101 *et seq.* on behalf of medical center which rendered care to the decedent. The trial court held that the medical center had not properly perfected its lien and granted the motion; medical center appeals. We reverse the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Steven Sharp, Nashville, Tennessee, for the appellant, Vanderbilt University Medical Center.

Jon C. Peeler and H. Anthony Duncan, Nashville, Tennessee, Tennessee, for the appellee, Charles Luis Blackburn.

OPINION

FACTUAL AND PROCEDURAL HISTORY

Daniel Blackburn was injured in a motorcycle accident caused by Henry McGee on July 20, 2012; Mr. Blackburn received medical treatment at Vanderbilt University Medical Center (“Vanderbilt”) but died later that day. On July 23, his father, Charles Blackburn, filed a wrongful death action against McGee in Davidson County Circuit Court.

On September 27 Vanderbilt filed a “Notice of Hospital Lien” in the Davidson County Circuit Court Clerk’s office; the notice advised, *inter alia*, that Vanderbilt had furnished

services to Daniel Blackburn on July 20, that the amount due for services was \$25,166.32, and that Vanderbilt claimed a lien on “damages which the patient or his/her representative may receive or be entitled to receive, whether by judgment, settlement, or compromise, from any and all causes of action accruing to the patient, all in accordance with Tennessee Code Annotated, § 29-22-101, et. seq.”¹

Blackburn reached a settlement of the wrongful death action for \$25,000.00 and on March 22, 2013, moved the court to approve the settlement. The court denied the motion and ordered Joyce Nickens-Ford, Daniel’s mother, to be added as a plaintiff; Blackburn amended the complaint to comply with the court’s order and on June 6 filed a second motion requesting that the court approve the settlement and direct disbursement of the proceeds. Blackburn also moved to quash Vanderbilt’s lien asserting that (1) Tenn. Code Ann. § 20-5-106(b) prevented Vanderbilt from recovering funds from the underlying wrongful death action; and (2) that Vanderbilt failed to comply with Tenn. Code Ann. § 29-22-102(b) because it did not “[exercise] reasonable diligence and [mail] a copy of the notice to [Blackburn’s] counsel within ten (10) days of filing” it. Vanderbilt responded to the motion, attaching a copy of the lien, the affidavit of Julie Mack, an account reimbursement specialist for Vanderbilt, and a copy of the letter and notice of lien which had been sent to “The Estate of Daniel Blackburn” on September 28, 2012, at the address given in Vanderbilt’s patient records, and which had been returned to Vanderbilt as “not deliverable to the address as listed.”

The court granted the motion to quash and entered an order approving the settlement. An agreed order was entered between Blackburn, McGee and Vanderbilt, providing that \$16,667.67 be immediately disbursed to Blackburn’s counsel and \$8,333.33 remain with the clerk pending further orders. Vanderbilt appeals the order quashing its lien; it contends that

¹ Tenn. Code Ann. § 29-22-101(a) and (b) states:

- (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 representatives of such person in the case of such person’s 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 ($\frac{1}{3}$) of the damages obtained or recovered by such person by judgment, settlement or compromise rendered or entered into by such person or such person’s legal representative by virtue of the cause of action accruing thereto.

its lien was perfected in the manner set forth in Tenn. Code Ann. § 29-22-102 and that the settlement proceeds are subject to the lien.

DISCUSSION

I. WAS VANDERBILT’S LIEN PERFECTED

The trial court held that Vanderbilt “failed to exercise reasonable diligence as required by T.C.A. § 29-22-102 and, therefore failed to perfect their lien”; the court did not specify the manner by which Vanderbilt did not comply with the statute. The portion of Tenn. Code Ann. § 29-22-102 pertinent to this issue is:

(a) In order to perfect such lien, the agent or operator of the hospital, before or within one hundred twenty (120) days after any such person shall have been discharged therefrom, shall file in the office of the clerk of the circuit court of the county in which the hospital is located, and in the county wherein the patient resides, if a resident of this state, a verified statement in writing setting forth the name and address of the patient as it appears on the records of the hospital, and the name and address of the operator thereof, the dates of admission and discharge of the patient therefrom, the amount claimed to be due for such hospital care, and to the best of the claimant's knowledge, the names and addresses of persons, firms or corporations claimed by such ill or injured person or by such person’s legal representative, to be liable for damages arising from such illness or injuries.

(b) A copy of the claim shall, within ten (10) days from the filing thereof be sent by registered mail, postage prepaid, to each person, firm or corporation so claimed to be liable on account of such illness or injuries, at the address given in the statement, and to the attorney, or attorneys, representing the person to whom services were rendered by the hospital if such attorney, or attorneys, are known to the claimant or could, with reasonable diligence, be known to the claimant.

Whether the requirements of the statute were met is a question of law, which we review *de novo* with no presumption of correctness. *Shelby County Health Care Corp. v. Nationwide Mut. Ins. Co.*, 325 S.W.3d 88, 92 (Tenn. 2010).

As an initial matter, we have determined that the record shows that Vanderbilt complied with Tenn. Code Ann. §29-22-102(a). Ms. Mack’s affidavit includes the following information:

4. The attached Notice of Hospital Lien (Exhibit A) contains: the name and address of Daniel Blackburn as it appeared on Vanderbilt's patient accounting/billing records at the time the hospital lien was prepared; the name and address of the operator of the hospital; the admission and discharge dates of July 20, 2012 to July 20, 2012 for Daniel Blackburn; and the amount claimed to be due for such hospital care, treatment and maintenance provided to him.

The notice includes the following statement: "The person(s), firm(s), or corporation(s) claimed by the patient or his/her representative to be liable for damages from the illness or injuries by the hospital are: -Unknown at this time-." This is sufficient to comply with § 29-22-102(a).²

Blackburn contends that the lien was not perfected because Vanderbilt did not comply with Tenn. Code Ann. §29-22-102(b) by mailing his counsel a copy of the notice of lien; he argues that "[i]f Vanderbilt had exercised reasonable diligence—in fact, any diligence—it would have inquired whether a lawsuit had been filed on behalf of the patient, Daniel Blackburn, when it filed its lien in the same clerk's office where this wrongful death action was previously filed."

The "reasonable diligence" required under §29-22-102(b) was for Vanderbilt to determine whether there was an attorney "representing the person to whom services were rendered." Black's Law Dictionary defines "reasonable diligence" to be "a fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity." BLACK'S LAW DICTIONARY (6th ed. 1991).

In *Shelby County Health Care Corp. v. Baumgartner*, No. W2008-01771-COA-R3-CV, 2011 WL 303249 (Tenn. Ct. App. Jan. 26, 2011), we considered the efforts that were required of a hospital to comply with Tenn. Code Ann. § 29-22-102(a). In that case the Regional Medical Center, which had treated parties who had been injured in an automobile accident and filed a lien, sued the Hartford Insurance Company, which provided liability coverage for the driver who caused a collision and which had settled with the injured parties, for impairment of the hospital's lien. The hospital did not know that Hartford was the insurer and, consequently, did not name Hartford or the driver in the lien notice. In response to the suit, Hartford argued that the hospital had a duty "to use 'reasonable diligence' or 'best

² Blackburn does not contest that the notice contains the information mentioned in Ms. Mack's affidavit; neither does he contend that the information contained in the notice of lien was not sufficient to comply with the statute.

efforts’ to discover the identity of the other driver and the other driver’s insurance company” and that the “best of the claimant’s knowledge” language in the statute included “‘reasonable diligence’ and ‘best efforts’ to find information beyond the claimant’s actual knowledge.” 2011 WL 303249 at *11-12.³ We rejected that argument and held that § 29-22-102(a) did not place a burden on the hospital “to engage in fact-finding efforts to ascertain the identity of persons or corporations which might be liable for the patient’s injuries” and that the medical center “did not have a duty under Section 29-22-102 to conduct an inquiry into the identity of potential third-party tortfeasors in order to perfect its hospital lien.” *Id.* at 12-13.

In the present case, Ms. Mack attests that a copy of the notice of lien was mailed to the address listed in the patient record and returned undelivered, and that, in the nearly three months between the filing of the suit and the preparation of the notice, Vanderbilt was not advised either of the fact that suit had been filed, the name of any counsel for Daniel Blackburn, or of “any person, firm or corporation claimed to be liable on the account.”⁴ Blackburn did not file any countervailing affidavit or other response to the material filed by Vanderbilt.

We see no reason to depart from the rationale *Baumgartner* applied to § 29-22-102(a) as we consider Vanderbilt’s efforts to comply with § 29-22-102(b). Ms. Mack’s affidavit shows Vanderbilt’s actual knowledge at the time it filed the lien; we have been referred to no fact in the record from which to conclude that it would have been reasonable for Vanderbilt to search the clerk’s records at that time. We decline to impose such a duty under

³ Hartford argued that the medical center “could have easily obtained such information by simply asking the Baumgartners about the driver of the other car or by reviewing the Arkansas highway patrol report” and that, because it failed to do so, the lien was not properly perfected.

⁴ Ms. Mack’s affidavit included the following information pertinent to the actions it took to comply with §29-22-102(b):

3. I mailed the attached letter and copy of the Notice of Hospital Lien via certified mail to Daniel Blackburn’s address as it appeared on Vanderbilt’s patient accounting/billing records at the time the hospital lien was prepared. It was returned undelivered by the post office. Attached hereto as Exhibit 1 is a copy of the letter, Notice of Hospital Lien, and returned envelope.

* * *

5. According to the Vanderbilt patient accounting/billing records that I searched at the time the Notice of Hospital Lien was prepared, there was no information providing the name of any persons, firms or corporations claimed by Daniel Blackburn or his representative to be liable for his damages as a result of his illness or injuries.

6. Further, while preparing the Notice of Hospital Lien, I searched the Vanderbilt Patient Accounting records to see if Daniel Blackburn was represented by an attorney, and I found no information indicating that he was represented by an attorney or attorneys.

the circumstances presented and hold that Vanderbilt's efforts satisfied the "reasonable diligence" requirement in §29-22-102(b).⁵

II. ARE THE PROCEEDS OF THE SETTLEMENT OF THE WRONGFUL DEATH ACTION SUBJECT TO VANDERBILT'S LIEN

Although not specifically addressed by the trial court, Vanderbilt presents the additional argument that, because its lien was perfected, it attaches to the proceeds of settlement; Blackburn argues that Tenn. Code Ann. § 20-5-106(a) prevents the lien from so attaching.⁶

We addressed the conflict between Tenn. Code Ann. § 20-5-106(b) and Tenn. Code Ann. § 29-22-101 in *Spivey v. Anderson*, No. 02A01-9704-CV-0075, 1997 WL 563199

⁵ In this regard, we note that Blackburn and his counsel were aware that Daniel Blackburn had been treated at Vanderbilt for the injuries which resulted in his death; we discern no reason why, in the three months after the accident, Blackburn or his counsel did not advise Vanderbilt of the suit, particularly since the amount of the hospital bill was recoverable as an item of damage in the wrongful death suit. *See* Tenn. Code Ann. § 20-5-113.

⁶ The portions of Tenn. Code Ann. § 20-5-106 pertinent to our discussion of this issue state:

(a) The right of action that a person who dies from injuries received from another, or whose death is caused by the wrongful act, omission, or killing by another, would have had against the wrongdoer, in case death had not ensued, shall not abate or be extinguished by the person's death but shall pass to the person's surviving spouse and, in case there is no surviving spouse, to the person's children or next of kin; to the person's personal representative, for the benefit of the person's surviving spouse or next of kin; to the person's natural parents or parent or next of kin if at the time of death decedent was in the custody of the natural parents or parent and had not been legally surrendered or abandoned by them pursuant to any court order removing such person from the custody of such parents or parent; or otherwise to the person's legally adoptive parents or parent, or to the administrator for the use and benefit of the adoptive parents or parent; *the funds recovered in either case to be free from the claims of creditors.*

(b) In any case involving a beneficiary who is a minor or who is legally incompetent, if the court finds it is in the best interest of the beneficiary, the court in its discretion may authorize all or any portion of the funds recovered for the beneficiary to be added to any trust or trusts established for the benefit of the beneficiary, wherever situated, whether the trust was created by the person whose death was caused by the wrongful action or omission or by any other person. *The funds recovered shall be for the benefit of the beneficiary and shall be free from the claims of creditors.*

Tenn. Code Ann. § 20-5-106 (a), (b) (emphasis added).

(Tenn. Ct. App. Sept. 9, 1997), in which an action was brought on behalf of a minor to recover for the wrongful death of her mother. The parties reached an agreement and, as part of the approval of the minor's claim, the defendant sought a declaration of the right of the hospital, which had provided care to the decedent and which had filed a lien, to the settlement funds. The trial court approved the settlement and held that, in light of the language in Tenn. Code Ann. § 20-5-106(b) that "the funds recovered shall be for the benefit of such beneficiary and shall be free from the claims of creditors", the proceeds were not subject to the hospital's lien. On appeal, we noted that the case presented "a conflict between the wrongful death statute and the hospitals' lien statute."⁷

In resolving this issue, we considered Tenn. Code Ann. § 1-3-103⁸ as well as the rule enunciated in *Valley Fid. Bank & Trust Co. v. Ayers* that "a specific statute or a special provision of a particular statute controls a general provision in another statute or a general provision in the same statute." *Valley Fid. Bank*, 861 S.W.2d 366, 369 (Tenn. Ct. App. 1993) (citing *Strader v. United Family Life Ins. Co.*, 218 Tenn. 411, 403 S.W.2d 765, 768 (1966)). We reasoned that the wrongful death statute is a general statute while Tenn. Code Ann. § 29-22-101 specifically establishes a lien for medical expense recovery and held:

[T]he provisions of the hospitals' lien statute are irreconcilable with the provisions of T.C.A. 20-5-106 that funds recovered are free from claims of creditors. Therefore, we hold that such provisions of T.C.A. § 20-5-106 do not apply in the face of an applicable and property perfected hospital lien authorized by T.C.A. § 29-22-101.⁹

⁷ Because the injured party in *Spivey* was a minor, Tenn. Code Ann. § 20-5-106 (b) was the statute considered; in this case we consider the analogous language at § 20-5-106 (a).

⁸ Tenn. Code Ann. § 1-3-103 states:

If provisions of different titles or chapters of the code appear to contravene each other, the provisions of each title or chapter shall prevail as to all matters and questions growing out of the subject matter of that title or chapter.

This statute has been cited in cases holding that, where two statutes relating to the same subject matter conflict, one of which is of general application and the other is of special application, the special statute will prevail. See, e.g., *State v. Nelson*, 577 S.W.2d 465 (Tenn. Crim. App. 1979); *State v. Safley*, 112 S.W.2d 831 (Tenn. 1938).

⁹ We referenced the holding in *Holston Valley Hosp. and Med Ctr. v. Moffitt*, No. 03A01-9608-CV-00271, 1997 WL 147530 (Tenn. Ct. App. Mar. 31, 1997), which considered the same issue and held that the hospital lien statute implicitly repealed the wrongful death statute.

The holding in *Spivey* is equally applicable to the case at bar. In light of our holding that Vanderbilt properly perfected its lien, Tenn Code Ann. § 20-5-106(a) does not prevent the lien from attaching to the settlement proceeds.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed and judgment entered for Vanderbilt in the amount of \$8,333.33.

RICHARD H. DINKINS, JUDGE