

#2423

signed 8-10-98; aff'd (D.Kan. 9-3-99) (Saffels, J.)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

**JACK LAVON BUDIG,
DEBORAH ANN BUDIG,**

DEBTOR(S).

**CASE NO. 97-41523-7
CHAPTER 7**

**VIA CHRISTI REGIONAL MEDICAL
CENTER,**

PLAINTIFF(S),

v.

ADV. NO. 97-7082

**JACK LAVON BUDIG,
DEBORAH ANN BUDIG,**

DEFENDANT(S).

MEMORANDUM OF DECISION

This proceeding is before the Court for decision following a bench trial on June 15, 1998.

Plaintiff Via Christi Regional Medical Center appeared by counsel W. Thomas Gilman of Redmond & Nazar, L.L.P., of Wichita, Kansas. Debtors Jack and Deborah Budig appeared by counsel John C. Herman of Hays, Kansas. Having heard the evidence and reviewed the parties' briefs, the Court is now ready to rule.

FACTS

On May 17, 1996, debtor Jack Budig arrived at Via Christi Regional Medical Center (“Via Christi”)¹ suffering from chest pain caused by coronary artery disease. In order to be admitted to the hospital, he was required to sign an “Admissions Consent Agreement” providing, among other things, that he agreed he was obligated to pay all charges for the services and treatment provided to him and that he “authorize[d] insurance, Medicare or Medicaid benefits otherwise payable to [him] to be paid directly to Via Christi Regional Medical Center for services rendered during this hospital stay.”

Perhaps not surprisingly, Mr. Budig did not remember signing this agreement and was not aware that he had until it was shown to him at trial; he conceded the signature on the agreement was his. Mr. Budig remained in the hospital for a week, undergoing heart bypass surgery during that time. Although he was a self-employed trucker before this event, Mr. Budig has not been able to resume working since it occurred.

Mrs. Budig works for the city of Hill City, Kansas, and through her employment, has health insurance on herself and her husband with Blue Cross and Blue Shield of Kansas, Inc. (“Blue Cross”). Mrs. Budig did not sign any documents at Via Christi when her husband was admitted there, and was not aware that he had signed any documents until the hospital sued them to collect its bill. She stated that neither she nor her husband would have refused to sign any admission documents Via Christi might have required. Both the debtors testified that the reason they carry health insurance is to enable them to

¹Via Christi was sometimes referred to in testimony or documents as “St. Francis Regional Medical Center.” The Court believes that was the hospital’s name when Mr. Budig was admitted for treatment, and the name was later changed to Via Christi.

pay the bills they incur for health care. Mrs. Budig said that her husband had authority to sign documents concerning the insurance she carried. Based on their prior experience with health insurance claims, both the debtors expected that Blue Cross would pay Via Christi directly, and that they would not be involved except perhaps to pay a limited deductible and a co-payment, if any was required. However, the “General Information” section of Mrs. Budig’s Blue Cross policy provided in paragraph J.3 that for covered services received from a non-contracting provider in the State of Kansas (except Johnson and Wyandotte counties): “[The insured’s] benefits will be paid directly to [the insured]. Such benefits are personal to [the insured] and cannot be assigned to any other person or entity.” So far as the Court is aware, Blue Cross includes a similar provision in all its policies. Mrs. Budig testified that she had received the policy but put it in a drawer without reading it; the Court believes this is what many, if not most, people do with health insurance policies.

Someone, probably one of the debtors, informed Via Christi of Mrs. Budig’s health insurance, and plan and group numbers for her policy were written on the hospital’s “Registration Record.” A notation included in the description of her insurance on that record, apparently by a Via Christi employee, reads “Noncontract.” The notation refers to Via Christi’s status as a “Non-Contracting Provider” under Mrs. Budig’s Blue Cross policy. Neither of the debtors knew at the time of Mr. Budig’s treatment what that status meant.

In its trial brief, Via Christi asserts that: “The Budigs also represented to the hospital that they maintained a policy of health insurance and that proceeds from it would be used to pay for the care and treatment to be provided by the hospital.” While the Court can infer from the evidence that the hospital was informed that Mrs. Budig had health insurance that covered Mr. Budig, the evidence did not

establish that either of the Budigs represented that they would use the insurance proceeds to pay Via Christi. Instead, so far as they were aware, Blue Cross would pay the hospital directly for the costs of Mr. Budig's treatment.

Perhaps a month after Mr. Budig was released from the hospital, the debtors received a bill from Via Christi for \$53,784.35. Early in July 1996, Mrs. Budig received a check from Blue Cross for \$30,962.84, payable to her alone. Probably at the same time, Blue Cross sent her a "Summary of Claims Processed" that showed the amount of the check sent to her and included a note reading, "The difference between the charge and our allowed charge is your responsibility as the provider of care is not contracting with [Blue Cross]. Your total responsibility is shown in column 9." Via Christi had apparently adjusted the bill it sent to Blue Cross so that the total charges shown on the summary were \$52,862.10. The amount in column 9, labeled "Your Responsibility," is \$21,899.26.

Mrs. Budig did not immediately endorse and deposit the check because she feared doing so might mean she accepted it as full payment. Despite the notation on the "Summary of Claims," she and her husband hoped Blue Cross would still send them the remaining \$22,000 or so they would need to pay Via Christi's bill. This hope was based on their past experience that Blue Cross paid their bills in full. On August 5, she finally deposited the check in the debtors' checking account. On August 6, Via Christi sent the debtors a letter indicating the hospital understood that Blue Cross had paid them directly (or would be soon) and asking them to send on to the hospital the amount Blue Cross had paid along with a copy of the "Summary of Claims Processed." The letter added that the hospital would then verify the amount the debtors owed and notify them of their remaining obligation.

After Mrs. Budig deposited the Blue Cross check, the debtors wrote checks on the account to pay for their living expenses, some medical expenses, and some other miscellaneous items. Mrs. Budig's paychecks were also deposited into this account. Ultimately, since Mr. Budig was unable to return to work, the debtors spent a large portion of the Blue Cross money. Via Christi sued the debtors in state court to collect for Mr. Budig's hospitalization. The debtors paid the hospital \$10,000, most or all of the balance then remaining in the checking account. Via Christi obtained a judgment against the debtors for the remainder of its bill, \$42,875.05, and for the imposition of a constructive trust on a lawnmower and some chairs they had bought with the money from the account. The state court declined to impose a constructive trust on a "cardio-glide," an exercise machine the debtors had bought through the account.

At the time it presented the Admissions Consent Agreement to Mr. Budig for his signature, Via Christi was aware that the assignment included in the document would not be effective against Blue Cross insurance benefits because Kansas case law and a statute, K.S.A. 40-19c06(b), allowed Blue Cross to prohibit its insureds from authorizing direct payments to non-contracting providers and Blue Cross policies always include a provision to do so. Via Christi did not tell Mr. Budig that the assignment was not effective against their Blue Cross insurance, did not advise either of the debtors that the hospital might accept as full payment less than the full amount it had billed them, did not advise either of the debtors that Blue Cross would not send insurance proceeds to Via Christi, and made no attempt to obtain from the debtors any security interest to secure payment of its charges.

DISCUSSION AND CONCLUSIONS

Via Christi contends the debtors' obligation to pay its bill for Mr. Budig's treatment is nondischargeable under 11 U.S.C.A. §523(a)(6), which excepts from discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." The Supreme Court recently ruled that this provision applies only to a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. *Kawaauhau v. Geiger*, 523 U.S. ___, 118 S.Ct. 974, 977-78, 140 L.Ed.2d 90, 95-97 (1998). Although Via Christi argues to the contrary, the Court is convinced that decision overruled the Tenth Circuit's prior case law interpreting §523(a)(6). See *Berger v. Buck (In re Buck)*, 220 B.R. 999, 1004 (10th Cir. BAP 1998).

Via Christi claims the "Admissions Consent Agreement" that Mr. Budig signed gave the hospital some sort of interest in the health insurance benefits that Blue Cross paid to the debtors because of Mr. Budig's hospitalization. It claims that the agreement assigned the Blue Cross benefits to it, and that the Court could uphold the validity of the assignment and hold the debtors responsible for conversion of the hospital's property. However, Via Christi concedes that this argument has been unsuccessful before both a bankruptcy judge and a district judge in this district, and that the Kansas Supreme Court and the 10th Circuit Court of Appeals have both written opinions rejecting either this argument, thus binding this Court to do so as well, or rejecting arguments so similar that this Court must view the opinions as extremely persuasive. Consequently, the hospital asks the Court to find, even if the assignment was not effective as an assignment, that it was nevertheless effective as an agreement between the parties that imposed a sort of trust on the Blue Cross benefits or otherwise gave Via

Christi some kind of a property interest in the benefits at the time the agreement was signed. The Court rejects both arguments.

The Kansas Supreme Court ruled in *Augusta Medical Complex, Inc., v. Blue Cross of Kansas, Inc.*, 230 Kan. 361, 361-67 (1981), that a provision in Blue Cross's health insurance policies declaring that benefits for services obtained from a non-contracting provider were personal to the insured and could not be assigned was vital to Blue Cross's functioning as a mutual nonprofit hospital service corporation and that public policy required the provision to be upheld as valid and enforceable. In 1992, the Kansas legislature allowed Blue Cross to become a for-profit mutual life insurance company rather than a mutual nonprofit hospital service corporation, but also authorized it to include in its health insurance policies similar non-assignability provisions. See *St. Francis Regional Med. Center v. Blue Cross and Blue Shield of Kansas, Inc.*, 49 F.3d 1460, 1462 (10th Cir. 1995). Since 1992, K.S.A. 40-19c06(b) has provided in pertinent part: "The agreements issued by any corporation currently or previously organized under this act may include provisions allowing for direct payment of benefits only to contracting health care providers." Although the change in Blue Cross's status altered some of the facts that supported the *Augusta* decision, the Tenth Circuit concluded in *St. Francis* that the balance struck in *Augusta* between the public policy favoring the free alienability of choses in action (like the right to receive benefits under an insurance policy) and the public policies favoring the freedom of contract and the utility of nonassignability clauses as cost containment measures still required the Circuit to uphold nonassignability provisions as valid under Kansas law. 49 F.3d at 1467-68. In *Morris v. St. Joseph Medical Center, Inc. (In re Fisher)*, 194 B.R. 525, 529-32 (Bankr.D.Kan. 1996), Judge Robinson relied on *Augusta* and *St. Francis* in concluding that a similar anti-assignment

clause in another Blue Cross policy rendered invalid the debtor's purported assignment to a non-contracting hospital of benefits payable under the policy. She ruled that no constructive trust could be imposed either. Her decision was affirmed on appeal by Judge Marten. *Morris v. St. Joseph Medical Center, Inc.(In re Fisher)*, No. 96-1165-JTM, 1996 WL 695401 at *2-4 (D.Kan. Nov. 27, 1996). For the reasons stated in all these opinions, this Court concludes that Mr. Budig's purported assignment of the Blue Cross benefits was invalid and void. Furthermore, Via Christi knew when it required Mr. Budig to sign the Admissions Consent Agreement that the assignment would be ineffective against Blue Cross insurance benefits. The Court would also note that in a somewhat analogous situation, the United States Supreme Court ruled that courts could not impose constructive trusts on pension benefits covered by an anti-alienation provision in the Employee Retirement Income Security Act (ERISA). *Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365, 371-77 (1990).

In *Augusta*, the Kansas Supreme Court recognized that hospitals might never be paid if the assignments they received from patients were not enforced and Blue Cross paid the patients directly, but nevertheless concluded that Blue Cross's anti-alienability clauses rendered the assignments invalid. More recently, both Judge Robinson and Judge Marten ruled this was still Kansas law, and also ruled that they could not impose a constructive trust in favor of a hospital with such an invalid assignment. Although the assignment was rendered void by the Blue Cross policy and Via Christi knew it would be ineffective against Blue Cross benefits when it foisted the Admissions Consent Agreement on the unsuspecting Mr. Budig, either while he was suffering a heart attack or just afterwards, Via Christi argues the Court can find that the hospital had some sort of contract-trust interest in the debtors' Blue Cross benefits without imposing a constructive trust. This argument is disingenuous, essentially ignoring

the cited case law while purporting to recognize it, and at least partly relies on Via Christi's frequently-repeated but unproven assertion that Mr. Budig expressly promised to use the Blue Cross benefits to pay his hospital bill. The assignment merely purported to authorize Blue Cross to pay Via Christi directly; it did not include a promise to use the benefits to pay the hospital if Blue Cross did not do so. By informing Via Christi they had health insurance, the debtors were demonstrating they had a means for the hospital to be paid, but given their experience that Blue Cross always paid their health care providers directly, they would not have been promising to pay Via Christi with benefits instead paid directly to them.

Via Christi cites three Kansas cases to support its new contract-trust-but-not-assignment-or-constructive-trust theory. *Rice v. Garrison*, 258 Kan. 142 (1995); *Tivis v. Hulsey*, 148 Kan. 892 (1938); *Hile v. DeVries*, 17 Kan.App. 2d 373 (1992). These cases all involve the designation of beneficiaries of life insurance policies, and can be distinguished on that basis. Furthermore, *Rice* and *Hile* certainly involved a trial court's imposition of a constructive trust and *Tivis* involved a jury verdict that the court interpreted as imposing a trust, although the court did not indicate what kind of trust was imposed. A justice dissenting from the decision in *Rice* interpreted *Tivis* to involve a constructive trust. *See* 258 Kan. at 159. Thus, at least two of the citations and perhaps all three clearly belie Via Christi's assertion that it is not asking the Court to impose a constructive trust. Most importantly, however, none of these cases involved an insurance policy that contained a provision, authorized by statute, barring the insured from changing the designated beneficiary.

In fact, a careful review of the cited cases indicates they actually support resolving this dispute against Via Christi. In *Tivis*, the insured had promised to and did make his cousin a life insurance

beneficiary in return for care she provided him, but later changed the beneficiary to his new wife. 148 Kan. at 895. The court said because the cousin gave a valuable consideration for the promise to make her a beneficiary, she “then acquired a vested interest in the policies, and [she] was entitled to follow the proceeds thereof and recover them from one who obtained them, at best, as a mere gratuity.” *Id.* So the insured had given up the right to eliminate his cousin as a beneficiary, and his attempt to do so was invalidated. In *Hile*, the insured had agreed in a property settlement agreement reached in connection with a divorce to maintain at least \$50,000 of insurance on his life with the couple’s children as beneficiaries. 17 Kan.App.2d at 373-74. He later changed the beneficiary to his new wife, but the trial court enforced the property settlement obligation either through a constructive trust or to prevent unjust enrichment, and the court of appeals affirmed. *Id.* at 374-75. In *Rice*, the insured had the right to designate his ex-wife as his beneficiary when he did so and made no promises to his new wife that obligated him to make her the beneficiary. 258 Kan. at 153-54. The court distinguished *Hile* because “[i]t was undisputed [in *Hile*] that the deceased had changed the beneficiary on his insurance when he had no legal right to do so.” 258 Kan. at 152. In the case before this Court, similar to the beneficiary designations in *Tivis* and *Hile*, the debtors had no legal right to assign their benefits to Via Christi, and the hospital’s attempt to have Mr. Budig do so was simply ineffective.

Stripped of the assignment clause, the Admissions Consent Agreement in this case is merely an agreement that Mr. Budig is obligated to pay all charges for services and treatment the hospital provided. By informing Via Christi of their health insurance policy, the debtors were simply representing that they had an asset they thought would take care of the hospital’s bill. Mr. Budig does not deny he owes Via Christi for the treatment and services he received. As a non-contracting

provider, Via Christi knew that the assignment clause would not be honored by Blue Cross and could not be enforced, but it did not inform Mr. Budig of this fact. Instead, the hospital left the debtors with their mistaken, though understandable, belief that their insurance would operate as it had in the past, paying the bill directly and leaving little if anything for them to pay. Via Christi had nothing more from the debtors than a promise to pay for charges incurred. Allowing the hospital to succeed on its conversion claim would reward it for including in its admissions agreement with patients covered by Blue Cross insurance a provision that could not be applied to that insurance.

Even if the Blue Cross money somehow belonged to Via Christi, the Court also questions whether the debtors had the intent to injure the hospital that is required under §523(a)(6) to make their debt to Via Christi nondischargeable. Since neither of them was aware of the assignment clause in the admissions agreement, the Court is not convinced they knew the assignment could have made the money Blue Cross sent them belong to the hospital. Mrs. Budig's hesitation to deposit Blue Cross's check is understandable since it was more than \$20,000 short of covering Via Christi's bill. The Court believes the debtors eventually spent some of the money on other bills because they knew they could not pay the full hospital bill even if they applied all the insurance proceeds to it, and they had other pressing bills because Mr. Budig was not able to work. They probably thought they would be better off paying bills they could pay in full with the insurance money and Mrs. Budig's earnings than they would be if they instead applied all the insurance proceeds to Via Christi's bill and owed the hospital \$20,000 they could not pay instead of \$50,000.

For these reasons, the Court concludes that the debtors' obligation to Via Christi is not covered by 11 U.S.C.A. §523(a)(6), but is dischargeable in their bankruptcy case.

The foregoing constitutes Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52(a) of the Federal Rules of Civil Procedure. A judgment based on this ruling will be entered on a separate document as required by FRBP 9021 and FRCP 58.

Dated at Topeka, Kansas, this ____ day of August, 1998.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE

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JUDGMENT ON DECISION

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Plaintiff Via Christi Regional Medical Center appeared by counsel W. Thomas Gilman of Redmond & Nazar, L.L.P., of Wichita, Kansas. Debtors Jack and Deborah Budig appeared by counsel John C. Herman of Hays, Kansas. The Court heard the evidence and reviewed the parties' briefs, and has now issued its Memorandum of Decision resolving the parties' dispute.

For the reasons stated in the Memorandum, judgment is hereby entered declaring that the debtors' obligation to Via Christi Regional Medical Center is not covered by 11 U.S.C.A. §523(a)(6), but is dischargeable in their bankruptcy case.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of August, 1998.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE

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