

Supreme Court of Nebraska.

Jeremy D. PARNELL, Appellant,
v.
GOOD SAMARITAN HEALTH SYSTEMS, INC., a
Nebraska corporation, doing business as
Good Samaritan Hospital, Appellee.

No. S-99-925.

Dec. 15, 2000.

Hospital filed a lien against a settlement obtained by patient who had sustained serious injuries in an automobile accident. Patient filed a declaratory judgment action seeking determination that settlement was exempt from hospital lien, that amount claimed by hospital did not reflect the usual and customary charges for services rendered, and that hospital lien statute was unconstitutional as special legislation. On cross-motions for summary judgment, the District Court, Buffalo County, John P. Icenogle, J., denied patient's motion, and granted hospital's motion. Patient appealed. The Supreme Court, Gerrard, J., held that: (1) hospital was entitled to hospital lien against settlement for amount billed for services pursuant to a fixed set of charges, and (2) hospital lien statute, in creating special class of lienholders based on determination that application of common fund doctrine to health care providers would threaten fiscal solvency of those providers, was not invalid as special legislation.

Affirmed.


Hendry, C.J., filed a dissenting opinion.

McCormack, J., filed a dissenting opinion.

West Headnotes

[1] Appeal and Error  **842(1)**
[30k842\(1\) Most Cited Cases](#)

Whether a statute is constitutional is a question of law; accordingly, the Supreme Court is obligated to reach a conclusion independent of the decision reached by the court below.

[2] Health  **961**
[198Hk961 Most Cited Cases](#)
(Formerly 204k5 Hospitals)

Hospital, which provided medical services to patient following automobile accident, was entitled to hospital lien against settlement patient negotiated for amount billed for services pursuant to a fixed set of charges, rather than amount hospital actually collected for similar services provided to other patients. [Neb.Rev.St. § 52-401](#).

[3] Statutes  **77(1)**
[361k77\(1\) Most Cited Cases](#)

Legislative act constitutes special legislation, violative of state constitution, if: (1) it creates an arbitrary and unreasonable method of classification, or (2) it creates a permanently closed class. Const. Art. 3, § 18.

[4] Statutes  **77(1)**
[361k77\(1\) Most Cited Cases](#)


When the Legislature confers privileges on a class arbitrarily selected from a large number of persons standing in the same relation to the privileges, without reasonable distinction or substantial difference, then the statute in question has resulted in the kind of improper discrimination prohibited by the state Constitution special legislation provision. Const. Art. 3, § 18.

[5] Statutes  **77(1)**
[361k77\(1\) Most Cited Cases](#)

Legislative classification, to be valid, under state Constitution's prohibition against special legislation, must be based upon some reason of public policy, some substantial difference of situation or circumstances, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified. Const. Art. 3, § 18.

[6] Statutes  **77(1)**
[361k77\(1\) Most Cited Cases](#)

Classifications for the purpose of legislation, under state Constitution's prohibition against special legislation, must be real and not illusive; they cannot be based on distinctions without a substantial difference. Const. Art. 3, § 18.

[7] Health  **961**
[198Hk961 Most Cited Cases](#)
(Formerly 204k5 Hospitals)

[\[7\] Statutes](#)  [77\(1\)](#)
[361k77\(1\) Most Cited Cases](#)

Hospital lien statute, in creating special class of lienholders based on determination that application of common fund doctrine to health care providers would threaten fiscal solvency of those providers and would potentially endanger their ability to continue providing care to indigent injured persons, was not invalid as special legislation; physicians, nurses, and hospitals were reasonably distinct from other creditors, such as third-party payors, where application of common fund doctrine was concerned, and public at large had interest in encouraging physicians, nurses, and hospitals to provide care without regard to patient's ability to pay. Const. Art. 3, § 18; [Neb.Rev.St. § 52-401](#).

[\[8\] Constitutional Law](#)  [70.1\(1\)](#)
[92k70.1\(1\) Most Cited Cases](#)

Legislature is the appropriate forum for resolution of questions concerning public policy.

[\[9\] Statutes](#)  [220](#)
[361k220 Most Cited Cases](#)

Where a statute has been judicially construed and that construction has not evoked an amendment, it will be presumed that the Legislature has acquiesced in the court's determination of the Legislature's intent.

****355** Syllabus by the Court

***877 1. Constitutional Law: Statutes: Appeal and Error.** Whether a statute is constitutional is a question of law; accordingly, the Nebraska Supreme Court is obligated to reach a conclusion independent of the decision reached by the court below.

2. Constitutional Law: Statutes: Special Legislation. A legislative act constitutes special legislation, violative of Neb. Const. art. III, § 18, if (1) it creates an arbitrary and unreasonable method of classification or (2) it creates a permanently closed class.

3. Constitutional Law: Special Legislation. When the Legislature confers ****356** privileges on a class arbitrarily selected from a large number of persons standing in the same relation to the privileges, without reasonable distinction or substantial difference, then the statute in question has resulted in the kind of improper discrimination prohibited by the Nebraska Constitution.

4. Constitutional Law: Special Legislation: Public Policy. A legislative classification, in order to be valid, must be based upon some reason of public policy, some substantial difference of situation or circumstances, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified.

5. Special Legislation. Classifications for the purpose of legislation must be real and not illusive; they cannot be based on distinctions without a substantial difference.

***878 6. Legislature: Public Policy.** The Legislature is the appropriate forum for resolution of questions concerning public policy.

7. Statutes: Judicial Construction: Legislature: Intent: Presumptions. Where a statute has been judicially construed and that construction has not evoked an amendment, it will be presumed that the Legislature has acquiesced in the court's determination of the Legislature's intent.

James D. Carson and Eric W. Kruger, of Rickerson & Kruger, Omaha, for appellant.

[Neil B. Danberg, Jr.](#), [Lyman L. Larsen](#), and [Michael J. Leahy](#), of Stinson, Mag & Fizzell, Omaha, for appellee.

[HENDRY](#), C.J., [WRIGHT](#), [CONNOLLY](#), [GERRARD](#), [STEPHAN](#), [McCORMACK](#), and [MILLER-LERMAN](#), JJ.

[GERRARD](#), J.

NATURE OF CASE

Jeremy D. Parnell sustained serious injuries in an automobile accident and received treatment at Good Samaritan Hospital (Good Samaritan). Good Samaritan filed a lien against a settlement obtained by Parnell pursuant to [Neb.Rev.Stat. § 52-401](#) (Reissue 1998). The question presented in this appeal is whether [§ 52-401](#) constitutes unconstitutional special legislation because it provides an exception to the common fund doctrine.

FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 1996, Parnell was injured in a motor vehicle accident in Buffalo County, Nebraska. After

the accident, Parnell received medical care at Good Samaritan. On November 11, 1997, Parnell entered into a settlement agreement with the alleged tortfeasor. The terms of the settlement acknowledged payment already made to Parnell in the amount of \$400,000 and also provided for deferred lump-sum payments totaling \$1,929,156 over a 40-year period.

Good Samaritan requested payment of unpaid bills in the amount of \$56,043.73 and has perfected a lien, pursuant to [§ 52-401](#), against the proceeds of Parnell's personal injury settlement. *879 Parnell has received a check from the alleged tortfeasor's insurance company, dated November 10, 1997, and made payable to both Parnell and Good Samaritan in the amount of \$57,039.28.

Parnell filed a declaratory judgment action seeking, inter alia, to have the district court determine that (1) Parnell's settlement was exempt from Good Samaritan's lien under [Neb.Rev.Stat. § 25-1563.02](#) (Reissue 1995); (2) the amount claimed by Good Samaritan did not reflect the usual and customary charges for services rendered; and (3) [§ 52-401](#) was unconstitutional as special legislation under [article III, § 18, of the Nebraska Constitution](#). **357 Good Samaritan denied that there was a conflict between [§ 52-401](#) and [25-1563.02](#), alleged that [§ 25-1563.02](#) had no applicability to a lien perfected under [§ 52-401](#), and denied the unconstitutionality of [§ 52-401](#). In a counterclaim, Good Samaritan sought a declaratory judgment that its lien was valid in the amount of \$57,039.28.

Good Samaritan filed a motion for summary judgment, and Parnell filed a motion for partial summary judgment. The district court denied Parnell's motion and granted Good Samaritan's motion, thereby dismissing Parnell's petition. The district court also granted summary judgment in favor of Good Samaritan on its counterclaim. The district court found that Good Samaritan had a hospital lien properly perfected, valid, and enforceable for services rendered to Parnell in the amount of \$57,039.28; that this amount is the usual and customary value of the services actually provided by Good Samaritan to Parnell; that [§ 52-401](#) is constitutional; and that [§ 52-401](#) is not limited by [§ 25-1563.02](#). Parnell appeals.

ASSIGNMENTS OF ERROR

Parnell assigns, restated, that the district court erred in (1) overruling his motion to compel discovery when the accounting records are needed to determine the usual and customary charges of Good Samaritan,

(2) incorrectly determining that the amounts medical care providers actually receive for the services they render are not a relevant factor when determining the "usual and customary charges" under [§ 52-401](#), (3) granting Good Samaritan's motion for summary judgment when an issue *880 of material fact remained as to Good Samaritan's usual and customary charges, and (4) not finding [§ 52-401](#) to be unconstitutional special legislation.

STANDARD OF REVIEW

[1] Whether a statute is constitutional is a question of law; accordingly, the Nebraska Supreme Court is obligated to reach a conclusion independent of the decision reached by the court below. [Dykes v. Scotts Bluff Cty. Ag. Socy.](#), 260 Neb. 375, 617 N.W.2d 817 (2000); [State ex rel. Stenberg v. Moore](#), 258 Neb. 738, 605 N.W.2d 440 (2000).

ANALYSIS

[2] We first note, with respect to Parnell's first three assignments of error, that Parnell presented his argument with respect to "usual and customary charges" to this court in [Parnell v. Madonna Rehab. Hosp.](#), 258 Neb. 125, 602 N.W.2d 461 (1999). In that case, we rejected Parnell's claim that "usual and customary charges" should be determined by considering the amounts actually collected by a service provider, instead of the amount charged. *Id.* Parnell conceded at oral argument that [Parnell v. Madonna Rehab. Hosp.](#), *supra*, would be determinative of the issues presented in the instant case as well. We agree. We decline to reconsider our decision in [Parnell v. Madonna Rehab. Hosp.](#) and on that authority, determine Parnell's first three assignments of error to be without merit. We therefore turn to Parnell's remaining assignment of error, claiming that [§ 52-401](#) is special legislation.

[3][4] A legislative act constitutes special legislation, violative of Neb. Const. art. III, [§ 18](#), if (1) it creates an arbitrary and unreasonable method of classification or (2) it creates a permanently closed class. [Bergan Mercy Health Sys. v. Haven](#), 260 Neb. 846, 620 N.W.2d 339 (2000); [Pfizer v. Lancaster Cty. Bd. of Equal.](#), 260 Neb. 265, 616 N.W.2d 326 (2000). When the Legislature confers privileges on a class arbitrarily selected from a large number of persons standing in the same relation to the privileges, without reasonable distinction or substantial difference, then the statute in question has resulted in the kind of improper discrimination prohibited by the Nebraska Constitution. [Bergan Mercy Health Sys. v. Haven](#), *supra*.

****358 [5][6] *881** A legislative classification, in order to be valid, must be based upon some reason of public policy, some substantial difference of situation or circumstances, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified. *Id.*: [Big John's Billiards v. Balka](#), 260 Neb. 702, 619 N.W.2d 444 (2000). Classifications for the purpose of legislation must be real and not illusive; they cannot be based on distinctions without a substantial difference. [Bergan Mercy Health Sys. v. Haven](#), *supra*.

[7] The sole argument offered by Parnell in his appellate brief as to why [§ 52-401](#) is unconstitutional is that it deprives him of the benefits of the common fund doctrine. [Section 52-401](#) provides, in relevant part:

Whenever any person employs a physician, nurse, or hospital to perform professional service or services of any nature, in the treatment of or in connection with an injury, and such injured person claims damages from the party causing the injury, such physician, nurse, or hospital, as the case may be, shall have a lien upon any sum awarded the injured person in judgment or obtained by settlement or compromise on the amount due for the usual and customary charges of such physician, nurse, or hospital applicable at the times services are performed....

....

A physician, nurse, or hospital claiming a lien under this section shall not be liable for attorney's fees and costs incurred by the injured person in securing the judgment, settlement, or compromise, but the lien of the injured person's attorney shall have precedence over the lien created by this section.

The latter paragraph of [§ 52-401](#) quoted above was enacted by the Legislature in response to this court's decision in [In re Guardianship & Conservatorship of Bloomquist](#), 246 Neb. 711, 523 N.W.2d 352 (1994). In [In re Guardianship & Conservatorship of Bloomquist](#), this court held that liens under [§ 52-401](#) were subject to the common fund doctrine, such that lienholders were liable for their pro rata portion of the legal expenses and costs where they sought payment out of a judgment or settlement for the amount of a lien filed pursuant to [§ 52-401](#).

***882** In response, the Legislature enacted 1995 Neb. Laws, L.B. 172, which amended [§ 52-401](#) to provide, as quoted above, that physicians, nurses, or hospitals claiming a lien under [§ 52-401](#) were not liable for attorney fees and costs incurred by the

injured person in securing the judgment, settlement, or compromise. It is this language that Parnell argues invalidates [§ 52-401](#) as special legislation because, Parnell claims, persons with access to third-party payment for injuries, such as insurance, are treated differently from those without such access.

Parnell argues that our decision in [In re Guardianship & Conservatorship of Bloomquist](#), *supra*, established that when either a subrogated third party or a lienholder is benefited by an award of funds to a tort victim, the benefited party must share in the costs associated with the collection of those funds. Parnell notes that in [In re Guardianship & Conservatorship of Bloomquist](#), 246 Neb. at 725, 523 N.W.2d at 360, this court stated that "[t]he lien statute grants hospitals a method of obtaining a full or partial recovery for the value of services that the hospitals would probably have 'written off' as uncollectible; and while not a windfall to the hospitals, the recovery should not come without costs."

Parnell argues that [§ 52-401](#), as amended, creates an unreasonable and arbitrary distinction between those who have access to insurance or other source of third-party payment and those who do not. Parnell argues that if an insured person, for instance, is the victim of a tort-feasor, the victim's insurer would pay the victim's bill from the medical care provider. The insurer ****359** would then be entitled to claim a subrogation interest in any judgment or settlement the tort victim might collect, but the amount the insurer could collect from the judgment or settlement would be subject to attorney fees and costs pursuant to the common fund doctrine. See [In re Guardianship & Conservatorship of Bloomquist](#), *supra*.

On the other hand, if an uninsured person is injured by a tort-feasor, the medical care provider would be uncompensated and would act directly against the victim pursuant to [§ 52-401](#). If a judgment is rendered or settlement reached, the lienholder can then collect from the proceeds without being subject to the common fund doctrine. Thus, argues Parnell, tort victims with ***883** otherwise identical injuries and expenses could ultimately be compensated differently because one would obtain the benefit of the common fund doctrine and the other would not.

We confronted similar questions regarding [§ 52-401](#) in [Bergan Mercy Health Sys. v. Haven](#), 260 Neb. 846, 620 N.W.2d 339 (2000), although we specifically reserved judgment on the question of the exception to the common fund doctrine, see *id.* (party did not argue issue of common fund doctrine, and court did

not consider it). We examined the legislative history of 1995 Neb. Laws, L.B. 172, and determined that it had been decided by the Legislature that doctors, nurses, and hospitals should be compensated when funds are available from the responsible party.

The testimony provided at the committee hearing on the bill provided support for the stated objectives of the legislation. The testimony provided by representatives of hospitals and health care professionals generally established that health care providers give care to injured persons without regard to a person's ability to pay for such care, and that the restriction placed on [§ 52-401](#) by *In re Guardianship & Conservatorship of Bloomquist* threatened the fiscal solvency of health care institutions, particularly to the continuing ability to afford provision of emergent care to indigent injured persons. See, generally, Committee on Health and Human Services Hearing, L.B. 172, 94th Leg., 1st Sess. (February 8, 1995). The testimony also established that some health care providers, deprived of the benefit of [§ 52-401](#), would resort to immediately pursuing collection efforts against injured parties and obtaining judgments against them, rather than simply securing a lien and waiting for a judgment or settlement against the tort-feasor. *Id.*

[Bergan Mercy Health Sys. v. Haven](#), 260 Neb. at 853-54, 620 N.W.2d at 346.

The concerns expressed by the Legislature in amending [§ 52-401](#), and noted by this court in [Bergan Mercy Health Sys. v. Haven](#), *supra*, apply with equal force to the issue raised by Parnell in the instant case. The Legislature determined that application of the common fund doctrine to health care providers would threaten the fiscal solvency of those providers and would potentially endanger their ability to continue providing ***884** care to indigent injured persons. We noted in [Bergan Mercy Health Sys. v. Haven](#) that unlike other creditors, physicians, nurses, and hospitals may be called upon to provide services without first ascertaining the patient's ability to pay. We concluded that this was a reasonable distinction, as the public at large has a particular interest in encouraging physicians, nurses, and hospitals to provide care without regard to the patient's ability to pay. See *id.*

The same distinction and the same logic compel us to conclude that physicians, nurses, and hospitals are reasonably distinct from other creditors, such as third-party payors, where the application of the common fund doctrine is concerned. The logical consequence of this distinction, as noted by Parnell, is that injured parties who are covered by third-party

payment schemes obtain the benefit of the common fund doctrine, while other injured parties do not. This distinction, however, was ****360** reasonably drawn by the Legislature in order to protect the ability of health care providers to offer treatment without first ascertaining the patient's ability to pay, and we cannot say that this policy choice was so untenable as to render the statute unconstitutional.

We also note that, generally, third-party payors are able to protect themselves against the application of the common fund doctrine. For example, insurers are aware that the doctrine could be applied to any subrogation interest they might assert and can consider that expense when establishing the premiums that they will charge for coverage. Additionally, in *In re Guardianship & Conservatorship of Bloomquist*, 246 Neb. 711, 523 N.W.2d 352 (1994), the lienholders in that case argued that application of the common fund doctrine to them should be limited because of the distinction between a subrogation interest and a hospital lien. The lienholders argued that, unlike subrogated insurers, hospital lienholders have no interest in the injured patient's cause of action against the third-party tort-feasor, no standing to participate in the injured patient's personal injury action, and no separate cause of action against the tort-feasor or the tort-feasor's insurer. See *id.*

[8][9] This court, in *In re Guardianship & Conservatorship of Bloomquist*, *supra*, found that public policy argument to be unpersuasive, but that does not compel us to conclude that the ***885** distinction identified by the lienholders in that case would not support the Legislature's subsequent decision to amend [§ 52-401](#). The Legislature is the appropriate forum for resolution of questions concerning public policy. *Else v. Else*, 219 Neb. 878, 367 N.W.2d 701 (1985). We have often stated that where a statute has been judicially construed and that construction has not evoked an amendment, it will be presumed that the Legislature has acquiesced in the court's determination of the Legislature's intent. *State v. Neiss*, 260 Neb. 691, 619 N.W.2d 222 (2000). In this instance, the Legislature did not acquiesce and exercised its prerogative to change the law. The action taken by the Legislature did not exceed its constitutional boundaries.

CONCLUSION

For the foregoing reasons, we conclude that Parnell's assignments of error are without merit and, therefore, affirm the judgment of the district court.

AFFIRMED.

HENDRY, C.J., dissenting.

I respectfully dissent from the majority opinion insofar as it addresses Neb. Const. art III, § 18. As explained by my dissent in Bergan Mercy Health Sys. v. Haven, 260 Neb. 846, 620 N.W.2d 339 (2000), the classes created by Neb.Rev.Stat. § 52-401 (Reissue 1998) with regard to a special legislation claim are (1) the particular class of physicians, nurses, and hospitals who receive the privilege of the lien and (2) the general class of those who likewise perform services of any nature in the treatment of, or in connection with, an injury without the privilege of the lien. Under the rationale set out in my dissent in Bergan Mercy Health Sys., I believe Parnell lacks standing to assert that the class of physicians, nurses, and hospitals created by § 52-401 violates Neb. Const. art III, § 18. Accordingly, I withhold any opinion regarding whether § 52-401 violates Neb. Const. art III, § 18.

McCORMACK, J., dissenting.

I respectfully dissent. It is obvious from the legislative history that the Legislature was responding to complaints from the hospitals who were unhappy with this court's decision 1 year before in *886In re Guardianship & Conservatorship of Bloomquist, 246 Neb. 711, 523 N.W.2d 352 (1994), wherein we ruled that the hospital must pay its proportionate share of the attorney fees from the recovery. The amendment to § 52-401 guts the **361In re Guardianship & Conservatorship of Bloomquist decision.

The stated purpose of the amendment to § 52-401 is to provide protection to those physicians, hospitals, and nurses who treat persons without any regard as to how that person is going to pay for those services. I do not have a quarrel with that purpose and would agree that any physician, hospital, or nurse who, when approached by a patient, does not require that before treatment is rendered, the patient show proof of insurance, medicare, medicaid or post a cash deposit if there is no insurance, or require another guaranty of payment, should get the protection of the stated purpose of § 52-401. However, I believe that the physicians, hospitals, or nurses seeking the protection afforded by § 52-401 should be required to make a showing that they do, in fact, regularly render health care without requiring, prior to

rendering treatment, that the patient is covered by insurance, medicare, or medicaid or post a cash deposit, or require another guaranty of payment. Unless the physician, hospital, or nurse makes such a showing, there is no rational basis for affording this physician, hospital, or nurse the protection of § 52-401, and § 52-401 would be unconstitutional as to those particular physicians, hospitals, or nurses who do not make such a showing.

This case is troubling for another reason, namely, assignment of error No. 1, wherein the district court erred in overruling Parnell's motion to compel discovery for the accounting records of Good Samaritan. I joined in the unanimous decision of this court in Parnell v. Madonna Rehab. Hosp., 258 Neb. 125, 602 N.W.2d 461 (1999), as to "usual and customary charges," and I believe that my thinking has changed on this subject. In today's society, the vast majority of patients who enter hospitals or visit physicians are insured in one way or another, be that a health maintenance or preferred provider organization, standard health insurance, medicare, medicaid, et cetera. A substantial number, if not the majority, of the medical bills of these persons are discounted by the insurance payor. To say that the "usual and customary charge" of a hospital is the amount it bills rather than the amount that it actually receives in payment is akin to assuming *887 that every person who goes into a new car dealership pays "sticker price." I have no idea what discovery of Good Samaritan's records would show as to the "usual and customary" amount actually collected as opposed to the gross amount of its bill before discounts, but I believe that the trial court abused its discretion in denying Parnell access to this information which, in turn, may have provided the basis for this court to reconsider its decision in Parnell v. Madonna Rehab. Hosp. I respectfully submit that this discovery would also have shed light, and therefore be relevant, on whether Good Samaritan accepts all patients without requiring, before treatment is rendered, that the patient show proof of insurance, medicare, or medicaid or post a cash deposit, or require another guaranty of payment.

Additional reasons for my dissent can be found in my dissent in Bergan Mercy Health Sys. v. Haven, 260 Neb. 846, 620 N.W.2d 339 (2000), and will not be reiterated here.

620 N.W.2d 354, 260 Neb. 877

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