

No. 1-14-2683

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMBULATORY SURGICAL CARE, FACILITY, LLC,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	2012 L 4142
)	
TRAVELERS INDEMNITY COMPANY OF AMERICA and OMRON AUTOMOTIVE ELECTRONICS, INC.,)	
)	Honorable
)	Sanjay T. Tailor
Defendants-Appellees.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Lampkin and Justice Reyes concurred in the judgment.

ORDER

HELD: The circuit court correctly determined that it had jurisdiction to hear plaintiff's claim for promissory estoppel. The court erred in directing a verdict in favor of defendants on plaintiff's promissory estoppel claim because issues of fact remain as to the elements of an unambiguous promise and expected and foreseeable reliance. And section 4 of the Illinois

Ambulatory Surgical Treatment Center Act (ASTC Act) (210 ILCS 5/4 (West 2000)) did not apply to preclude plaintiff from pursuing its claim for promissory estoppel.

¶ 1 Plaintiff Ambulatory Surgical Care Facility, LLC filed a one-count complaint for promissory estoppel in the circuit court of Cook County against defendants Travelers Indemnity Company of America (Travelers) and Omron Automotive Electronics, Inc. (Omron) seeking to recover certain medical facility charges incurred by Omron employee Ms. Casimira Deleone when she underwent an outpatient surgical procedure on her left shoulder. This appeal arises from a directed verdict in favor of defendants at the close of plaintiff's case-in-chief in the bench trial.

¶ 2 Plaintiff argues on appeal that it established a *prima facie* case of promissory estoppel which should have precluded the circuit court from directing a verdict in favor of defendants. Defendants counter that the court's judgment should be affirmed not only because plaintiff failed to establish the required elements to sustain a claim for promissory estoppel, but also because the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) gave the Illinois Workers' Compensation Commission (Commission) exclusive jurisdiction over the matter. Defendants also argue we should affirm because plaintiff was not a licensed facility under Illinois Ambulatory Surgical Treatment Center Act (ASTC Act) (210 ILCS 5/4 (West 2000)) at the time of the surgery. For the reasons that follow, we affirm in part, reverse in part, and remand with directions.

¶ 3

BACKGROUND

¶ 4 Plaintiff provides outpatient surgical facility services and is affiliated with Medicos Pain & Surgical Specialists, S.C. (Medicos) and Marque Medicos Farnsworth, LLC (Marque).

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Medicos and Marque are health care providers who provided services to Ms. Deleone. Travelers is an insurance provider that provides workers' compensation insurance to Omron.

¶ 5 In October 2009, Ms. Deleone, who was employed at Omron as a machine operator, suffered an injury to her left shoulder while on the job. She received treatment and therapy for the injury, but the pain persisted and she continued to have reduced range of motion in the shoulder. Eventually it was determined that Ms. Deleone required surgery on her shoulder and she sought compensation under the Act.

¶ 6 Prior to performing surgery on Ms. Deleone, Medicos sought pre-approval from Travelers. On November 2, 2010, Medicos sent a fax to Travelers asking the insurer to authorize Dr. Ellis Nam to perform the following medical procedures requested by the doctor: "Left Shoulder Arthroscopy, Subacromial Decompression, Clavicle Resection, Possible Capsular Release." Dr. Nam is a board certified orthopedic surgeon who was working as an independent contractor for Medicos as a staff physician.

¶ 7 Five months later, on April 7, 2011, based on an independent medical evaluation by one of its physicians, Travelers faxed Marque a letter to the attention of Dr. Nam approving the following surgical procedure and aftercare: "a capsular release of the left shoulder with anticipated recovery and rehab of 4 months."

¶ 8 On May 3, 2011, Dr. Nam performed outpatient shoulder surgery on Ms. Deleone at the plaintiff's medical facility. According to all involved, the surgery was successful. In his operative notes, the doctor stated in part: "A general manipulation under anesthesia was performed achieving full forward flexion followed by external rotation with the arm at side

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followed by external and internal rotation with the arm abducted 90 degrees followed by cross-chest adduction. As I was able to achieve full range of motion, I opted to not to perform a capsular release." The doctor performed the following procedures on Ms. Deleone's left shoulder: arthroscopic subacromial decompression; arthroscopic extensive debridement of labral tearing and partial bursal-sided rotator cuff tearing; athroscopic synovectomy, subacromial space; arthroscopic distal claviclectomy; and manipulation under anesthesia.

¶ 9 Travelers paid Dr. Nam's professional service fees for the surgery. Based on Dr. Nam's operative notes, plaintiff submitted a bill and invoice to Travelers in the total amount of \$68,950.57 for facility service charges incurred in connection with the surgery.

¶ 10 Plaintiff assumed that under the Act's fee schedule and based on the billing codes for the surgical procedures that were performed, it was entitled to reimbursement of 76% of the billed charges. Plaintiff also assumed that under the Act, it was entitled to receive statutory interest on the amount due until paid.

¶ 11 Travelers initially denied payment on the ground that plaintiff was not a licensed facility under the ASTC Act at the time of the surgery. Travelers later issued payment to plaintiff in the amount of \$19,866.39, stating that the original invoice was incorrectly processed.

¶ 12 Travelers disputed the additional fees sought by plaintiff and refused to pay. As a result, plaintiff filed a one-count complaint for promissory estoppel in the circuit court of Cook County against defendants seeking reimbursement of the disputed fees plus interest.

¶ 13 Defendants moved to dismiss the complaint pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2014)). Defendants also sought a dismissal

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with prejudice on the alleged ground that pursuant to section 18 of the Act, the matter should be decided by the Commission and that the circuit court lacked jurisdiction to decide the issues. Section 18 states that "All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Commission." 820 ILCS 305/18 (West 2012). Defendants sought a stay of the proceedings pending a ruling by the Commission. Following briefing on the motion, the court granted a partial stay. The court later lifted the stay.

¶ 14 Defendants answered the complaint and filed affirmative defenses. The parties proceeded through discovery and a date was set for a bench trial. Three months prior to trial, defendants filed another motion for a stay, on the same basis as the prior motion. The circuit court denied the motion stating in part that it had "not been presented with authority that [the Commission] has exclusive jurisdiction over this claim;" Defendants then filed a motion for summary judgment, which was denied. The matter proceeded to a bench trial.

¶ 15 At the close of plaintiff's case-in-chief, the circuit court directed a verdict in favor of defendants, based upon its finding that plaintiff had failed to establish the required elements to sustain a claim for promissory estoppel. The court determined that in the context of plaintiff's promissory estoppel claim, the unambiguous promise that was made was preauthorization for a "capsular release" of the insured's left shoulder. The court held that the plaintiff's reliance on the preauthorization was not reasonable for purposes of promissory estoppel. The court stated in part "[t]he unambiguous promise is we will approve capsular release surgery, so I don't see how

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a plaintiff could have reasonably relied on an approval of capsular release surgery to perform other surgery and expect to be compensated." This appeal followed.

¶ 16

ANALYSIS

¶ 17 Initially, we must determine if the circuit court properly concluded that the Commission did not have exclusive jurisdiction over plaintiff's promissory estoppel claim. Defendants argue, as they did below in the circuit court, that pursuant to section 18 of the Act, the court lacked jurisdiction to hear this matter. Again, this section of the Act states that "All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Commission." 820 ILCS 305/18 (West 2012).

¶ 18 We disagree with defendants' interpretation of the applicable provisions of the Act. Since this issue calls for statutory construction, which presents a question of law, our review is *de novo*. *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶ 19. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Hayashi v. Illinois Department of Financial & Professional Regulations*, 2014 IL 116023, ¶ 16. The most reliable indicator of the legislature's intent is the statutory language itself, which must be given its plain and ordinary meaning. *Id.*

¶ 19 Illinois courts have original jurisdiction over all justiciable matters. Ill. Const. 1970, art. VI, § 9. However, the legislature may vest exclusive original jurisdiction in an administrative agency "when it has explicitly enacted a comprehensive statutory administrative scheme." *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 31. Section 19(f) of the Act limits the role of circuit courts in workers' compensation proceedings to

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appellate review. *Pekin Insurance Co v. Campbell*, 2015 IL App (4th) 140955, ¶ 33. As a result, circuit courts "have no original jurisdiction over workers' compensation proceedings, wherein benefits are determined, under the Act." *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 158 (1992).

¶ 20 Here, however, plaintiff's cause of action for promissory estoppel does not involve a question arising under the Act or involve a workers' compensation benefits issue. See, e.g., *Pekin Insurance Co.*, 2015 IL App (4th) 140955, ¶ 34 (finding that plaintiff's rescission action did not involve a question "arising under the Act" as it did not involve a workers' compensation benefits issue); *Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 427 (6th Cir. 2006) ("Claims for breaches of fiduciary duty and promissory estoppel are not claims for denial of benefits and are therefore addressed in the first instance in the district court, requiring no deference to any administrator's action or decision"). "Promissory estoppel is an equitable theory of recovery which permits the enforcement of promises that are unsupported by consideration." *Prentice v. UDC Advisory Services, Inc.*, 271 Ill. App. 3d 505, 513 (1995). We find that plaintiff's cause of action for promissory estoppel was a justiciable matter within the circuit court's jurisdiction.

¶ 21 Moreover, the doctrine of primary jurisdiction did not require the circuit court to decline resolution of this dispute in deference to the Commission. "The doctrine of primary jurisdiction is a judicially created doctrine that is not technically a question of jurisdiction, but a matter of self-restraint and relations between the courts and administrative agencies." *Bradley v. City of Marion*, 2015 IL App (5th) 140267, ¶ 35.

¶ 22 Under this doctrine, a circuit court should refer a matter to an administrative agency when the agency has specialized or technical expertise that would help resolve the controversy or where there is a need for uniform standards. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corporation*, 2011 IL 111611, ¶ 43. The doctrine applies only when the circuit court either has original or concurrent jurisdiction over the subject matter. *Id.* at ¶ 44.

¶ 23 Our supreme court has determined that in certain cases, circuit courts and the Commission have concurrent jurisdiction to decide questions raised in workers' compensation cases. *Employers Mutual Companies v. Skilling*, 163 Ill. 2d 284, 287-88 (1994). In *Skilling*, the supreme court held that section 18 of the Act did not divest circuit courts of jurisdiction. *Id.* The supreme court determined that since there was no language in section 18 specifically excluding circuit courts from deciding workers' compensation cases, the Commission and the courts had concurrent jurisdiction. *Id.*; see also *ABF Freight System, Inc. v. Fretts*, 2015 IL App (3d) 130663, ¶ 15.

¶ 24 Plaintiff's cause of action is not focused on the Act. Rather, it is focused on the alleged promise made by Travelers and relied upon by plaintiff. Plaintiff maintains that Travelers should be estopped under Illinois law from refusing to remit payment for services that it represented were covered. The dispute regarding whether Travelers made an unambiguous promise to plaintiff, which would enable plaintiff to establish its claim for promissory estoppel, is precisely the type of legal dispute that the circuit court, rather than the Commission, was designed to address. The Commission's specialized or technical expertise is not necessary in resolving

whether plaintiff established its theory of promissory estoppel. Therefore, we find the circuit court did not err in determining that it had jurisdiction to hear plaintiff's complaint.

¶ 25 Defendants next contend the circuit court properly directed a verdict in their favor on plaintiff's claim for promissory estoppel. We must disagree.

¶ 26 "[A] verdict should be directed only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Heastie v. Roberts*, 226 Ill. 2d 515, 544 (2007). In the instant case, we find the circuit court erred in directing a verdict in favor of defendants on plaintiff's promissory estoppel claim.

¶ 27 "Promissory estoppel is a common-law doctrine adopted to permit the enforcement of promises that are unsupported by consideration." *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 91. To establish a claim for promissory estoppel, the plaintiff must allege and prove that (1) defendant made an unambiguous promise to plaintiff, (2) plaintiff relied on that promise, (3) plaintiff's reliance was expected and foreseeable by defendant, and (4) plaintiff relied on the promise to its detriment. *Id.* at ¶ 95. Only the first and third elements are really at issue.

¶ 28 At the outset, we note that the parties dispute the appropriate standard of review to be applied to the circuit court's findings. Plaintiff argues we should apply a *de novo* standard. Defendants counter that a manifest weight of the evidence standard should apply because the court weighed the evidence before determining that plaintiff's reliance on the preauthorization

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letter was unreasonable. We need not resolve this dispute here, because under either standard, the court's judgment must be reversed.

¶ 29 In regard to the first element, we believe the circuit court erred in directing a verdict on the promissory estoppel claim because we find the evidence raised an issue of fact as to whether the unambiguous promise Travelers made to plaintiff preauthorizing the surgical procedure of a "capsular release," encompassed the surgical procedures Dr. Nam actually performed on May 3, 2011. Travelers' insurance claim notes indicate that the insurer not only expected that a capsular release surgery would be scheduled and performed, but also anticipated the other surgical procedures which were performed.

¶ 30 For example, on April 7, 2011, approximately a month prior to surgery, an agent of Travelers noted that one of its doctors had determined that the insured did "indeed have capsulitis and is a candidate for a capsular release." The agent further noted "I will notify Dr. Nam office that per this IME [Independent Medical Examination] decision we will approve her repeat surgery." On April 25th, an agent noted "As per our IME the employee is to have left shoulder revision, subacromial decompression distal clavicle resection, with a capsular release on 4/27/11." On April 26th, an agent noted "Employee is scheduled to have left shoulder revision, subacromial decompression distal clavicle resection, with a capsular release on 4/27/11 Nature of injury is now inflammation. As the surgery scheduled for 4/27/11 involves more than surgery of adhesive capsulitis. Primary diagnoses will reflect rotator cuff disease."

¶ 31 The surgical procedures outlined in the insurance claim notes are the same surgical procedures Dr. Nam performed on the insured, except for the capsular release, which the doctor

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determined was not necessary once he examined the insured's left shoulder just prior to surgery. In his operative notes, Dr. Nam stated that he elected not to perform a capsular release because he was able to achieve full range of motion under general anaesthesia. Plaintiff, as the surgical facility provider, had no control over how the surgery would actually be performed. The decision on how to proceed with the surgery was a medical decision made by the doctor in the operating room.

¶ 32 We find the evidence is sufficient to enable a trier of fact to conclude that Travelers made an unambiguous promise to plaintiff to reimburse it for the costs it incurred in connection with the surgical procedures performed by Dr. Nam. See, *e.g.*, *Connecticut General Life Insurance Co. v. Grand Avenue Surgical Center, Ltd.*, 181 F. Supp. 3d 538, 545 (N.D. Ill. 2015). Our finding is supported by evidence showing that Travelers paid Dr. Nam for the same surgical procedures it now refuses to reimburse plaintiff for in this case.

¶ 33 As to the element of justifiable reliance, we believe there is an issue of fact as to whether it was expected and foreseeable to Travelers that plaintiff would rely on its preauthorization letter to schedule the surgery and procure the medical equipment and supplies necessary to allow Dr. Nam to perform surgery. We find the evidence is sufficient to enable a trier of fact to conclude or infer that when Travelers sent plaintiff the preauthorization letter, it knew or should have known that plaintiff would justifiably rely on that letter to procure the necessary medical equipment and supplies for the surgery. See, *e.g.*, *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 802-03 (2005); *Rehabilitation Institute of Chicago v. Group Administrators, Ltd.*, 844 F. Supp. 1275, 1278-79 (N.D. Ill. 1994).

¶ 34 In sum, we conclude the circuit court erred in directing a verdict in favor of defendants on plaintiff's promissory estoppel claim because we find there are genuine issues of material fact as to: (1) whether the unambiguous promise Travelers made to plaintiff preauthorizing the surgical procedure of a "capsular release," encompassed the surgical procedures Dr. Nam actually performed; and (2) whether it was expected and foreseeable to Travelers that plaintiff would rely on its preauthorization letter to procure the medical equipment and supplies required for the surgery. See, *e.g.*, *Przybylski v. Yellow Cab Co.*, 6 Ill. App. 3d 243, 245 (1972) (issues of fact precluded directed verdict).

¶ 35 Finally, we reject the defendants contention that plaintiff cannot pursue its claim for promissory estoppel because at the time of the surgery, it was not a licensed Ambulatory Surgical Treatment Center (ASTC) as defined in section 205.110 of Title 77 of the Illinois Administrative Code (77 Ill. Adm. Code § 205.110 (1996)). In support of this contention, defendants point to section 4 of the Illinois Ambulatory Surgical Treatment Center Act (ASTC Act) which states in relevant part that no person shall open, conduct or maintain an ambulatory surgical treatment center without first obtaining a license from the Department of Public Health of the State of Illinois. 210 ILCS 5/4 (West 2000).

¶ 36 We do not believe that section 4 of the ASTC Act necessarily supports defendants position. Section 9110.90(h)(1)(A) of Title 50 of the Illinois Administrative Code (50 Ill. Adm. Code § 9110.90(h)(1)(A) (1996)), states that the Commission's medical fee schedule applies not only to licensed ASTCs as defined by section 205.110 of Title 77, but also to ambulatory

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surgical treatment facilities accredited by the Joint Commission (formerly Joint Commission on Accreditation of Healthcare Organizations).

¶ 37 Defendants are correct that plaintiff did not receive accreditation by the Joint Commission until several months after the surgery at issue. However, plaintiff presented un rebutted evidence that at the time of the surgery, it had applied for accreditation, and more importantly, that the accreditation process required that it actively be performing surgical procedures.

¶ 38 In conclusion, we find the circuit court correctly determined that it had jurisdiction to hear plaintiff's claim for promissory estoppel. However, we find the court erred in directing a verdict in favor of defendants on plaintiff's promissory estoppel claim because issues of fact remain as to the elements of an unambiguous promise and expected and foreseeable reliance. We also reject defendants contention that section 4 of the ASTC Act applies to preclude plaintiff from pursuing its claim for promissory estoppel.

¶ 39 Accordingly, for the reasons set forth above, the judgment is reversed and the cause is remanded to the circuit court for consideration of plaintiff's promissory estoppel argument consistent with this order.

¶ 40 Affirmed in part and reversed in part; cause remanded with directions.