

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 6, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1449-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE APPROVAL OF
SETTLEMENT FOR JENNIFER BOUCHER:**

JENNIFER BOUCHER,

PETITIONER-RESPONDENT,

v.

NORTH MEMORIAL MEDICAL CENTER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for a St. Croix County: CONRAD A. RICHARDS, Judge. *Reversed and cause remanded with directions.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

MYSE, P.J. North Memorial Medical Center appeals a judgment dismissing its claimed hospital lien on the proceeds of a personal injury

settlement Jennifer Boucher received for injuries she sustained in an automobile accident.¹ North Memorial contends that the trial court erred in concluding that the hospital lien is unenforceable against Boucher because North Memorial failed to perfect the lien under the terms of the applicable Minnesota statute. North Memorial further contends that the trial court erred in concluding that Boucher's assignment of the personal injury settlement proceeds to her attorney for legal services rendered in an unrelated matter was enforceable against the proceeds. Because North Memorial has an enforceable hospital lien against Boucher notwithstanding its failure to perfect the lien, and because the hospital lien must be satisfied before Boucher's assignment of the settlement proceeds to her attorney for fees on an unrelated legal matter, we reverse the judgment and remand with directions to enter judgment in favor of North Memorial.

Jennifer Boucher was a passenger in a motor vehicle which was involved in a one-car accident in St. Croix County, Wisconsin. The driver of vehicle was a St. Croix County resident. Although Boucher was a resident of Polk County, Wisconsin, she was transported to and treated for her injuries at North Memorial Medical Center, a Minnesota hospital. North Memorial incurred hospital charges in the amount of \$105,459.27, for services rendered to Boucher as a result of this accident. North Memorial has not received payment for these services.

Following the accident, Boucher entered into a contingent fee agreement with an attorney to represent her for the injuries she sustained in this accident. She also entered into a separate retainer and reservation fee agreement

¹ This is an expedited appeal under RULE 809.17, STATS.

with this same attorney for other legal services unrelated to her personal injury claim. Pursuant to the signed retainer agreement, Boucher assigned the proceeds of any settlement received from the accident to the attorney as payment for the attorney's legal services on this unrelated legal matter.

Minnesota has a hospital lien statute which creates a lien for charges for medical care rendered to an injured person and which attaches to the proceeds of any personal injury settlement received for injuries that were treated by the hospital. MINN. STAT. ANN. § 514.68 (West 1990). A subsequent section of the Minnesota hospital lien statute provides for perfection of the lien by filing a written lien statement with the court within ten days of the patient's discharge and mailing a copy one day thereafter to each person, firm or corporation claimed by the injured person to be liable for the damages arising from the injuries. MINN. STAT. ANN. § 514.69 (West 1990).

The trial court concluded that because North Memorial had not perfected the lien as provided by the Minnesota lien statute, the lien was unenforceable against Boucher. The trial court further concluded that Boucher's assignment of the personal injury settlement proceeds to pay her attorney for unrelated legal services was valid.

The application of a statute from a foreign jurisdiction to a Wisconsin personal injury settlement raises questions of statutory interpretation. This court resolves questions of statutory interpretation without deference to the trial court's determination. *Hughes v. Chrysler Motors Corp.*, 197 Wis.2d 973, 978, 542 N.W.2d 148, 149 (1996). The primary goal in statutory interpretation is to discern the legislature's intent. *Id.* We ascertain that intent by first examining the plain language of the statute. *Anderson v. City of Milwaukee*, 208 Wis.2d 18,

25, 559 N.W.2d 563, 566 (1997). If the plain language of the statute is ambiguous, the court may resort to collateral sources to determine the statute's meaning. *State ex rel. Jacobus v. State*, 208 Wis.2d 39, 48, 559 N.W.2d 900, 903 (1997). When the statutory language is clear and unambiguous, however, the legislative intent reflected by such language is to be implemented without recourse to collateral sources. *State Historical Society v. Maple Bluff*, 112 Wis.2d 246, 252, 332 N.W.2d 792, 795 (1983).

We note that neither party has directly raised the issue as to whether a Minnesota statute can create a lien on proceeds to a Wisconsin resident from litigation pending in Wisconsin. While the public policy reflected by the Minnesota hospital lien statute is consistent with the public policy reflected by Wisconsin's hospital lien statute, because neither party raises this issue we decline to address it further. We have no duty to consider any issues other than those presented to us. The parties have waived the issue by failing to raise it and, accordingly, we conclude the issue is not properly before us. *Waushara County v. Graf*, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19 (1992). Further, we decline to review an issue inadequately briefed. *State v. Flynn*, 190 Wis.2d 31, 58, 527 N.W.2d 343, 354 (Ct. App. 1994).

We first address whether North Memorial's hospital lien attached to and is enforceable against Boucher's personal injury settlement proceeds. The trial court concluded that North Memorial's lien did not attach to Boucher's personal injury settlement proceeds because the lien had not been perfected pursuant to MINN. STAT. ANN. § 514.69. Therefore, we must determine whether North Memorial's failure to perfect the lien pursuant to the provisions of MINN. STAT. ANN. § 514.69 invalidates the lien on the proceeds to Boucher.

MINN. STAT. ANN. § 514.68 provides:

Any person, firm, or corporation operating a hospital in this state shall have a lien for the reasonable charges for hospital care of an injured person upon any and all causes of action accruing to the person to whom such care was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, subject, however, to any attorney's lien.

This section clearly creates a lien in favor of the hospital for charges for services performed on the injuries Boucher sustained in this automobile accident. The clear and unambiguous language of this statute vests the lien directly with the hospital and assigns a specific priority to the distribution of the proceeds due the plaintiff. Further, the unambiguous language of this statute clearly envisions that it is the act of rendering medical services which automatically creates the lien and that the lien attaches to an injured person's pre-existing cause of action upon the rendering of the medical services.

The subsequent section, MINN. STAT. ANN. § 514.69, is the only section that addresses perfecting the lien. Subdivision 1 of that statute provides:

Perfection of hospital's lien. In order to perfect such lien, the operator of such hospital, before, or within ten days after, such person shall have been discharged therefrom, shall file in the office of the court administrator of the district court of the county in which such hospital shall be located a verified statement in writing setting forth the name and address of such patient, as it shall appear on the records of such hospital, the name and location of such hospital and the name and address of the operator thereof, the dates of admission to and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and, to the best of claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by such injured person, or the legal representatives of such person, to be liable for damages arising from such injuries; such claimant shall also, within one day after the filing of

such claim or lien, mail a copy thereof, by certified mail, to each person, firm, or corporation so claimed to be liable for such damages to the address so given in such statement. The filing of such claim or lien shall be notice thereof to all persons, firms, or corporations liable for such damages whether or not they are named in such claim or lien.

Pursuant to the clear and unambiguous terms of this statute, perfecting the lien relates only to the enforceability of the lien against those claimed to be liable for a patient's damages. The perfecting of the lien provides notice to all claimed to be liable for the patient's damages and permits the hospital to assert its claim to such damages and its priority as set forth in the previous statutory section.

The final provision of Minnesota's hospital lien statutes authorizes the hospital, upon perfection of the lien, to pursue an independent suit against the party legally liable for the patient's injuries. This provision also authorizes the hospital to pursue an independent action against any person who has received payment for a patient's damages. MINN. STAT. ANN. § 514.71 (West Supp. 1997-98), provides:

No release of such causes of action, or any of them, or of any judgment thereon shall be valid or effectual as against such lien unless such lienholder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien, may enforce such lien by action against the person, firm, or corporation liable for such damages, and against any person who received payment for such damages, which action shall be commenced and tried in the county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorneys' fees and disbursements. Such action shall be commenced within two years after the filing of such lien.

Consequently, the purpose of the perfecting statute, MINN. STAT. ANN. § 514.69, is to provide notice of the hospital's lien to those who are claimed to be liable for a patient's injuries or to others who have received payment for the patient's injuries in the event the hospital lienholder asserts its authority to pursue its independent claim.

In this case, however, we are dealing with a claim asserted by North Memorial directly against the patient, Jennifer Boucher. We are not presented with a claim asserted by North Memorial against any party claimed to be liable for Boucher's injuries or to another who has received payment for Boucher's injuries. We conclude, therefore, that North Memorial's failure to perfect the lien has no consequences against its claim against Boucher. We further conclude that a valid lien was created on behalf of North Memorial by virtue of MINN. STAT. ANN. § 514.68. Because North Memorial's lien was created and attached to Boucher's personal injury proceeds upon the rendering of medical services to her, the lien is enforceable against her notwithstanding North Memorial's failure to perfect the lien.

We next determine whether Boucher's assignment of the personal injury settlement proceeds to her attorney for legal services rendered in an unrelated legal matter is enforceable against those proceeds. Boucher contends that because North Memorial's failure to perfect its lien rendered its lien ineffective, North Memorial's claimed lien does not have priority over her assignment of personal injury settlement proceeds to pay her attorney's fees in the unrelated legal matter.

Boucher appears to suggest that North Memorial's failure to perfect the lien invalidates the lien as to Boucher's counsel. Boucher's counsel's claim

for attorney's fees due for unrelated legal work does not mandate the notice requirements contained in MINN. STAT. ANN. § 514.69. As previously discussed, MINN. STAT. ANN. § 514.69 requires notice to all those claimed to be liable for the patient's damages. A private agreement assigning proceeds to a third party who Boucher obviously does not claim to be liable for her damages does not mandate a notice provision under this statute. Because the failure to perfect the lien would have no legal consequences as to counsel's right to the assigned proceeds, this argument must fail.

Moreover, North Memorial's claim is not made against Boucher's counsel but against Boucher herself. Because the notice requirements do not apply to Boucher, North Memorial's failure to perfect the lien is of no legal consequence to claims made against Boucher's consequences.

Finally, to the extent that Boucher suggests that an attorney's lien for fees for services on a matter unrelated to the personal injury action should be satisfied before the hospital lien pursuant to the priorities designated in MINN. STAT. ANN. § 514.68, this argument is contrary to the legislative intent and purpose of the hospital lien statute. The attorney's lien which has priority under the hospital lien statute is an attorney's lien for services involved in resolving Boucher's personal injury claim. An attorney's lien for services rendered on an unrelated matter is not accorded the same dignity under the statute.

Although the parties cast the issue as the validity of the assignment of the proceeds of Boucher's personal injury claim to her attorney for unrelated legal work, the true issue is the priority between North Memorial's valid hospital lien and Boucher's assignment of the personal injury proceeds to her attorney for unrelated legal work. Even though the assignment of these proceeds may be valid,

it would have a lower priority if the lien created by MINN. STAT. ANN. § 514.68, effectively gives the hospital a valid lien on all proceeds after satisfying the claims which North Memorial concedes have priority.² We conclude that a valid lien has been created in favor of North Memorial and that, accordingly, even if the assignment of proceeds for unrelated legal work is valid the priority assigned by statute to the hospital lien requires that the hospital lien be satisfied before any proceeds can be applied elsewhere.

Because we conclude that North Memorial had an enforceable hospital lien against Boucher notwithstanding its failure to perfect the lien and because we conclude that the hospital lien must be satisfied before any settlement proceeds can be applied to Boucher's assignment of those proceeds for unrelated legal work, we reverse the judgment and remand with directions to enter judgment in favor of North Memorial.

By the Court.—Judgment reversed and cause remanded with directions.

Not recommended for publication in the official reports.

² North Memorial concedes that Boucher's personal injury attorney fees and related costs are a first priority claim against the settlement proceeds and that the St. Croix County Department of Health and Human Services has a second priority claim against the settlement proceeds.

