

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

QUALITY CARE TRANSPORT	:	
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Plaintiff-Appellant	:	C.A. CASE NO. 2009 CA 113 2009 CA 121
v.	:	T.C. NO. 09CV0960 09CV0960
ODJFS, et al.	:	(Civil appeal from Common Pleas Court)
Defendants-Appellees	:	
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**OPINION**

Rendered on the 1<sup>st</sup> day of October, 2010.

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FROELICH, J.

{¶ 1} Quality Care Transport, Ltd. (“QCT”) appeals from a judgment of the Clark County Court of Common Pleas, which dismissed its complaint for a declaratory judgment and injunctive relief with respect to three defendants. For the following reasons, the judgment of the trial court will be affirmed in part, reversed in part, and one issue will be remanded for further proceedings.

## I

{¶ 2} QCT provides medical transportation services. Because some of its services are reimbursed by Medicaid, QCT was required to become a designated Medicaid provider by entering into an agreement with the Ohio Department of Job and Family Services (“ODJFS”), which is charged with administering the Medicaid program in Ohio. QCT entered into a contract with ODJFS on March 4, 2003. Under separate agreements, QCT provided transportation services to Community Mercy Health Partners (“CMHP”), a hospital, and Essex of Springfield (“Essex”), a long-term care facility.

{¶ 3} On July 23, 2009, QCT filed a Complaint for Declaratory and Injunctive Relief, naming as defendants the ODJFS and its director, CMHP, and Essex. In its Complaint, QCT alleged that it had been informed by Jill Monk of the Ohio Attorney General’s Office that its contracts with CMHP and Essex were illegal because they violated Ohio Adm. Code 5101:3-1-17.2(A). Specifically, the Complaint alleged that Monk had informed QCT that its contracts with CMHP and Essex violated the provision of its contract with ODJFS that required QCT to bill ODJFS “for no more than the usual and customary fee charged other patients for the same service.” In other words, Monk apparently believed or alleged that QCT was billing ODJFS for its services at a higher rate than QCT was billing some of its other customers, namely

CMHP and Essex.

{¶ 4} QCT's complaint stated that the "action [arose] as a result of the proposed action of Defendants to prosecute QCT for Medicaid fraud or to pursue audit findings and undertake collection activity related to and arising out of the state Defendant's interpretation" of QCT's contracts with ODJFS, CMHP, and Essex. QCT alleged that it was "at risk for prosecution and/or civil audit and other civil remedies" if it performed under its contracts with CMHP or Essex, that it had no adequate remedy at law, and that it was at risk of "substantial and irreparable injury." Thus, QCT sought to have the trial court "construe the terms and conditions of the [attached] contracts" and enter a "declaratory judgment that QCT is not in violation of the laws governing operation of the Medicaid program and [that] the contracts with [CMHP and Essex] are valid, enforceable and do not violate the laws governing the Medicaid program."

{¶ 5} Essex filed an Answer. On August 28, 2009, ODJFS filed a Motion to Dismiss QCT's complaint. On September 15, QCT filed a memorandum in opposition to ODJFS's motion to dismiss.

{¶ 6} On August 31, 2009, after the time for filing a responsive pleading had passed, CMHP filed a Motion for Leave to Move or Plead. QCT filed a memorandum with the court stating that it had no objection to permitting CMHP to file a motion or pleading. The trial court granted CMHP's motion and gave it until September 11, 2009, to move or plead. CMHP did not do so within that time period. On Friday, October 16, 2009, CMHP filed a Motion for Leave to File a Motion to Dismiss Instantly.

{¶ 7} On October 20, 2009, the trial court sustained CMHP's motion for leave to file its Motion to Dismiss; in the same entry, before QCT had an opportunity to respond to CMHP's

motion, the court sustained ODJFS's and CMHP's Motions to Dismiss.<sup>1</sup> The judgment stated: "In an effort to preempt any criminal action against it, plaintiff is essentially asking this Court to render a decision that plaintiff should not and cannot be exposed to any criminal liability. This Court cannot and will not interfere with the criminal charging authority of the Ohio Attorney General's Office."

{¶ 8} On October 22, 2009, Essex filed a Motion to Dismiss QCT's complaint against it based on "the current posture of this case" and "to further judicial economy," noting that the court had granted motions to dismiss in favor of both of the other defendants in the case.

{¶ 9} After the case was dismissed against ODJFS and CMHP, QCT filed a motion for reconsideration and a memorandum in opposition to CMHP's motions for leave and to dismiss. On November 5, 2009, the trial court overruled QCT's motion for reconsideration.

{¶ 10} On November 10, 2009, the trial court filed a second entry sustaining CMHP's motion for leave and sustaining ODJFS's and CMHP's motions to dismiss; this entry included Civ.R. 54(B) certification that there was no just reason for delay. On November 30, 2009, the trial court granted Essex's motion to dismiss.

{¶ 11} On December 4, 2009, QCT filed a notice of appeal from the judgments dismissing the declaratory judgment action against ODJFS and CMHP and denying the motion for reconsideration (Case No. 09CA113). On December 17, 2009, QCT filed a notice of appeal from the judgment granting Essex's motion to dismiss (Case No. 09CA121). We consolidated these appeals.

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<sup>1</sup>This judgment was file-stamped by the clerk on October 20, 2009, but it contained a second filed stamp indicating that the judgment was "journalized" on October 23, 2009.

{¶ 12} QCT raises two assignments of error on appeal.

## II

{¶ 13} Before we turn to the assignments of error, we will briefly discuss the circumstances in which a declaratory judgment may be appropriate.

{¶ 14} A declaratory judgment action provides a means by which parties can eliminate uncertainty regarding their legal rights and obligations. *Mid-American Fire and Cas. Co. v. Heasley*, 113 Ohio St. 3d 133, 2007-Ohio-1248, ¶8, citing *Travelers Indemn. Co. v. Cochrane* (1951), 155 Ohio St. 305, 312. The purpose of a declaratory judgment action is to dispose of “uncertain or disputed obligations quickly and conclusively,” and to achieve that end, the declaratory judgment statutes are to be construed “liberally.” *Id.*, citing *Ohio Farmers Indemn. Co. v. Chames* (1959), 170 Ohio St. 209, 213. A declaratory judgment action may be brought even before any contract breach. R.C. 2721.04.

{¶ 15} Ohio’s Declaratory Judgment Act sets out the types of cases appropriate to declaratory judgment actions before courts of record. R.C. 2721.03 provides: “\*\*\* [A]ny person interested under a \*\*\* written contract, or other writing constituting a contract or any person whose rights \*\*\* are affected by a \*\*\* contract \*\*\* may have determined any question of construction or validity arising under the instrument, \*\*\* [or] contract \*\*\* and obtain a declaration of rights, status, or other legal relations under it.”

{¶ 16} Under Ohio law, three elements are necessary to obtain a declaratory judgment as an alternative to other remedies: (1) that a real controversy between adverse parties exists; (2) which is justiciable in character; and (3) that speedy relief is necessary to the preservation of rights which may be otherwise impaired or lost. *Fairview Gen. Hosp. v. Fletcher* (1992), 63 Ohio

St.3d 146, 149, citing *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128, 130, and *Buckeye Quality Care Centers, Inc. v. Fletcher* (1988), 48 Ohio App.3d 150, 154. Declaratory judgment is not precluded, where appropriate, by “[t]he existence of another adequate remedy.” Civ.R. 57.

{¶ 17} Although broad in scope, the declaratory judgment statutes are not without limitation. Most significantly, in keeping with the long-standing rule that a court does not render advisory opinions, they allow the filing of a declaratory judgment only to decide “an actual controversy, the resolution of which will confer certain rights or status upon the litigants.” *Heasley* at ¶9, citing *Corron v. Corron* (1988), 40 Ohio St.3d 75, 79. Not every conceivable controversy is an actual one; in order for a justiciable question to exist, “[t]he danger or dilemma of the plaintiff must be present, not contingent on the happening of hypothetical future events \*\*\* and the threat to his position must be actual and genuine and not merely possible or remote.” *Id.*, citing *League for Preservation of Civil Rights v. Cincinnati* (1940), 64 Ohio App. 195, 197 (citations omitted).

{¶ 18} Decisions on a declaratory judgment action are reviewed under an abuse of discretion standard; “[t]he granting or denying of declaratory relief is a matter for judicial discretion, and where a court determines that a controversy is so contingent that declaratory relief does not lie, this court will not reverse unless the lower court’s determination is clearly unreasonable.” *Id.* at ¶12, citing *Bilyeu v. Motorists Mut. Ins. Co.* (1973), 36 Ohio St.2d 35, syllabus.

{¶ 19} In this case, the action was resolved by means of motions to dismiss pursuant to Civ.R. 12(B)(6). “A motion to dismiss a complaint for failure to state a claim upon which relief can be granted, pursuant to Civ.R.12(B)(6), tests the sufficiency of a complaint. In order to prevail, such a complaint must demonstrate that the plaintiff

can prove no set of facts entitling him to relief. *O'Brien v. University Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, \*\*\*, at syllabus. The court must construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations in the complaint as true, and make all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192, \*\*.\*” *Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, ¶16. We review the trial court’s decision to grant a motion to dismiss pursuant to Civ.R. 12(B)(6) de novo. *Id.*

### III

{¶ 20} We begin by addressing QCT’s second assignment of error, which states:

{¶ 21} “THE COURT ERRED IN DISMISSING THIS ACTION ON THE GROUND THAT APPELLANT WAS ATTEMPTING TO PREEMPT ACTION BY A CRIMINAL CHARGING AUTHORITY.”

{¶ 22} QCT contends that the trial court “created a legal fiction” and acted without any legal basis when it concluded that the declaratory action should be dismissed because it was an effort by QCT “to preempt any legal action against it.” ODJFS responds that this “legal fiction” originated in QCT’s complaint, which asserted that QCT was “at risk of prosecution” if it performed under its contract with CMHP and Essex, despite its (QCT’s) concessions on appeal that ODJFS cannot commence criminal actions and that no criminal action was, in fact, pending against it. ODJFS further claims that QCT did not plead sufficient facts to show that there is a justiciable controversy between adverse parties or that speedy relief was necessary to preserve rights that may otherwise be lost or impaired.

{¶ 23} QCT sought two forms of relief in its complaint: (1) it asked the trial court

to interpret its contract with ODJFS to determine whether its subsequent contracts with CMHP and Essex were in conflict with the ODJFS contract, and (2) it asked for a finding that it was not in violation of the law, as set forth in Ohio Adm. Code 5101:3-1-17.2(A). The trial court did not address QCT's request that the court interpret the terms of QCT's contract with ODJFS. The trial court expressly refused to rule on the legality of QCT's actions (i.e., whether it had violated the Administrative Code) because it thought that such a ruling would "interfere with the criminal charging authority of the Ohio Attorney General's Office," and it dismissed the complaint on that basis.

{¶ 24} In our view, the trial court acted within its discretion when it refused to consider whether QCT had violated Ohio Adm. Code 5101:3-1-17.2(A) by allegedly charging ODJFS more than the "usual and customary fee" it charged any of its other customers. Although QCT claimed in its complaint that Jill Monk of the Attorney General's Office had threatened legal action, no legal action was pending at the time of the complaint, and neither Monk nor the Attorney General's Office was a party to this declaratory action. More importantly, QCT did not seek clarification on the construction or validity of the regulation; rather, it sought a ruling on whether it had violated the regulation. We question whether a declaratory judgment can establish whether specific actions are criminal in nature. See, e.g., *State ex rel. Becker v. Schwart*, Licking App. No. 06-CA-4, 2006-Ohio-6389, ¶12 ("Assuming, arguendo, appellant seeks to pre-adjudicate a particular element of a potential criminal charge via a declaratory judgment \*\*\*, we would be unwilling to approve such a maneuver \*\*\*.") Although it was the State that sought such a ruling in *Becker*, the same rationale would prevent a defendant from foreclosing a grand jury's consideration and a trier of fact's

determination of a criminal charge.

{¶ 25} The trial court, however, failed to address QCT's request for clarification of whether its agreements with CMHP and Essex violated the terms of its contract with ODJFS. This type of clarification of contractual provisions is expressly permitted by the Declaratory Judgment Act. "In a declaratory judgment action, R.C. 2721.03 and 2721.04 provide that a party to a written contract is entitled to have the construction and validity of that contract determined by a court, and the party may obtain a declaration of rights, status, or other legal relations under it." *Drs. Kristal & Force, D.D.S., Inc. v. Erkis*, Franklin App. No. 09AP-06, 2009-Ohio-5671, ¶18. The trial court erred in failing to address this part of the complaint. Even assuming, for the sake of argument, that a breach of the terms of QCT's contract with ODJFS could have resulted in criminal prosecution, this possibility would not have precluded the trial court from clarifying whether the terms of the contract between QCT and ODJFS prohibited the type of contractual arrangements that QCT had made with CMHP or Essex.

{¶ 26} The trial court did not find that QCT's complaint failed to state a cause of action or that it could "prove no set of facts entitling [it] to relief," as required by Civ.R. 12(B)(6). The court never reached this issue. As QCT points out in its brief, a declaratory judgment on the alleged violation of the agreement with ODJFS would give QCT the options of "amending or reworking the contracts, canceling its Provider Agreement, and/or perhaps justifiably failing to perform (or repudiate) one or more of the contracts." Thus, because the relief sought by QCT was the type of relief expressly permitted under the Declaratory Judgment Act, the trial court erred in concluding that any alleged potential for criminal charges warranted the dismissal of the

action.

{¶ 27} Having concluded that QCT's request for clarification of its contract with ODJFS was a proper subject of a declaratory judgment action, whether QCT was entitled to declaratory judgment depended on whether it could establish the three elements necessary to obtain a declaratory judgment: (1) that a real controversy between adverse parties exists; (2) which is justiciable in character; and (3) that speedy relief is necessary to the preservation of rights which may be otherwise impaired or lost. *Fairview Gen Hosp.*, 63 Ohio St.3d at 149; *Buckeye Quality Care Centers*, 48 Ohio App.3d at 154. Because the motions to dismiss were granted, the evidence has not been developed. We will remand this matter to the trial court for this determination.

{¶ 28} In its brief, ODJFS argues that, even if QCT presented a justiciable controversy in its complaint, the dismissal of the complaint was appropriate because QCT had failed to exhaust its administrative remedies. ODJFS reasons that QCT's complaint essentially asked the court to enjoin ODJFS from instituting administrative proceedings to recover Medicaid overpayments, that an order obtained in such an administrative proceeding would be appealable to the court pursuant to R.C. 119.12, and therefore that QCT has failed to exhaust its administrative remedies. This reasoning and the series of events on which it is based is far too speculative to justify the dismissal of a complaint for declaratory judgment. As we discussed above, the interpretation of a contract is a legitimate basis to seek a declaratory judgment. The fact that ODJFS *might* bring administrative action against QCT at some time in the future, and that such an action *might* result in a decision from which QCT might decide to appeal, did not preclude QCT from seeking a declaratory judgment.

{¶ 29} The second assignment of error is sustained to the extent that the trial court erred in granting the motions to dismiss on QCT's complaint for a declaratory judgment regarding the terms of the contract between ODJFS and QCT. In all other respects, the assignment of error is overruled.

### III

{¶ 30} QCT's first assignment of error states:

{¶ 31} "THE COURT ERRED BY DISMISSING PARTIES WHO WOULD BE AFFECTED BY THE DECLARATORY JUDGMENTS SOUGHT UNDER THEIR RESPECTIVE CONTRACTS WITH APPELLANT."

{¶ 32} QCT claims that the dismissals of CMHP and Essex were a "sweeping" mechanism to dispose of this case" and that there was no legitimate basis for the dismissal of these parties. CMHP and Essex claim that they were properly dismissed because the provisions of their contracts with QCT were not in dispute, and there was no "real controversy or justiciable issue" between them and QCT for which a declaratory judgment would terminate the uncertainty or controversy.<sup>2</sup>

{¶ 33} The only contractual provisions which QCT sought to clarify in its complaint for declaratory judgment were the provisions contained in its contract with ODJFS. Although the resolution of the terms of that contract had the potential to affect QCT's ability to comply with its contracts with CMHP and Essex, QCT made no

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<sup>2</sup>We note that, in the trial court, Essex's motion to dismiss relied entirely on the fact that ODJFS and CMHP had already been dismissed, without advancing a substantive legal argument. However, Essex has advanced a substantive argument for dismissal in its brief and was, at all times, similarly situated to CMHP.

allegation that the terms of those contracts needed clarification or that CMHP or Essex had threatened to breach the contracts. As the Ohio Supreme Court observed in *Driscoll v. Austintown Associates* (1975), 42 Ohio St.2d 263, 273, a person must be joined in a declaratory judgment action only if he or she is “legally affected” by it. One is not legally affected by a judgment simply because it has a practical implication for him. *Id.*, citing *Schriber Sheet Metal & Roofers v. Shook* (1940), 64 Ohio App. 276, 285.

{¶ 34} Because the controversy at issue herein did not directly affect CMHP or Essex legally, we agree that they were entitled to be dismissed from QCT’s declaratory judgment action.

{¶ 35} The first assignment of error is overruled.

IV

{¶ 36} The judgment of the trial court dismissing Essex will be affirmed (Case No. 09CA121). The judgment dismissing ODJFS and CMHP will be affirmed as to CMHP, and affirmed in part and reversed in part as to ODJFS (Case No. 09CA113). As to ODJFS, the judgment will be reversed with respect to the dismissal of QCT’s request for a declaratory judgment on the terms of its contract with ODJFS, and this matter will be remanded for further proceedings; the portion of the judgment refusing to determine whether QCT had violated the Ohio Administrative Code is affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

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