

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0488

W/DM
CF
VICKSBURG HEALTHCARE, LLC D/B/A RIVER REGION HEALTH
SYSTEM

VERSUS

STATE OF LOUISIANA THROUGH THE DEPARTMENT OF
HEALTH AND HOSPITALS, AND ALAN LEVINE IN HIS
CAPACITY AS SECRETARY OF THE LOUISIANA DEPARTMENT
OF HEALTH AND HOSPITALS

DATE OF JUDGMENT: DEC 21 2011

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 571263, DIV. 24, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE R. MICHAEL CALDWELL, JUDGE

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: AMENDED AND, AS AMENDED, AFFIRMED.

Guidry, J. concurs.

KUHN, J.

Defendants, the State of Louisiana through the Department of Health and Hospitals and its secretary Alan Levine (collectively DHH or the department), appeal the trial court's judgment, overruling an exception raising the objection of prescription and awarding plaintiff, Vicksburg Healthcare, LLC d/b/a River Region Healthcare System (River Region), reimbursement for inpatient healthcare services it administered to Louisiana-resident Medicaid patients. River Region and DHH each also appeal the amount of reimbursement awarded by the trial court. For the following reasons, we amend and, as amended, affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We have previously rendered an opinion in this matter, affirming on grounds of a violation of the Commerce Clause of the U.S. Constitution, the trial court's grant of summary judgment and its declaration that a reimbursement methodology promulgated by DHH (which appears in various publications of the Louisiana Register) was unconstitutional in its application to River Region. See *Vicksburg Healthcare, LLC v. State ex rel. Dep't of Health and Hospitals*, 2010-1248 (La. App. 1st Cir. 3/25/11), 63 So.3d 205.

River Region is a hospital located in Vicksburg, Mississippi, approximately eight miles from the Louisiana state line, and is organized under the laws of the State of Mississippi. Between March 2000 and December 2008, River Region, was enrolled in the Louisiana Medicaid program and administered non-emergent healthcare services to Louisiana Medicaid patients.¹ *Id.* at 209.

¹ Medicaid is a joint federal-state program, which furnishes medical assistance on behalf of families with dependent children and other qualifying individuals, see 42 USCA §1396, in which Louisiana participates. *Vicksburg Healthcare, LLC v. State ex rel. Dep't of Health and Hospitals*, 2010-1248 (La. App. 1st Cir. 3/25/11), 63 So.3d 205, 207.

After its successful challenge of the constitutionality of the rules promulgated by DHH, which categorized River Region as an out-of-state, “border” hospital and reimbursed River Region at a lower per diem rate for inpatient hospital healthcare services it administered to Louisiana Medicaid patients than the amount DHH reimbursed similar Louisiana hospitals, River Region filed a motion for summary judgment seeking an award of reimbursement for the difference between what DHH had paid and the amount it averred it was entitled to be paid under a constitutional reimbursement methodology. In response, DHH filed a peremptory exception raising the objection of prescription.

After a hearing, the trial court overruled the exception of prescription and granted River Region summary judgment, awarding reimbursement in the amount of \$3,525,636.52. A judgment in conformity with the trial court’s ruling was subsequently signed. Both parties have appealed.

In its appeal, DHH urges that the trial court erred in overruling the exception of prescription. And both DHH and River Region contend the trial court erred in the amount of reimbursement it awarded.²

EXCEPTION OF PRESCRIPTION

In reviewing a peremptory exception raising the objection of prescription,

² River Region also appealed the trial court’s denial of a motion to enforce the judgment. The motion, filed along with the motion for summary judgment, sought to execute the trial court’s declaration that the reimbursement methodology was unconstitutional. In our appellate review of DHH’s devolutive appeal of that declaration, we made clear that the reimbursement methodology had only been proven to be an unconstitutional commerce clause violation as DHH had applied it to River Region for inpatient healthcare services the Mississippi hospital had administered to Louisiana-resident Medicaid patients. See Vicksburg Healthcare, LLC, 63 So.3d at 213. Because River Region no longer administers non-emergent healthcare services to Louisiana Medicaid patients, execution of the declaratory judgment can serve no useful purpose or give any practical relief. Therefore, the motion to enforce is moot. See Joseph v. Ratcliff, 2010-1342 (La. App. 1st Cir. 3/25/11), 63 So.3d 220, 225. Accordingly, we find no error in the trial court’s denial of the motion to enforce judgment.

appellate courts strictly construe the statutes against prescription and in favor of the claim that is said to be extinguished. *Onstott v. Certified Capital Corp.*, 2005-2548 (La. App. 1st Cir. 11/3/06), 950 So.2d 744, 747. When evidence is received on the trial of the peremptory exception, the factual conclusions of the trial court are reviewed by the appellate court under the traditional rules governing appellate review of facts. As such, a trial court's factual determinations regarding prescription should not be reversed in the absence of manifest error. *Onstott*, 950 So.2d at 746; *Stobart v. State through Dep't of Transp. and Dev.*, 617 So.2d 880, 882 (La. 1993). However, when a question of law is presented, the appellate court's review consists of determining whether the trial court was legally correct or incorrect in its decision. See *Onstott*, 950 So.2d at 746.

The issue before this court in reviewing the trial court's ruling on the peremptory exception of prescription is the proper classification of the nature of River Region's claim. The essential facts necessary for resolution of this issue are not in dispute. On October 1, 2008, River Region filed a petition seeking a declaration that the reimbursement methodology DHH was applying to pay it for its administration of inpatient hospital healthcare services to Louisiana Medicaid patients was unconstitutional. The trial court granted that relief, and this court affirmed that declaration, albeit on different grounds, in which we clearly emphasized the limitation of the declaration of unconstitutionality only as to DHH's application of the methodology to River Region's claim for reimbursement for inpatient hospital healthcare services. See *Vicksburg Healthcare LLC*, 63 So.3d at 213.

But in its petition, River Region also sought damages consisting of a monetary award of a constitutionally permissible amount of reimbursement. The parties agree that River Region is entitled to an award of “the difference between the amount River Region was actually paid and the amount which it should have been paid if DHH had used a constitutionally and legally valid ... reimbursement rate.” This amount of reimbursement is, therefore, the only damages that River Region claims entitlement to in its motion for summary judgment. Thus, because the underlying facts are not in dispute, we are presented with a question of law for which our resolution is simply a determination of whether the trial court was legally correct or incorrect in overruling the exception of prescription insofar as River Region’s claim for an amount of reimbursement. See Onstott, 950 So.2d at 746.

We note, and the parties do not dispute, that the Medicaid Act does not provide a time period by which a qualified healthcare provider, such as River Region, may seek recovery for deficient reimbursement payments from the state. See 42 U.S.C.A. §1396. When a federal statute fails to provide a maximum time period during which such an action can be brought, courts typically borrow the most analogous state statute. See DelCostello v. Int’l Brotherhood of Teamsters, 462 U.S. 151, 158, 103 S.Ct. 2281, 2287, 76 L.Ed.2d 476, 485 (1983). Thus, we turn to Louisiana liberative prescriptive statutes.

All personal actions, including actions to enforce contractual obligations, are generally subject to a liberative prescription of ten years, unless otherwise provided by legislation. La. C.C. art. 3499. Delictual actions are subject to a liberative prescription of one year, running from the day injury or damage is sustained. La. C.C. art. 3492. The allegations and prayer of the petition determine the true nature

of the action and the applicable prescriptive period. A set of circumstances can give rise to more than one cause of action, and each of those causes has its own prescriptive period. *Onstott*, 950 So.2d at 747.

DHH urges that River Region's claim is an action alleging a violation of a federal constitutional right, which is delictual in nature and, as such, has to be filed within one year of the date on which the constitutional violation occurred. Thus, DHH contends that River Region's claim is prescribed for all payments DHH tendered to River Region under the unconstitutional reimbursement methodology prior to October 1, 2007, which is one year before the hospital filed its petition seeking declaratory relief and reimbursement.³ River Region maintains that the provider agreement by which DHH approved the hospital's enrollment in Louisiana's Medicaid program is a contract with DHH and, as such, the failure of DHH to reimburse it a constitutionally proper amount allows it to raise its claim within a ten-year prescriptive period.

The nature of the duty breached determines whether the action is in tort or in contract. The classic distinction between damages *ex contractu* and damages *ex delicto* is that the former flow from the breach of a special obligation contractually assumed by the obligor, whereas the latter flow from the violation of a general duty owed to all persons. *Gallant Investments, Ltd. v. Illinois Cent. R.R. Co.*, 2008-1404 (La. App. 1st Cir. 2/13/09), 7 So.3d 12, 17. When a person negligently performs a contractual obligation, he has committed an active breach of contract,

³ Under DHH's theory, it implicitly concedes that payments it made subsequent to one year before River Region filed the petition seeking a declaration of the unconstitutionality of the reimbursement methodology constituted continuous conduct that caused continuous damages so as to fall within the continuous tort doctrine. See *In re Medical Review Panel for Claim of Moses*, 2000-2643 (La. 5/25/01), 788 So.2d 1173, 1183-86.

which may also support an action in tort. *First Louisiana Bank v. Morris & Dickson Co., LLC*, 44,187 (La. App. 2d Cir. 4/8/09), 6 So.3d 1047, 1050.

In this case, the unconstitutional reimbursement methodology utilized by DHH to pay River Region constitutes a negligent performance of a contractual obligation. Thus, DHH has committed an active breach of contract. That River Region may have also had an action sounding in tort, which would be subject to the one-year prescriptive period of La. C.C. art. 3492 and that has already accrued, does not destroy its right to pursue its action in contract. See *First Louisiana Bank v. Morris & Dickson Co., LLC*, 6 So.3d at 1050.

It is undisputed that DHH has tendered a sum of money to River Region for the hospital's performance of its obligation to administer inpatient healthcare to Louisiana Medicaid patients since March 2000. Thus, by their actions, the parties have formed a contract. See La. C.C. art. 1927.⁴ And DHH's payment, from March 2000 through December 2008, of an amount less than it owed River Region under a constitutionally and legally valid reimbursement methodology is but a partial performance of a special obligation DHH contractually assumed when it approved the provider agreement that permitted River Region's administration of inpatient healthcare to Louisiana Medicaid patients. As such, River Region is permitted to

⁴ La. C.C. art. 1927 states,

A contract is formed by the consent of the parties established through offer and acceptance.

Unless the law prescribes a certain formality for the intended contract, offer and acceptance may be made orally, in writing, or by action or inaction that under the circumstances is clearly indicative of consent.

Unless otherwise specified in the offer, there need not be conformity between the manner in which the offer is made and the manner in which the acceptance is made.

claim the amount it is owed under a constitutionally and legally valid reimbursement methodology. See La. C.C. art. 1861.⁵

Additionally, La. R.S. 46:437.11(C), which appears in the Louisiana Medical Assistance Programs Integrity Law⁶ and was enacted to combat and prevent fraud and abuse committed by healthcare providers participating in Medicaid, states:

Each provider agreement shall be a **voluntary contract** between the department and the health care provider in which the health care provider agrees to comply with federal and state laws and rules pertaining to the medical assistance programs [i.e., under the Medicaid Act] when furnishing goods, services, or supplies to a recipient and the department agrees to pay a sum, determined by fee schedule, payment methodology, or other method, for the goods, services, or supplies provided to the recipient. (Emphasis added.)

This statutory authority clearly recognizes the contractual relationship between the healthcare provider and DHH. The statute acknowledges the obligation of a healthcare provider, like River Region, to comply with federal and state laws and rules when furnishing goods, services, or supplies to a Louisiana Medicaid recipients; as well as the reciprocal obligation of DHH to pay a sum, determined by fee schedule, payment methodology, or other method, for the goods, services, or supplies thus provided. And we have no problem concluding the statute implicitly requires that the sum DHH agreed to pay to River Region must be determined by a constitutionally and legally valid fee schedule, payment methodology, or other

⁵ La. C.C. art. 1861 provides,

An obligee may refuse to accept a partial performance.

Nevertheless, if the amount of an obligation to pay money is disputed in part and the obligor is willing to pay the undisputed part, the obligee may not refuse to accept that part. If the obligee is willing to accept the undisputed part, the obligor must pay it. In either case, the obligee preserves his right to claim the disputed part.

⁶ See generally La. R.S. 46:437.1-437.14.

method, for the goods, services, or supplies provided by the healthcare provider to Louisiana Medicaid recipients. Because the reimbursement methodology that DHH utilized to perform its contractual obligation to River Region was unconstitutional and illegal, it is evident that DHH breached the special obligation it contractually assumed under the statutorily recognized, voluntary contract between DHH and River Region.

Accordingly, we conclude that River Region is entitled to pursue its claim for that portion of the sum that DHH was specially obligated to pay by a constitutional and legal reimbursement methodology in contract. As such, La. C.C. art. 3499 is the most analogous applicable state statute.⁷ Thus, the trial court correctly overruled DHH's exception of prescription since the claim was filed within the applicable 10-year prescriptive period.

QUANTUM OF REIMBURSEMENT

River Region filed a motion for summary judgment, urging entitlement to a specific amount of reimbursement. Summary judgments are reviewed on appeal *de*

⁷Although at the hearing of this matter DHH contended that if River Region's claim for reimbursement were determined to sound in contract the most analogous time limitation statute applicable is the three-year period set forth in La. C.C. art. 3494, we find no merit in this assertion. Mindful that a traditional written contract expressing the terms of an open account relationship does not exist between these parties but rather that River Region was annually "enrolled" in Louisiana Medicaid Program, we find River Region's claim for reimbursement is not properly categorized as an open account or compensation for services rendered. While River Region is claiming that its reimbursement is compensation for services rendered, and DHH suggests the contract resembled that of an open account, the actual recipients of the services rendered by River Region were Louisiana Medicaid patients, not DHH. *See Double-Eight Oil and Gas L.L.C. v. Caruthurs Producing Co., Inc.*, 41,451 (La. App. 2d Cir. 11/20/06), 942 So.2d 1279, 1286 (as between the parties, the claim for payment is not for purchases or services rendered by the claimant to the debtor as the open account statute contemplates); *see also House of Raeford Farms of Louisiana, L.L.C. v. Osei-Tutu*, 41,586 (La. App. 2d Cir. 11/1/06), 942 So.2d 601, 603-04 (the mere creation of a debt owed does not give rise to an action on an open account where the debt arises from a service rendered for the debtor and not by him). In light of the hybrid nature of the relationship between River Region and DHH, which is derived from both the conduct of the parties and a statutorily recognized voluntary contract, we conclude that, under the facts of this case, La. C.C. art. 3499 is the more appropriately analogous, applicable state prescriptive statute.

novo, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *Vicksburg Healthcare, LLC*, 63 So.3d at 207. The motion should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B).

On appeal, both DHH and River Region challenge the trial court's grant of summary judgment awarding reimbursement in the amount of \$3,525,636.52. DHH urges that amount is more than River Region is entitled to recover under a constitutionally and legally valid reimbursement methodology. And River Region maintains that the amount is less than what it is entitled to receive from DHH.

In support of its motion for summary judgment, River Region established that it was enrolled in the Louisiana Medicaid program from March 2000 until December 2008. During that time, River Region provided a total of 13,284 days of inpatient hospital healthcare services to Louisiana Medicaid patients. Under the tiered system, DHH's classification of "Peer Group 5" refers to a category of hospitals, which have more than 138 beds and are neither rural hospitals nor teaching hospitals. River Region is an out-of-state hospital where Louisiana Medicaid patients customarily obtain medical services. It has more than 138 beds and is neither a rural hospital nor a teaching hospital.

In order to determine the amount DHH owes River Region, *i.e.*, the difference between what DHH paid and what River Region is owed under a constitutionally and legally valid reimbursement methodology, both parties cite La. R.S. 40:1300.144. According to La. R.S. 40:1300.144,

A. The department shall adopt rules and regulations in accordance with the Administrative Procedure Act that provide the following ...

(3)(a) With respect to reimbursement for services furnished in another state, the department shall insure that reimbursement for such services shall be the lesser of the payment for such services by the state wherein such hospital is located or the department's payment made to like in-state providers. The department shall provide coverage for such services to the same extent that it would pay for services furnished within the boundaries of this state, only if any of the following conditions is met:

(i) Medical services are needed because of a medical emergency.

(ii) Medical services are needed and the recipient's health would be endangered if he were required to travel to his state or residence.

(iii) The state determines, on the basis of medical advice, that the needed medical services are necessary supplementary resources, and more readily available in the other state.

(iv) It is general practice for recipients in a particular locality to use medical resources in another state.

(b) In the event federal requirements for the state plan for medical assistance permit the department to impose further restrictions on payment for and coverage of medical services to Louisiana Medicaid patients rendered by out-of-state providers, the department shall promulgate regulations restricting payment for and coverage of such services to the fullest extent permitted by law. Such restrictions shall include lowering the rate of reimbursement provided for services rendered to out-of-state hospitals to the payment for such services by the state wherein such hospital is located, the department's payment made to like in-state providers, or the average rate paid to Louisiana rural hospitals located in the state, whichever is the least.

As we noted in our earlier opinion, in an attempt to conform to the directive stated in La. R.S. 40:1300.144(A)(3)(b), DHH adopted a rule, which created a classification of out-of-state, "border" hospitals, a classification that DHH applied to River Region. *Vicksburg Healthcare, LLC*, 63 So.3d at 208 & n.6. We found

that the DHH rule, as applied to River Region, was unconstitutional and not in conformity with La. R.S. 40:1300.144(A)(3)(b). *Vicksburg Healthcare, LLC*, 63 So.3d at 213. Thus, its application to the facts of this case is inappropriate. And an application of La. R.S. 40:1300.144(A)(3)(a) is likewise inappropriate in this case as River Region has not cited, nor has this court found, a rule or regulation adopted by DHH in accordance with the Administrative Procedure Act as mandated under the legislative authority provided in that subsection. Therefore, because DHH has not adopted any rule or regulation under the enabling legislation of La. R.S. 40:1300.144(A)(3)(a) or (b), we look to the Medicaid Act for guidance.

Under federal law, a state plan for medical assistance must provide for inclusion, to the extent required by regulations, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State, but are absent there from. See 42 USCA §1396a(a)(16). According to 42 C.F.R. §431.52(b)(4), providing for payments for services furnished out of state,

A State plan must provide that the State will pay for services furnished in another State to the same extent that it would pay for services furnished within its boundaries if the services are furnished to a recipient who is a resident of the State, and ... the following condition [] is met ... [i]t is general practice for recipients in a particular locality to use medical resources in another State.

Thus, under the plain language of this federal regulation, which is applicable in this case under 42 USCA §1396a(a)(16), Louisiana's state plan requires DHH to pay for the inpatient healthcare services River Region administered to Louisiana-resident Medicaid patients to the same extent that DHH pays for those services furnished within the boundaries of Louisiana where, as here, it is the general

practice for Louisiana-resident Medicaid recipients to use the medical resources of River Region, which is located in Mississippi.

Based on the showing made by River Region on its motion for summary judgment, utilizing the same reimbursement Peer Group 5 rate that similar Louisiana hospitals were paid between March 2000 and December 2008 as required under an application of 42 C.F.R. §431.52(b)(4), the difference between the amount that River Region was paid and the amount it was entitled to under a constitutionally and legally valid reimbursement methodology is \$5,490,420.65.⁸ Thus, the trial court's judgment, awarding reimbursement in the amount of \$3,525,636.52, is amended to award River Region reimbursement in the amount of \$5,490,420.65.⁹

DECREE

For these reasons, the trial court's judgment is amended to award plaintiff, Vicksburg Healthcare, LLC d/b/a River Region Healthcare System, reimbursement

⁸ Although in its appeal DHH challenges the reimbursement rate to which River Region is entitled, it has offered no specific assertions against River Region's calculations of 13,284 days for its administration of inpatient hospital healthcare services at the Peer Group 5 rate under a constitutionally and legally valid reimbursement methodology.

⁹ Citing dicta in *Vicksburg Healthcare LLC*, 63 So.3d at 214 n.13, DHH asserts that the approval of an amendment to Louisiana's state plan by the Centers for Medicare and Medicaid Services demonstrates that 42 C.F.R. §431.52(b) does not require DHH to reimburse River Region at the same rate as a comparable in-state hospital. In reliance of this assertion, DHH points to a document entitled, "State Plan under Title XIX of the Social Security Act Medical Assistance Program," designated "Attachment 4.19-A," which was provided by DHH to River Region in response to interrogatories and requests for production of evidence and submitted by River Region in support of its entitlement to the earlier-rendered summary judgment declaring the DHH rule unconstitutional. The document, which was not admitted at the hearing on the motion for summary judgment presently under review, is neither self-explanatory nor self-proving and has not been sufficiently authenticated to be reliable. As in our earlier opinion, in which we found it was insufficient to support River Region's entitlement to declaratory relief under the Medicaid Act, we likewise find in this appeal that it is insufficient evidence to rebut the showing made by River Region that it is entitled to summary judgment under the plain language of 42 C.F.R. §431.52(b)(4) on the issue of damages. Accordingly, DHH's assertion is without merit.

in the amount of \$5,490,420.65. As amended, the judgment is in all other respects affirmed. Appeal costs in the amount of \$7,858.20 are assessed against defendants, the State of Louisiana through the Department of Health and Hospitals and its secretary Alan Levine.

AMENDED AND, AS AMENDED, AFFIRMED.