
NO. 26281

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

WANDA SHELTON, Appellant-Appellee,

vs.

KAISER FOUNDATION HEALTH PLAN, INC.,¹ Appellee-Appellant,

and

J.P. SCHMIDT, INSURANCE COMMISSIONER, DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS, STATE OF HAWAI'I, Appellee-Appellee.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 03-1-1234)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Appellee-appellant Kaiser Foundation Health Plan, Inc. (Kaiser) appeals from the first circuit court's November 26, 2003 final judgment.² As points of error, Kaiser contends that the circuit court erred when it: (1) reversed the May 16, 2003 order of the Insurance Commissioner (Commissioner); (2) concluded that HRS § 431:10A-116.5 (Supp. 2003) required Kaiser to provide coverage for in vitro fertilization (IVF) procedures; and (3) declined to rule on whether language in Hawai'i Revised Statutes (HRS) § 431:10A-116.5 limited beneficiaries to one IVF

¹ The caption, throughout both the Supreme Court Record and the Record on Appeal, reads "Shelton v. Kaiser Permanente." However, the appellee-appellant's actual name appears to be Kaiser Foundation Health Plan, Inc. See Record on Appeal at 25.

² The Honorable Eden Elizabeth Hifo presided over this matter.

procedure in the beneficiary's lifetime or whether the language limited beneficiaries to one IVF procedure per plan.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we vacate the circuit court's judgment and the Insurance Commissioner's order. In Hawaii Mgmt. Alliance Ass'n v. Ins. Comm'r, No. 24801 (Nov. 18, 2004), we held that the Employee Retirement Income Security Act of 1974 (ERISA) preempts Hawaii's external review law, Hawai'i Revised Statutes (HRS) § 432E-6 (Supp. 2000); therefore, HRS § 432E-6 does not apply to ERISA-covered plans. Because Shelton's plan is an ERISA-covered plan, the Commissioner lacked jurisdiction to consider Shelton's external review and the circuit court lacked jurisdiction to consider Shelton's appeal from the Commissioner's order. Therefore,

IT IS HEREBY ORDERED that the circuit court's November 26, 2003 final judgment and the Commissioner's May 16, 2003 order are vacated.

DATED: Honolulu, Hawai'i, January 10, 2005.

On the briefs:

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