SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2311-15T2

SAINT BARNABAS MEDICAL CENTER
A/S/O SEAN HOLEY,

Plaintiff-Appellant,

v.

MERCURY INDEMNITY COMPANY OF AMERICA,

Defendant-Respondent.

Argued telephonically July 10, 2017 –
Decided July 31, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-6590-15.

Steven Stadtmauer argued the cause for appellant (Celentano, Stadtmauer & Walentowicz, LLP, attorneys; Mr. Stadtmauer, on the briefs).

David C. Harper argued the cause for respondent.

PER CURIAM

This appeal arises out of a dispute between plaintiff Saint Barnabas Medical Center (SBMC) and an automobile insurer,

defendant Mercury Indemnity Company of America (MICA), over personal injury protection (PIP) benefits. After being injured in a June 2013 motor vehicle accident, the insured motorist, Sean Holey, received treatment for his burn injuries at SBMC's outpatient facility on June 24, 2013. Holey assigned his rights to receive PIP benefits for those services under his automobile policy with MICA to SBMC, as his subrogee.

SBMC submitted a bill for $10,404 for surgical and ancillary services it provided to Holey. MICA processed the bill pursuant to Exhibit 7 of the Hospital Outpatient Surgical Facility (HOSF) fee schedule and SBMC's Magnacare Preferred Provider Organization (PPO) contract, and allowed a total payment of $3,234.31, which related solely to surgical codes 15002 and 15100. MICA denied eleven additional line items totaling $3894, finding that, under N.J.A.C. 11:3-29.5(a), they constituted "ancillary service[s] that [are] integral to the surgical procedure and [therefore] not permitted to be reimbursed separately in a HOSF."

SBMC contended that under the HOSF fee schedule it could charge a maximum of $6,681.02 for the procedures performed on Holey. It disputed MICA's decision to disallow the eleven line items as well as the reduction of the reasonable fee allowed by MICA for surgical code 15100. Accordingly, SBMC claimed it was owed the difference between $6,681.02 and $3,234.31, or $3,446.71.

The dispute over SBMC's unpaid balance was presented to a Dispute Resolution Professional (DRP) who was assigned by the arbitration tribunal, Forthright, to hear the case. The DRP entered an award in favor of MICA. In a thorough written opinion, the DRP wrote:

> After considering all documentation submitted, as the finder of fact I conclude by the preponderance of the evidence that [MICA] properly issued payment for services rendered at 80% of the billable amount and further find that the billable amount is in fact the HOSF fee schedule. I further find by the same preponderance that [SBMC] has failed to submit sufficient rationale to support their position that payment should be issued at 80% of their [usual, customary, and reasonable].
>
> Next[,] [MICA] denied spate payment for several [revenue] codes which they contend were unbundled from the primary skin graft and facility fee. These services included pharmaceutical[] supplies, anesthetic agents, injections[,] and recovery room fees.
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> After considering all documentation submitted, as the finder of fact I conclude by the preponderance of the evidence submitted that [SBMC] has failed to submit sufficient documentation to support their position that these services are separately reimbursable as they [were] intrinsic to the skin graft and facility fee billed under CPT codes 15002 and 15100.

As permitted by the DRP rules, SBMC pursued an internal administrative appeal to a three-member DRP Panel within Forthright. After considering the parties' arguments and

reviewing the record, the DRP Panel affirmed the DRP's arbitration award in a comprehensive seven-page written opinion.

SBMC then filed a complaint in the Law Division seeking to vacate the arbitration award pursuant to N.J.S.A. 2A:23-13(c)(4) and (5). SBMC alleged that the DRP and DRP Panel "commit[ted] prejudicial errors when they imperfectly executed their powers and erroneously applied [the] law to the issues and facts presented in this action." In an order and letter opinion dated January 8, 2016, Judge Robert H. Gardner disagreed and affirmed the award.

On appeal, SBMC argues that the trial court erred in interpreting the law and in failing to address all of SBMC's claims. It further argues that this court has jurisdiction to review the Law Division order because the method by which hospitals bill for their services, and the proper interpretation of N.J.A.C. 11:3-29.5 relative to how a hospital is paid for its services, are issues of "general public importance." MICA responds that the Alternative Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-1 to -30, prohibits appellate review absent circumstances in which the judge failed to provide an appropriate review or an issue of strong public policy requires review. MICA argues this case does not fall within either exception. We agree.

APDRA was enacted in 1987 to create a new procedure for dispute resolution. Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower

Project, L.P., 154 N.J. 141, 145 (1998). The express intention of the procedure is "to provide a speedier and less expensive process" for the resolution of disputes. Governor's Reconsideration and Recommendation Statement to Assembly Bill No. 296, at 1 (Jan. 7, 1987), reprinted at N.J.S.A. 2A:23A-1. A critical element of the procedure is a summary application in the Superior Court to vacate, modify, or correct an award within forty-five days after delivery of the award. N.J.S.A. 2A:23A-13a. Any such action in the Superior Court shall be conducted in a summary manner and on an expedited basis. N.J.S.A. 2A:23A-19. In addition, the APDRA severely limits the grounds on which an award may be vacated, modified, or corrected. N.J.S.A. 2A:23A-13c provides that a decision on the facts by the DRP is final unless the party seeking review demonstrates that his or her rights were prejudiced by

> (1) Corruption, fraud or misconduct in procuring the award;
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> (2) Partiality of an umpire appointed as a neutral;
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> (3) In making the award, the umpire's exceeding their power or so imperfectly executing that power that a final and definite award was not made;
>
> (4) Failure to follow the procedures set forth in this act, . . .; or

> (5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution.
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> [N.J.S.A. 2A:23A-13c.]

Pursuant to APDRA's statutory framework, judicial scrutiny by the trial court is designed to be the final level of appellate review. N.J.S.A. 2A:23A-18(b) provides that "[u]pon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered by the [trial] court in conformity therewith and be enforced as any other judgment or decree. There shall be no further appeal or review of the judgment or decree." (Emphasis added).

Adhering to this explicit language in the statute, the general rule then is that a plaintiff has no right to appeal from a trial judge's order issued in cases arising under the APDRA. Morel v. State Farm Ins. Co., 396 N.J. Super. 472, 475 (App. Div. 2007). Courts have adhered to this general rule, reserving, for policy matters, the exercise of their supervisory jurisdiction over the trial court. See Mt. Hope, supra, 154 N.J. at 152 (noting that only "'rare circumstances' grounded in public policy [] might compel this Court to grant limited appellate review"). The "rare circumstances" enabling further review beyond the trial court in APDRA matters arise only in situations where such appellate review is needed to effectuate a "nondelegable, special supervisory

function," of the appellate court. Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 239 (App. Div. 2008).

In only a few exceptional instances has this court elected to perform such appellate review in an APDRA matter. See, e.g., Selective Ins. Co. of Am. v. Rothman, 414 N.J. Super. 331, 341-42 (App. Div. 2010) (reversing a trial court's order erroneously upholding a decision of a DRP, who failed to enforce a clear statutory mandate involving a "matter of significant public concern"), aff'd, 208 N.J. 580 (2012); Allstate Ins. Co. v. Sabato, 380 N.J. Super. 463, 473 (App. Div. 2005) (conducting appellate review over a DRP's ruling on attorney's fees because the reasonableness of counsel fees "comes within [the court's] exclusive supervisory powers"); Faherty v. Faherty, 97 N.J. 99, 109 (1984) (exercising appellate review over a child support award made by an arbitrator designated by the parties' divorce judgment); see also Kimba Med. Supply v. Allstate Ins. Co., 431 N.J. Super. 463, 482 (App. Div. 2013) (invoking the jurisdictional exception to undertake appellate review of unresolved and recurring legal questions concerning the proper interpretation of APDRA, and to clarify the trial court's ability to remand certain open issues back to the dispute professional).

In the event that such further judicial review is appropriate, however, the appellate court's "role is to determine whether the

trial judge acted within APDRA's bounds. If so, [the appellate tribunal is] bound by N.J.S.A. 2A:23A-18(b) to dismiss the appeal." Fort Lee Surgery Ctr., Inc. v. Proformance Ins. Co., 412 N.J. Super. 99, 103 (App. Div. 2010). Fort Lee Surgery is an instructive example of the general rule disfavoring this court's involvement in APDRA matters. In Fort Lee Surgery we were asked to determine whether the trial judge erred in modifying an arbitrator's award issued under APDRA. We found that our appellate review of the trial court in that matter was inappropriate and declined to exercise jurisdiction. Id. at 104.

We reasoned that because the Law Division judge had rested her decision upon one of the enumerated statutory grounds set forth in APDRA for vacating, modifying or correcting an arbitration award, the Appellate Division had no cause to invoke its supervisory function. Ibid.; see also Riverside Chiropractic, supra, 404 N.J. Super. at 240 (declining appellate jurisdiction because it was not shown that the trial judge "commit[ted] any glaring errors that would frustrate the Legislature's purpose in enacting the APDRA"); N.J. Citizens Underwriting Reciprocal Exch. v. Kieran Collins, D.C., LLC, 399 N.J. Super. 40, 50 (App. Div.) (likewise dismissing an appeal in an APDRA matter because the trial judge "steered a course well within" the trial court's limited scope of review), certif. denied, 196 N.J. 344 (2008).

While we are mindful that "[t]he exercise of our supervisory function cannot be talismanically eliminated by the mere invocation of the words of the [APDRA] statute," Fort Lee Surgery, supra, 412 N.J. Super. at 104, we decline to exercise our supervisory function to review the merits of this billing dispute over PIP benefits. There is nothing momentous, legally or factually, about this case. The amount in dispute here is relatively small. No significant issues of public policy are implicated. We do not discern that Judge Gardner approached the merits of this dispute outside the proper boundaries of the APDRA. Therefore, finding no basis to invoke our supervisory function and no rare circumstance grounded in public policy to invoke our appellate jurisdiction, we dismiss SBMC's appeal of the January 8, 2016 order.

Dismissed.