STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1108

Stand Up Mid America MRI, Inc.,
Respondent,

vs.

Allstate Insurance Company,
Appellant.

Filed April 13, 2010
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27CV084290

Mark A. Karney, Minneapolis, Minnesota (for respondent)

Richard S. Stempel, Christopher M. Drake, Stempel & Doty, PLC, Hopkins, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant insurer appeals from the district court's decision that, because respondent did not knowingly or intentionally violate the corporate-practice-of-medicine doctrine, appellant is liable for payment for magnetic-resonance-imaging services that respondent provided to appellant's insured. We affirm.

FACTS

Respondent Stand Up Mid America MRI, Inc. (SUMA) owns a magnetic-resonance-imaging (MRI) machine. Chiropractors refer patients to SUMA to get MRI scans. After SUMA performs an MRI scan, SUMA sends the MRI images to a radiologist, Terry Yochum, Doctor of Chiropractic (D.C.). Dr. Yochum reads the MRI images and creates a report that includes "findings" interpreting the images. SUMA sends Dr. Yochum's report to the referring chiropractor. SUMA is owned and operated by Wayne E. Dahl, D.C., who has been a licensed chiropractor in Minnesota since 1977. SUMA was, at times relevant to this lawsuit, organized under Minn. Stat. § 302A (2004), the Minnesota Business Corporation Act, rather than Minn. Stat. § 319B.01 (2004), the Minnesota Professional Firms Act.

Appellant Allstate Insurance Company insures Sarah Coe. Coe's treating chiropractor referred Coe to SUMA in August 2005 for a spinal/cervical MRI for use in chiropractic treatment. Coe assigned her insurance benefits under the Allstate policy to SUMA.

SUMA performed an MRI on Coe's cervical spine, and Dr. Yochum prepared a report including his findings based on the images. The report was sent to Coe's treating chiropractor. SUMA billed Allstate $1,600 for Coe's MRI and $400 for Dr. Yochum's reading and report. The total bill, including tax, came to $2,040.

Allstate and Coe executed a Hold Harmless and Indemnity Agreement, in which Allstate agreed to hold Coe harmless for any of the charges allegedly incurred and due to SUMA but reserved its rights and defenses against SUMA. Allstate declined to pay

SUMA's bill, and SUMA sued Allstate for the outstanding balance of the bill, plus interest. Allstate denied liability on the grounds that SUMA's bill was void because SUMA was knowingly and/or intentionally owned and operated in violation of the corporate-practice-of-medicine doctrine (CPMD).

After a bench trial, the district court concluded that SUMA's taking of the MRI images did not violate the CPMD, but the interpretation and analysis of the MRI images by SUMA did violate the CPMD under a September 2005 supreme court decision that first applied the CPMD to the practice of chiropractic. Because the case applying the CPMD to chiropractic was issued after SUMA provided services to Coe, the district court held that SUMA's violation could not have been knowing or intentional, and its bill was valid. The district court entered judgment for SUMA. This appeal follows.

D E C I S I O N

I. Standard of Review

In an appeal from a bench trial, the district court's factual determinations are entitled to deference and will not be set aside unless clearly erroneous. *Porch v. Gen Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). But we are not bound by and need not give deference to the district court's decision on a purely legal issue. *Id.* "When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *Id.* (quotation omitted).

II. History and development of CPMD in Minnesota

The CPMD is the application of a historical prohibition on corporations engaging in "learned professions," including the medical profession, through the employment of licensed professionals, except under specific statutory or regulatory exceptions. *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513, 516 (Minn. 2005) (*Isles Wellness I*) (applying the CPMD to the practice of chiropractic). In Minnesota, the CPMD was first recognized in *Granger v. Adson*, 190 Minn. 23, 26–27, 250 N.W. 722, 723 (1933). Granger, a layperson, sued to enforce a contract with a licensed pathologist to analyze urine samples taken as part of "health audits" Granger offered to his subscribers. *Granger*, 190 Minn. at 24, 250 N.W. at 722–23. "Granger then presented the results obtained from the pathologist to the subscriber and, depending on the results, either advised the subscriber to consult a doctor or offered the subscriber advice about diet, habits and exercise." *Isles Wellness I*, 703 N.W.2d at 518–19 (citing *Granger*, 190 Minn. at 24, 250 N.W. at 722).

The supreme court held that Granger was practicing medicine in violation of a statute that prohibited the practice of medicine without a license and was engaged in the practice of healing,[1] voided his contract with the pathologist, and stated that "it is 'improper and contrary to statute and public policy for a corporation or layman to practice medicine' indirectly by hiring a licensed doctor to practice medicine for the

[1] The "practice of healing" is currently described in Minn. Stat. § 146.01 (2008), in relevant part, as including "any person who shall in any manner for any fee, . . . engage in . . . the practice of chiropractic . . . also any person, or persons, individually or collectively, who maintains an office for the reception, examination, diagnosis or treatment of any person for any disease, injury, defect."

benefit or profit of the hire." *Id*. at 519 (quoting *Granger*, 190 Minn. at 27; 250 N.W. at 723, and rejecting an assertion that the CPMD has not been adopted in Minnesota).[2]

In *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90 (Minn. 2006) (*Isles Wellness II*), the supreme court held that operating a chiropractic clinic in violation of the corporate-practice-of-medicine doctrine does not, as a matter of public policy, void all contracts between the clinic and its patients' insurers. *Id.* at 95. The supreme court stated:

> [W]e conclude that categorically voiding the contracts would not serve the public policy reasons underlying the corporate practice of medicine doctrine. Permitting insurance companies to avoid liability under their insurance contracts does little to protect patients from the specter of lay control over professional judgment. . . . We will not void a contract unless it is established that the corporation's actions show a knowing and intentional failure to abide by state and local law.

Id. (quotation and citation omitted).

III. Application of CPMD in this case

In this case, the district court held that SUMA's imaging with its MRI machine did not violate the CPMD, but paying a licensed chiropractor to make findings based on the images did violate the CPMD. Nonetheless, the district court concluded that because the supreme court did not apply the CPMD to the practice of chiropractic until September

[2] In Minnesota, the Professional Firms Act specifically permits the formation of professional firms to practice certain specified professions, including chiropractic, so long as all ownership interests are held by licensed professionals. *See* Minn. Stat. §§ 319B.02, .03, .07 (2008). And Minnesota law also permits the formation of Health Maintenance Organizations (HMOs) under an exception to the CPMD. *Isles Wellness I*, 703 N.W.2d at 518 (citing Minn. Stat. §§ 62D.03, .22, subd. 3). But SUMA was not organized under either of these statutes.

2005, SUMA's violation of the CPMD in this case could not have been knowing or intentional in August 2005 when it provided services to Coe. Therefore, the district court concluded that Allstate could not avoid paying for the services by claiming a violation of the CPMD.

Allstate first urges this court to hold that the district court erred by stating that the imaging alone did not violate the CPMD. SUMA agrees with Allstate and urges this court to hold that the CPMD applies to imaging as well as analysis of images. But whether or not imaging alone implicates the CPMD is not critical to the outcome of this case; we therefore conclude that this is not the appropriate case in which to reach that issue. The critical issue in this case is whether SUMA knowingly and intentionally violated the CPMD. There is no dispute that Coe's scan and Dr. Yochum's interpretation of Coe's scan both occurred before *Isles Wellness I* was issued. Because we conclude that the district court correctly held that SUMA could not have knowingly and intentionally violated the CPMD prior to the issuance of the opinion in *Isles Wellness I*, Allstate is not entitled to relief even if the district court erred in holding that taking the scan alone did not violate the CPMD.

Isles Wellness II requires an examination of the circumstances surrounding the contract to determine whether the violation was knowing and intentional. 725 N.W.2d at 93. In this case, SUMA employed a chiropractor who, as the district court found, provided services to Coe's treating chiropractor that fall squarely within the definition of the practice of chiropractic. The record does not support Allstate's assertion that the services provided by SUMA did *not* constitute "chiropractic" as considered in *Isles*

Wellness I. Dr. Yochum is a doctor of chiropractic. Dr. Dahl, SUMA's sole shareholder, described Dr. Yochum—one of the preeminent authorities on scanning within the chiropractic community, having written textbooks on the subject—as an expert in chiropractic radiology. SUMA includes Dr. Yochum's name, followed by his chiropractic degree, D.C., on its letterhead. Coe's treating chiropractor was aware of Dr. Yochum's credentials and relied on his interpretation of Coe's MRI scan.

The district court found that Dr. Yochum's analysis of Coe's images is exactly the type of analysis that chiropractors and radiologists do. Minn. Stat. § 148.01, subd. 3 (2008) specifically defines "chiropractic" to include

> analytical x-ray of the bones of the skeleton which are necessary to make a determination of the presence or absence of a chiropractic condition. The practice of chiropractic may include procedures which are used to prepare the patient for chiropractic adjustment or to complement the chiropractic adjustment. The procedures may not be used as independent therapies or separately from chiropractic adjustment.

We conclude that *Isles Wellness II* presented the same question presented to the district court here: whether a corporation's outstanding claims for chiropractic services were void as against public policy due to the fact that the services were provided in violation of the CPMD. *See Isles Wellness II*, 725 N.W.2d at 92. In reaching this conclusion, we reject Allstate's assertion that provision of MRI scans and analysis of the resulting images is, as a matter of law in every case, the practice of medicine rather than the practice of chiropractic.

Allstate, asserting that MRI services per se constitute the practice of medicine, argues that *Granger* provided definitive notice to SUMA that it was violating the CPMD.

But because SUMA's services constituted the practice of chiropractic, we reject Allstate's assertion that *Granger* provided clear notice to SUMA that the services violated the CPMD.

In *Isles Wellness II*, the supreme court concluded that bills for chiropractic services that violated the CPMD were *not* void because (1) there was nothing indicating a knowing and intentional violation of Minnesota's laws and (2) there was a lack of clarity regarding the CPMD's applicability to the practice of chiropractic before the *Isles Wellness I* decision. *Id*. at 95 (remarking in a footnote that even in *Isles Wellness I* the supreme court remained divided on the question of whether the CPMD applies to chiropractors, *id*. at 95 n.2).

Here, as in *Isles Wellness II*, there is no evidence that SUMA knowingly and intentionally violated the law. The record reflects that before organizing SUMA, Dr. Dahl consulted a lawyer to "make sure that [he] was in compliance with *all laws* that were germane to setting up SUMA." At the time SUMA was incorporated, the CPMD had not been held to apply to the practice of chiropractic. And, prior to SUMA's provision of services to Coe, Dr. Dahl was not advised that owning SUMA could constitute a violation of the CPMD. Dr. Dahl testified that he felt that SUMA was on "solid [legal] foundation." Contrary to Allstate's assertion that "[Dr.] Dahl's testimony confirms . . . [that] he intended to run his business in the manner it operated despite obvious law to the contrary," Dr. Dahl's testimony supports the district court's conclusion that SUMA did not knowingly or intentionally violate relevant laws.

Allstate argues that Dr. Dahl's knowledge or intent to violate the CPMD can be inferred from his actions, citing *State Farm Fire & Cas. Co. v. Wicka*, 474 N.W.2d 324, 329 (Minn. 1991), for the proposition that intent may be established by inference. *Wicka* involved an intentional-act exclusion in an insurance policy. *Id.* There, the supreme court noted that intent to cause bodily injury could be "established by proof on an insured's actual intent to injure or by inference, when the character of the act is such that an intention to inflict injury can be inferred as a matter of law." *Id.* As the supreme court observed in *Isles Wellness II*, there was a "lack of clarity regarding the applicability of the [CPMD] to chiropractors before . . . *Isles Wellness I*." 725 N.W.2d at 95. Given that lack of clarity, the establishment of a general corporation to engage in the provision of chiropractic MRI services before *Isles Wellness I*, does not lead, as a matter of law, to an inference of intent to violate the CPMD. *Isles Wellness I* is the first holding in Minnesota that the CPMD applies to the practice of chiropractic.[3]

The district court did not err by concluding that SUMA's violation of the CPMD was not knowing or intentional, and therefore that its fee for services to Coe is collectible from Allstate under *Isles Wellness II*.

Affirmed.

[3] SUMA argues that *Isles Wellness I* did not provide adequate notice that it was violating the CPMD and that it did not have notice until the district court denied its motion for summary judgment in 2008 that its activities were prohibited by the CPMD. But the district court order was based firmly on *Isles Wellness I*.