No. 121078

IN THE SUPREME COURT OF ILLINOIS

Estate of **AKEEM MANAGO**, by special administrator, APRIL PRITCHETT,
Plaintiff-Appellee,

v.

THE COUNTY OF COOK,
Respondent-Appellant
(Chicago Housing Authority, a Municipal Corporation, and H.J. Russell and Company, Defendants).

Appeal from the Appellate Court of the First District of Illinois

No. 1-12-1365

Circuit Court of Cook County
Case No. 08 L 13211

Honorable Thomas L. Hogan,
Judge Presiding.

BRIEF OF PLAINTIFF APPELLEE ESTATE OF AKEEM MANAGO

ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Akeem Manago, by his mother, sued Chicago Housing Authority and H.J. Russell & Company under a theory of attractive nuisance for injuries suffered when he was entangled on the cables on the roof of an elevator in a CHA building in 2005 when he was 12 years old. Akeem additionally alleged his mother, "April Pritchett[,] has expended and incurred obligations for medical expenses and care and will in the future expend and incur such further obligations." *Manago v. Cnty. of Cook*, 2016 IL App (1st) 121365, ¶5, 57 N.E.3d 701, 405 Ill.Dec. 16 (Ill. App., 2016) (hereinafter referred to as *Manago II*)

The matter was heard in a bench trial, and the court awarded Akeem $250,000 for scarring, $75,000 for pain and suffering, and $75,000 for loss of a normal life, for a total of $400,000. The court found that Akeem was 50% at fault and reduced the damages to $200,000. As to the Family Expense Claim, the court ruled that April Pritchett had not established a prima facie claim because she had not proven she was required to pay the medical bill she introduced. That bill was from the John H. Stroger, Jr., Hospital of Cook County, in the amount of $79,512.53. (C. 450-454; and C. 325). The lien claimant conceded that it was given notice of the pendency of the trial (Vol. 4, Rpt., p. 5 lines 21 to p. 6 line 1) and that lienholder had the opportunity to come in and present evidence to support the amount claimed in the lien but was not required to do so. (Vol. 4, Rpt., p. 6 lines 9-16).

The plaintiff filed a motion to reconsider the trial court's judgment order denying an award of medical expenses to April Pritchett (C. 470-471) as well as plaintiff's "Petition To Strike And Extinguish Hospital Lien." The second motion is the subject of this pending appeal. (C. 460-468). Both the motion to reconsider the denial of an award for the medical

expenses from John H. Stroger, Jr., Hospital of Cook County, in the amount of $79,512.53 and the petition to strike and extinguish the subject hospital lien were pending at the very same time in the same court. (C. 348). The lien claimant, County of Cook, was aware and advised of the ongoing motion to reconsider the denial of an award for the medical expenses. (C. 351-363. Cook County's Response In Opposition To Plaintiff's Petition To Strike And Extinguish Hospital Lien, ¶¶5-10). Both motions were set for a joint hearing (C. 489) and were argued together (Vol. 4, Rpt., p. 2-18).

After briefing and argument the trial court denied plaintiff's motion to reconsider the judgment denying a medical expense award to April Pritchett, while granting Plaintiffs Motion to Strike and Extinguish the Hospital Lien of Cook County on the ground that the award specifically excluded compensation for the medical bills and that the lien did not attach to the minor's award. (Vol. 4, Rpt., p. 16 lines 15 through p.17 line 14). Cook County appealed.

The appellate court initially accepted the case for consideration upon the County's brief only due to plaintiff's failure to file an appellate brief within the time prescribed by Illinois Supreme Court Rule 343(a) (eff. July 1, 2008). (*Manago v. Cnty. of Cook*, 2016 IL App (1st) 121365, ¶14, 57 N.E.3d 701, 405 Ill.Dec. 16 (Ill. App., 2016)) "The plaintiff filed a petition for rehearing. . . . [and] the Illinois Trial Lawyers Association (ITLA, *amicus*) filed a motion to file an *amicus curiae* brief in support of the petition for rehearing." (2016 IL App (1st) 121365, ¶14). The appellate court granted the petition for rehearing and set a supplemental briefing schedule. On rehearing the appellate court concluded where the minor's parent "did not assign her cause of action for medical expenses to the injured minor plaintiff, no lien exists under the Act" (2016 IL App (1st) 121365, ¶47) and that the language

of the Act "limit[s] the creation of a lien to claims or causes of action seeking medical expenses." (2016 IL App (1st) 121365, ¶48)

STATUTES INVOLVED

770 ILCS 23/20

Items to which lien attaches

§ 20. Items to which lien attaches. The lien of a health care professional or health care provider under this Act shall, from and after the time of the service of the lien notice, attach to any verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person. If the verdict, judgment, award, settlement, or compromise is to be paid over time by means of an annuity or otherwise, any lien under this Act shall be satisfied by the party obligated to compensate the injured person to the fullest extent permitted by Section 10 before the establishment of the annuity or other extended payment mechanism.

770 ILCS 23/10

Lien created; limitation

(a) Every health care professional and health care provider that renders any service in the treatment, care, or maintenance of an injured person, except services rendered under the provisions of the Workers' Compensation Act[1] or the Workers' Occupational Diseases Act,[2] shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges up to the date of payment of damages to the injured person. The total amount of all liens under this Act, however, shall not exceed 40% of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action.

(b) The lien shall include a written notice containing the name and address of the injured person, the date of the injury, the name and address of the health care professional or health care provider, and the name of the party alleged to be liable to make compensation to the injured person for the injuries received. The lien notice shall be served on both the injured person and the party against whom the claim or right of action exists. Notwithstanding any other provision of this Act, payment in good faith to any person other than the healthcare professional or healthcare provider claiming or asserting such lien prior to the service of such notice of lien shall, to the extent of the payment so made, bar or prevent the creation of an enforceable lien. Service shall be made by registered or certified mail or in person.

(c) All health care professionals and health care providers holding liens under this Act with respect to a particular injured person shall share proportionate amounts within the statutory limitation set forth in subsection (a). The statutory limitations under this Section may be waived or otherwise reduced only by the lienholder. No individual licensed category of health care professional (such as physicians) or health care provider (such as hospitals) as set forth in Section 5, however, may receive more than one-third of the verdict, judgment,

award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action. If the total amount of all liens under this Act meets or exceeds 40% of the verdict, judgment, award, settlement, or compromise, then:
(1) all the liens of health care professionals shall not exceed 20% of the verdict, judgment, award, settlement, or compromise; and
(2) all the liens of health care providers shall not exceed 20% of the verdict, judgment, award, settlement, or compromise;
provided, however, that health care services liens shall be satisfied to the extent possible for all health care professionals and health care providers by reallocating the amount unused within the aggregate total limitation of 40% for all health care services liens under this Act; and provided further that the amounts of liens under paragraphs (1) and (2) are subject to the one-third limitation under this subsection.

If the total amount of all liens under this Act meets or exceeds 40% of the verdict, judgment, award, settlement, or compromise, the total amount of all the liens of attorneys under the Attorneys Lien Act[3] shall not exceed 30% of the verdict, judgment, award, settlement, or compromise. If an appeal is taken by any party to a suit based on the claim or cause of action, however, the attorney's lien shall not be affected or limited by the provisions of this Act.

(d) If services furnished by health care professionals and health care providers are billed at one all-inclusive rate, the total reasonable charges for those services shall be reasonably allocated among the health care professionals and health care providers and treated as separate liens for purposes of this Act, including the filing of separate lien notices. For services provided under an all-inclusive rate, the liens of health care professionals and health care providers may be asserted by the entity that bills the all-inclusive rate.

(e) Payments under the liens shall be made directly to the health care professionals and health care providers. For services provided under an all-inclusive rate, payments under liens shall be made directly to the entity that bills the all-inclusive rate.

770 ILCS 23/30

Adjudication of rights

§ 30. Adjudication of rights. On petition filed by the injured person or the health care professional or health care provider and on the petitioner' s written notice to all interested adverse parties, the circuit court shall adjudicate the rights of all interested parties and enforce their liens. A lien created under the Crime Victims Compensation Act may be reduced only by the Court of Claims.

A petition filed under this Section may be served upon the interested adverse parties by personal service, substitute service, or registered or certified mail.

750 ILCS 65/15

Expenses of family

§ 15. (a)(1) The expenses of the family and of the education of the children shall be chargeable upon the property of both husband and wife, or of either of them, in favor of creditors therefor, and in relation thereto they may be sued jointly or separately.

STATEMENT OF FACTS

The County's statement of facts is accurate, and the appellate court provided a recitation of those facts in its opinion. Plaintiff will set out the process by which the circuit and appellate courts determined that the County had no lien rights in this matter, so that the court and parties will have those facts conveniently before them.

Akeem Manago was 12 years old when he was injured by being entangled in the cables on the roof of an elevator in a CHA building in 2005. He filed suit, by his mother, against the Chicago Housing Authority and H.J. Russell & Company, the elevator maintenance company, under a theory of attractive nuisance. His mother, April Pritchett, claimed a right to recover the costs of Akeem's medical care under the Family Expense Act. (C. 450-454; and C. 325).

After a bench trial, the court awarded Akeem Manago damages of $250,000 for scarring, $75,000 for pain and suffering, and $75,000 for loss of a normal life, for a total of $400,000. R. C312; App. at A1 (order). The court found that Akeem was 50% at fault and reduced the damages to $200,000. As to the Family Expense Claim, the court ruled that April Pritchett had not established a prima facie claim because she had not proven she was required to pay the medical bill she introduced. That bill was from the John H. Stroger, Jr., Hospital of Cook County, in the amount of $79,512.53.

The County sought $66,666.66, representing one-third of the total damage award, that being the most it could recover under the Health Care Services Lien Act as the only lien holder. 770 ILCS 23/10(c). Plaintiff filed a motion to strike and extinguish the alleged lien. R. C458. The court pointed out that the child had proven his case but his mother had not proven her Family Expense Act claim, which is why the court found in favor of the child but

against the mother. R. 11, 12 (v4). The court denied the lien and granted plaintiff's motion to strike the lien. R. C490; 15 (v4); App. at A6.

The County appealed, but plaintiff did not file a brief. The appellate court issued an opinion, but then granted plaintiff's motion for reconsideration in which plaintiff sought leave to put arguments before the appellate court which would have and should have been included in an answer brief. On rehearing the appellate court concluded where the minor's plaintiff "did not assign her cause of action for medical expenses to the injured minor plaintiff, no lien exists under the Act" (2016 IL App (1st) 121365, ¶47) and that the language of the Act "limit[s] the creation of a lien to claims or causes of action seeking medical expenses." (2016 IL App (1st) 121365, ¶48)

ARGUMENT

There are competing and conflicting public policies involved in the resolution of this case. The public policies involved are:

1) The duty of the courts to protect the rights of minors involved in litigation.

2) The right to full and fair compensation under our tort laws for claims and causes of action held by a minor plaintiff.

3) The obligation of parents to provide for the medical care of their minor children.

4) The public policy interest involved in the Health Care Services Lien Act (770 ILCS 23/1 et seq.); and lastly

6) A minor's due process rights in being required to satisfy a debt (and henceforth a lien) for damages that the minor could not sue the tortfeasor for; and for which no evidentiary hearing was conducted.

There are competing and conflicting public policies will be discussed within various portions of the Plaintiff-respondent's argument.

The County has no right to recover its medical costs from Akeem Manago because the court's award to him did not include medical bills as one of the elements of damages allowed, and nothing in the law gives a health care provider a lien on monies recovered for other elements of damage in the underlying case or in any other case.

The issue has been crystallized by the analysis contained in the appellate court's opinion. The key question is whether the amendment to the Health Care Services Lien Act intended to change the scope and application of that Act. 770 ILCS 23/1, et seq.

That act was amended to consolidate the various health care lien provisions into one statute, and to prevent a situation where lien claims when added together often resulted in a

monetary figure larger than the settlement or verdict in the underlying injury case. See *Burrell v. Southern Truss (Wood River Tp. Hosp.)*, 679 N.E.2d 1230, 176 Ill.2d 171, 223 Ill.Dec. 457 (Ill., 1997). In other words, where there was a serious injury, there would often be expensive medical care leading to significant medical bills, as in this case. Each health care provider would perfect a lien under the particular statutory provision allowing a lien for that area of medical practice. The various types of heath care liens allowed are identified in 770 ILCS 23/35, the lien laws before their consolidation.

The total of those liens in any given accident claim could equal six-thirds of the plaintiff's recovery (not including attorney liens) and frequently began to exceed the reasonable settlement value or the verdict amount, with the effect that the injured plaintiff would take action to recover the medical expenses, but would himself ultimately receive nothing. In that scenario, an injured person had no incentive to prosecute a claim against the person causing the injury. The health care provider itself had no basis for suing the tortfeasor, and the often relatively small amounts of the individual bills would make that economically unfeasible even if the provider had standing to file such an action.

To cure that problem, the legislature redrafted the entire lien law, producing a single statute covering all such liens and limiting the lienors' total recovery to 40% of the total recovery in the related underlying personal injury case. 770 ILCS 23/10(a). Any one lienholder was limited to one-third of the total recovery. The Act distinguished between two classes: health care providers, e.g., hospitals, and health care professionals, e.g., doctors. If there was more than one provider, the total liens of all health care providers could not exceed 20% of the recovery, and similarly the total liens of all health care professionals could not exceed 20% of the recovery. Thus, no more than 40% of the total recovery in the underlying

personal injury claim would ever be expended in satisfaction of statutory heath care liens. That guaranteed that the injured tort victim who made those recoveries possible would receive some compensation for his injury in every case.

Note that the entire health care lien scheme revolves around or is premised on a tort recovery and on the need to distribute that tort recovery equitably where the recovery was not large enough to allow everyone a full recovery. Nothing about the change in the law suggested there was any problem with respect to identifying the funds which would be subject to a lien under the Act or that the lien should extend to any and all causes of action of the injured person. Plaintiff points that out because the appellate court in *Manago v. Cnty. of Cook*, 2013 IL App (1st) 121365 (Ill. App., 2013) initially extended those lien rights far beyond the recovery in the tort claim even where the recovery does not include monies for the medical bills related to the injury and treatment in that tort claim. *Manago I* goes much further. The hospital, and indeed anyone or any institution holding a lien under the Act, can recover such a lien in any action filed by the person to whom they administered the care, including recoveries in legal actions entirely unrelated to the tort claim involving the medical expenses forming the basis for the lien.

The appellate court in its withdrawn opinion (*Manago I*), superceded by the decision now before this court, held the "plain language of the Act" creates a hospital a lien against any recovery by the "injured person" stating:

> "The attachment of the lien is no longer "based on the negligent or wrongful act." Compare 770 ILCS 35/2 (West 1996) with 770 ILCS 23/20 (West 2004). Moreover, the attachment of the lien is no longer limited to an "action brought by such injured person on account of such claim or right of action." Compare 770 ILCS 35/2 (West 1996) with 770 ILCS 23/20 (West 2004)." (2013 IL App (1st) 121365 ¶28)

If the legislature intended such a far-reaching change from the former version, it would surely have used plain language to clarify that change, and there would surely have been a vociferously legislative history created in opposition to it. That did not happen. Plaintiff's contention is that if the legislature intended to make such a drastic change to lien law, it would have said so and it would have used language that made such a change self-evident. The Appellate Court in *Manago II* (2016 IL App (1st) 121365 ¶¶17-22) correctly applied the rules of statutory construction to avoid inconsistency, giving effect to both the Health Care Services Lien Act and the Family Expense Act. (*Manago II* ¶39)

Without such language in the Act, this case is like *Alvarez v. Pappas*, 229 Ill. 2d 217, 231, 890 N.E.2d 434, 443 (2008). Although this case is discussed in the appellate decision the lienholder-petitioner has ignored it. In *Alvarez* this Court there held it would not enforce even clear language of a statute if that construction "does not make sense" causing the meaning of the statute to be "unclear and ambiguous" requiring an examination of the General Assembly's intent, taking into consideration the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved.

More recently this Court was confronted with interpreting the interplay between several sections of the Vehicle Code financial responsibility provisions in *Nelson v. Artley,* 2015 IL 118058, 396 Ill.Dec. 374, 40 N.E.3d 27. The plain language of the financial responsibility provisions for car rental companies who obtained certificates of self-insurance rather than post a motor vehicle liability bond with the Secretary of State placed no liability limits upon the car rental company. Applying common sense this court found that although there was no language limiting the liability of self-insureds in the statute, such a limit on liability should be found in order to keep that provision consistent with the statutory liability

limits provided for the two other methods of establishing financial responsibility. This Court stated:

> "In construing a statute, we presume that the legislature did not intend absurd, inconvenient, or unjust results (*Alvarez v. Pappas,* 229 Ill.2d 217, 232, 321 Ill.Dec. 712, 890 N.E.2d 434 (2008)), and we will not, absent the clearest reasons, interpret a law in a way that would yield such results (*Town of Cicero v. Green,* 211 Ill. 241, 244, 71 N.E. 884 (1904))." (2015 IL 118058 ¶27)
>
> "[T]here is nothing inherently objectionable about using common sense when deciphering a statute. To the contrary, our court has specifically cited with approval the proposition that courts "do not set aside common experience and common sense when construing statutes." (Internal quotation marks omitted.) *Exelon Corp. v. Department of Revenue,* 234 Ill.2d 266, 282, 334 Ill.Dec. 824, 917 N.E.2d 899 (2009). . . . "common sense" as a shorthand for deductive reasoning based on the language and purposes of the law and the consequences of a contrary construction." (2015 IL 118058 ¶29)

A. ***The County's argument for interpretation of sections ten (§10) and twenty (§20) of the* "Health Care Services Lien Act" is untenable for multiple reasons.**

Although the county, lienholder-petitioner, claims the appellate court improperly read limitations into the statute that do not exist (citing to *Burrell v. S. Truss*, 176 111. 2d 171, 174 (1997) and *McVey v. M.L.K. Enterprises*, LLC, 2015 IL 118143, 392 Ill.Dec. 536, 32 N.E.3d 1112 N.E.3d 1112), by its argument the county implicitly reads limitations into the act which does not appear in its plain language. The county's argument limits lien claims against minors under the act to an verdict, judgment, award, settlement, or compromise (1) in personal injury actions (2) brought by the minor's parent, (3) against the tortfeasors who caused the minor's injuries, presumably that are the basis for the lien and not some other legally cognizable tort for injuries. (Brief of lienholder-petitioner P.13).

As is clear from the withdrawn *Manago I* opinion, none of these limitations are contained in the plain language of the Act. As was noted by appellate court in *Manago I*

citing to its dicta from *Anderson v. Department of Mental Health,* 305 Ill. App. 3d 262 (1999), the prior (Constitutional) version of the act (770 ILCS 35/1, 2 (1996)) required a causal connection between the injuries resulting in a verdict, judgment, award, settlement, or compromise and the treatment provided to the injured person. "The attachment of the lien is no longer 'based on the negligent or wrongful act.' Compare 770 ILCS 35/2 (West 1996) with 770 ILCS 23/20 (West 2004). Moreover, the attachment of the lien is no longer limited to an 'action brought by such injured person on account of such claim or right of action.' Compare 770 ILCS 35/2 (West 1996) with 770 ILCS 23/20 (West 2004)." *Manago I,* 2013 IL App (1st) 121365. ¶¶27, 28. On what basis does the lienholder-petitioner read these limitations into the act?

It seems that either the lienholder-petitioner believes that the statutory language is "unclear and ambiguous" thus requiring an examination of the General Assembly's intent, or that the plain language of the statute is otherwise infirm without reading such limitations into the act. The issue as delineated by the two appellate opinions could not be clearer. Without an examination of the legislative purpose and intent implicated in the obvious interplay between the Family Expense Act and the Health Care Services Lien Act the liens are limitless extending to ***any*** verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person, without relation to claims for injuries or the medical services provided. It is conceivable that a "health care provider" or "health care professional" after being partially satisfied in a tort action could again be asserted in a string of contract actions completely unrelated to injuries or medical treatment until the "health care provider" or "health care professional" had recovered all they claim.

a. Plain language of lien statute creates assignments of personal actions

Allowing for providers and professionals to assert liens against personal chooses in action other than for a verdict, judgment, award, settlement, or compromise of a claim for the medical expenses forming the basis of the lien could easily run afoul of Illinois' long-standing policy against such assignments. See, Manago II special concurring opinion of Justice Gordon (*Manago II,* 2016 IL App (1st) 121365, ¶¶55-59) . The assignment of the expectancy of recovery from a non-assignable cause of action is a meaningless distinction intended to circumvent public policy. "If the assignment of the cause of action is void, the assignment of the expectancy of the proceeds is also void." *Town & Country Bank of Springfield v. Country Mut. Ins. Co.*, 459 N.E.2d 639, 641, 121 Ill.App.3d 216, 76 Ill.Dec. 724 (Ill. App. 4 Dist., 1984). See also, *Midland States Life Ins. Co. v. Hamideh*, 311 Ill.App.3d 127, 724 N.E.2d 32, 243 Ill.Dec. 723 (Ill. App., 1999), holding a security interest against non-assignable lottery right to a prize as a void assignment.

The appellate court in *Manago II* correctly identified that the lien statute contains limiting language:

> "[S]ection 10(a) of the Act provides health care providers "shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges up to the date of payment of damages to the injured person." 770 ILCS 23/10(a) (West 2004). The phrase "all claims and causes of action of the injured person" is limited by the phrase "for the amount of the health care professional's or health care provider's reasonable charges up to the date of payment of damages to the injured person." *Id.; In re E.B.,* 231 Ill.2d at 467, 326 Ill.Dec. 1, 899 N.E.2d 218. The latter phrase does not merely describe the amount of a lien; it also describes the nature of the claim triggering the creation of the lien, *i.e.,* claims for reasonable medical charges."

Finding the lien statute to restrict health care services liens to causes of action of the injured person for the reasonable medical expenses as both the trial and appellate courts did is the only just and logical interpretation. A lien in gross against each and every lawsuit that

an injured person may bring is an expectancy in the recovery of such lawsuits and therefore is essentially a partial[1] assignment of such causes of action. Certainly, this cannot be the intention of the legislature when they combined all of the various medical lien claims into a single statute.

b. Duty to Protect Minor Litigants

Interpreting the statute in a manner as to grant liens in gross to any and all causes of action would cause the entire legal system to function in opposition obligation to protect minor's interests. (*Mastroianni v. Curtis* (1979), 78 Ill.App.3d 97, 33 Ill.Dec. 723, 397 N.E.2d 56.) Every minor plaintiff is a ward of the court when involved in litigation, and the court has a duty and broad discretion to protect the minor's interests. (*Burton v. Estrada* (1986), 149 Ill.App.3d 965, 103 Ill.Dec. 233, 501 N.E.2d 254.) See also *Kingsbury v. Buckner* (1890), 134 U.S. 650, 680, 10 S.Ct. 638, 648, 33 L.Ed. 1047, 1059 (Citing Illinois law the Supreme Court stated: "The court, whose duty it is to protect the interests of the infant, should see to it that they are not bargained away by those assuming, or appointed, to represent him.").) See also *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197 (Ill. App., 2013)

c. Full & Fair Compensation

Our Supreme Court recently stated that the fundamental premise of tort law is that of just compensation for any loss or injury proximately caused by the tortfeasor. *Clark v. The Children's Mem'l Hosp.*, 2011 IL 108656, 955 N.E.2d 1065, 353 Ill.Dec. 254 (Ill., 2011) (2011 IL 108656 at ¶29). The Court cited to its decision in *Best v. Taylor Machine Works*, 179 Ill.2d 367, 406, 228 Ill.Dec. 636, 689 N.E.2d 1057 (1997) explaining "[t]here is

[1] Partial because the Act limits the total of such lien claims in any one lawsuit to 40%.

universal agreement that the compensatory goal of tort law requires that an injured plaintiff be made whole"; and further citing to the Restatement (Second) of Torts § 903, cmt. a, at 453–54 (1979) for the proposition that "compensatory damages are designed to place [a plaintiff] in a position substantially equivalent in a pecuniary way to that which he would have occupied had no tort been committed".

Where a court interprets the Family Expense Act (750 ILCS 65/15) as placing a lien against a minor's cause of action for monies owed by the minor's parents and for which the minor could not bring a cause of action the minor is denied full and fair compensation for the injuries suffered by the minor this violates the policy of placing the minor in a position substantially equivalent in a pecuniary way to that which the minor would have occupied but for the tort. The minor's parent, April Pritchett, separately pursued a claim under the Family Expense Act (750 ILCS 65/15) for $79,572.63 in "the medical bills stipulated to by the parties" (2016 IL App (1st) 121365 ¶7 & 8). The trial court found that the minor's parent failed to establish a prima facie case "due to the lack of evidence presented by Pritchett establishing any expectation of having to pay the medical bills." (2016 IL App (1st) 121365 ¶8). In this case, (1) the parent sued for the medical bills, and (2) the court denied recovery for the medical bills. Placing a lien upon the minor's claim which was independent of his mother's claim for those bills is unjust and violates any public policy involved excepting the protection of a creditor. It certainly does not protect the interests of the minor.

The public policy involved is further compounded where, in many cases, the amount that the minor recovers is limited by the solvency of the judgment debtor or insurance policy limits on the recovery. In such a case imposing the expenses for which the minor's parents

are responsible upon the minor's recovery is unjust to the minor and denies the minor of due process.

d. Parental Obligation

The general public does not have a duty to completely support a child where the parent is capable of contributing to such support. *In Interest of Nelsen*, App. 2 Dist.1977, 12 Ill.Dec. 18, 54 Ill.App.3d 412, 369 N.E.2d 515. "A parent is under an obligation to provide for the maintenance of his infant children, is a principle of natural law; and it is upon this natural obligation alone that the duty of a parent to provide his infant children with the necessaries of life rests." *Clark v. The Children's Mem'l Hosp.*, 2011 IL 108656, 955 N.E.2d 1065, 353 Ill.Dec. 254 (Ill., 2011) at ¶50. Thus, the obligation to pay the medical expenses is on the parent, and the cause of action to recover for the medical expenses lies in the parent, not in the child. *Billy v. Meyer* (1965), 60 Ill.App.2d 156, 163, 208 N.E.2d 367.

It is incomprehensible that the legislature intended to strap a child with the obligations of that child's parents where the child lacks the right to sue for those damages. *Reimers v. Honda Motor Co., Ltd.*, App. 1 Dist.1986, 104 Ill.Dec. 165, 150 Ill.App.3d 840, 502 N.E.2d 428, appeal denied 108 Ill.Dec. 424, 114 Ill.2d 557, 508 N.E.2d 735; *Dewey v. Zack*, App. 2 Dist.1995, 209 Ill.Dec. 465, 272 Ill.App.3d 742, 651 N.E.2d 643. A hospital would not be able to sue the minor for the medical treatment provided to that minor. *Estate of Hammond v. Aetna Cas.* (Aetna Life & Cas. Co.), App. 1 Dist.1986, 96 Ill.Dec. 270, 141 Ill.App.3d 963, 491 N.E.2d 84; *Kennedy v. Kiss* (1980), 89 Ill.App.3d 890, 894, 45 Ill.Dec. 273, 412 N.E.2d 624; and 2 Williston on Contracts, § 240, at 51 (3rd ed. 1959).)

B. A medical care lien can attach only to a claim arising out of the event which led to the medical care.

The opinion held that the last major amendment to the lien statute, the most recent one noted in *Galvan*, means a medical care provider now has a right to recover from *any* money an injured person receives as a settlement or an award in *any* type of claim he or she might bring at *any* time. *Galvan v. Northwestern Memorial Hospital*, 382 Ill.App.3d 259, 271-72, 888 N.E.2d 529, 541 (2008) (noting the amendment). That is so even if that settlement or award is not causally related to the injuries which led to the treatment that in turn led to the lien. That in turn would mean a hospital or other health care provider could sue a minor for medical care costs, whereas he or she is not normally liable for such costs. That is the consequence of that interpretation because if the lien can be asserted against any part of any recovery, even if the recovery did not include medical care costs, the medical care provider is essentially being allowed to sue that minor directly. That reading of the Act contradicts holdings to the contrary over many years.

When the legislature originally provided lien relief to medical care providers by giving them a lien right against the settlement or award received by a patient who still owed the medical care provider for medical services, it assumed as a prerequisite for allowing a lien both that the patient owed for the care and that there was a connection between the medical care and the incident underlying the suit in which a lien is being asserted. That is seen in the language in section one of the earlier version of the Act, discussed in *Anderson*. The Act established a lien upon all claims and causes of action of the injured person for the amount of the care provider's reasonable charges. The lien attached to the action by the injured party *based on the negligent act* which caused the injury treated by the lien holder.

Anderson v. Department of Mental Health, 305 Ill.App.3d 262, 711 N.E.2d 1170 (1999) (discussing sections 1 and 2 of the prior Act).

That Act was amended, but Section 10 creating the lien still contains similar language in that it still focuses on the "claims and causes of action of the *injured* person". 770 ILCS 23/10(a). It refers to the injured person, not the patient. From that, one can read that the legislature was still looking to the case involving the *injury* for imposition of a lien, not just any case filed by the patient in any court for any reason. If it meant what the opinion says it means, the provision would have said "claims and causes of action of the *patient*".

The *Manago I* opinion focused on the new language in the amendment and the removal of that phrase, contending that the attachment of a lien is no longer limited to an "action brought by such injured person *on account of such claim or right*", and that the lien therefore attaches to *any* verdict or settlement of the patient. From that, the appellate court in *Manago I* agreed that a hospital has a lien against a patient's settlement or award regardless of whether the recovered amount included medical expenses.

However, that analysis of the intent allegedly shown by the removal of the quoted language ignores the chronological limitation that the legislature put on the period of time when the provider can recover its charges. The health care provider has a lien for charges only "up to the date of payment of damages to the injured person". 770 ILCS 23/10(a). The legislature, by that language, linked the lien to the date on which the injured person recovered his or her damages, and those damages would presumably be damages for the injury. The lienholder did not have an unlimited time within which to collect on its lien, as would have been the case if the legislature had intended that the lienholder could collect from *any* judgment obtained by the injured person for *any* reason.

From that, we see that the legislature must have assumed that the lien related to the recovery for the injury, just as the original act had made clear. Otherwise, the Act's clear time bar would instead be indefinite, because it would restart each time the tort victim had some new claim or filed some new action.

Language linking the lien only to the personal injury claim or case is also seen in that part of Section 10(a) which limits the total of all liens to 40% of the "verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person *on his or her claim or right of action*". [Emphasis supplied.] That latter language did not look to the total amount of liens in *any* claim or *any* right of action, but only to the total amount of liens in "his or her" right of action. That is in the singular, referring to "a" cause of action. That was done because the legislature assumed the need to take some particular action when liens exceeded some fixed percentage of the recovery existed only in the personal injury action in which the treatment resulting in the unpaid bill was rendered. It had no reason to extend the lien right to any funds the patient received in *any* claim or litigation at any future time.

That last statement about extending lien rights indefinitely lights up another problem with the unlimited reading of the definition of the fund to which the Act's lien attaches. If the hospital, or any health care provider or professional, has a lien right to recover its bills in *any* litigation brought by its patient, that would give a provider the right to recover even from a patient's Workers' Compensation claim. That would interfere with the State's carefully designed scheme to protect injured workers and ensure they receive temporary disability payments to feed, clothe and shelter themselves and their families. Surely the legislature did not intend the Lien Act to intrude on that statutory relief.

Further evidence of the kind that *Alvarez* looked at to determine whether "plain" language really meant what one party thought is found in Section 10(c)'s mathematical formula for limiting and apportioning lien amounts. No single provider can receive more than one-third of the verdict or settlement. If the total of all claimed liens exceeds 40% of the verdict, then health care providers (hospitals) cannot receive more than 20% of the verdict or settlement, and health care professionals (doctors) cannot receive more than 20% of the verdict or settlement. Section 10(c)(1) and (2). Total lien payments are capped at 40% of the settlement or award. In addition, that section provides a formula for reallocating unused percentages.

In light of all those limitations and complex allocations, could the legislature possibly have intended those provisions to apply in *any* case ever brought by a patient who still owes payment to a hospital or doctor for medical care of accident injuries? If that were the case, the lien holder could recover again and again, in each such pending action, until it has all its bills paid. The percentage limitation and allocation would be circumvented, and the primary goal of the Lien Act amendment would be negated.

Further, can the Court imagine a judge in another case suddenly finding him or herself called upon to adjudicate liens in a case entirely unrelated to the matter before it? We should keep in mind that it is not just a matter of math. There are questions about the validity and reasonableness of the medical bills, potentially requiring a hearing. That is logically handled best by the judge who is adjudicating the claim in which the medical treatment leading to the lien or liens actually occurred.

Further evidence that the legislature intended liens for patient care to apply only in the case in which the bills for that care were at issue is seen in the last part of Section 10(c).

That provides that where total lien amounts exceed 40% of the recovery, attorney's fees are limited. In that scenario, the injured person's attorney is not allowed to receive a fee of more than 30% of the recovery, regardless of the provisions of the attorney-client contract. That provision surely was not intended to apply outside the personal injury case in which the lawyer represents an injured client whose medical care resulted in unpaid bills and consequent liens.

There are cases involving tragic injury in which liens of hundreds of thousands of dollars exist. Under the County's construction, lienholders could exert such liens over three or four or more future claims by that patient, each time limiting the attorney to a fixed fee. That might not be a typical situation, but it is sometimes the case. Surely the legislature did not mean to limit attorney fees in cases unrelated to the accident case in which the lien claim was first made. That further shows that the legislature did not intend such liens to apply outside the case and the particular claim involving the care that created the lien.

Further evidence of the legislature's intent to limit the chronological scope and reach of such liens is found in Section 15. It provides that the injured person making a recovery must give notice to medical care providers providing service to the injured person. Surely the legislature intended to mean that such notice must be given to the health care providers providing care for injuries sustained in the accident currently at issue, not some unrelated case. The alternative would be to require an injured person to give notice to each medical provider and medical professional who ever treated him for any reason whatsoever, and to who he still owed money, each time he or she either made a claim or filed a suit. Such a reading of the Act would also surely bring into play questions about what is a claim that implicates the need for such notice.

Section 15 also points to *the* treatment or care rendered to that injured person, not *any* care rendered for any reason, similar to the "singular" language noted above. Again, this suggests that liens are intended to attach only in the case seeking recovery for the medical care related to the injury suffered in the accident.

All this supports plaintiff's introduction, where he pointed out that the latest amendment to the lien statute was not intended to change how the Act applied. Rather it was intended to put all such liens under one statute and to limit total liens to 40%, to avoid a situation where medical liens would otherwise consume an entire verdict or settlement.

In *Manago I* the court looked to *Anderson* as the basis for its finding that a medical care lien attaches to *any* judgment, regardless of the grounds for that judgment. *Anderson v. Department of Mental Health*, 305 Ill.App.3d 262, 711 N.E.2d 1170 (1999). As noted above, the Act's current version does not contain the phrase "based on the negligent or wrongful act" that was in the prior version. The *Anderson* court said without that phrase, a medical care lien would attach to *any* verdict or recovery by the injured person.

Anderson was addressing a lien claimant's contention that the recent amendment meant the lien attached to *any* recovery by the injured person, for any reason whatsoever. The opinion in *Manago I* pointed to the continued presence of those words in the amended version as evidence that the legislature still intended the lien attach only to funds received in an accident claim related to the care and lien at issue. However, the court could have reached the same conclusion without that underpinning, by looking at the statute as a whole and analyzing each section as plaintiff did above. The plaintiff in *Anderson* there obviously failed to bring all that to that court's attention. More importantly, the plaintiff there

obviously did not point out that such a broad reading of the lien statute would raise constitutional issues.

C. Allowing a lien against the minor's recovery would constitute an improper taking.

A lien is a property right, one impressed on another person's property. *Galvan v. Northwestern Memorial Hospital*, 382 Ill.App.3d 259, 271-72, 888 N.E.2d 529, 541 (2008). The imposition of a lien constitutes a constitutional taking because it deprives the person subject to the lien of a significant property interest. See, *Roberts v. Total Health Care, Inc.*, 109 Md.App. 635, 675 A.2d 995, (1995); *Harris County v. Progressive National Bank,* 93 S.W.3d 381 (Tex. Ct. App 2002); *County of Burleson v. General Electric Capital Corp.,* 831 S.W.2d 54 (Tex. Ct. App. 1992).

In *Clark v. the Children's Mem'l Hosp.*, 2011 IL 108656, 955 N.E.2d 1065, 353 Ill.Dec. 254 (Ill., 2011) our Supreme Court stated:

> "The Family Expense Act is a codification and expansion of common law doctrine of necessaries, under which a wife or minor child could obtain necessary goods or services on credit and the husband or father was liable, based on his duty to support his family. See, e.g., *Hunt v. Thompson*, 4 Ill. 179, 180 (1840) ('[A] parent is under an obligation to provide for the maintenance of his infant children, is a principle of natural law; and it is upon this natural obligation alone that the duty of a parent to provide his infant children with the necessaries of life rests.')" (2011 IL 108656 ¶50)

Under Illinois law, the minor is prevented from bringing an action for the medical bills (*Estate of Hammond v. Aetna Cas.* (Aetna Life & Cas. Co.), App. 1 Dist.1986, 96 Ill.Dec. 270, 141 Ill.App.3d 963, 491 N.E.2d 84) unless assigned by the parent to the child. Even when the cause of action is assigned by the parent to the child (which did not happen in this instance), such claim is subject to defenses which are peculiar to the parent, but not necessarily the minor, such as the parents contributory negligence (*see Kennedy v. Kiss*, App.

1 Dist.1980, 45 Ill.Dec. 273, 89 Ill.App.3d 890, 412 N.E.2d 624), and the statute of limitations (*see Curtis v. Womeldorff*, 145 Ill.App.3d 1006, 99 Ill.Dec. 807, 496 N.E.2d 500 (1986)). The claim for medical expenses "is not a claim for damages as a result of the child's personal injury, but is founded on the parents' liability for the child's medical expenses under the Act. *Janetis v. Christensen,* 200 Ill.App.3d 581, 588, 146 Ill.Dec. 341, 558 N.E.2d 304 (1990). The cause of action belongs to the parents, and if the parents are not entitled to recover, neither is the child. *Bauer v. Memorial Hospital,* 377 Ill.App.3d 895, 922, 316 Ill.Dec. 411, 879 N.E.2d 478 (2007). If a minor plaintiff's parents waive their right to recover minor's medical expenses, the minor is not entitled to recover the medical expenses unless her parents assigned their claim to their child. *Roberts v. Sisters of Saint Francis Health Services, Inc.,* 198 Ill.App.3d 891, 904, 145 Ill.Dec. 44, 556 N.E.2d 662 (1990). Absent an assignment from the parent a minor plaintiff has never had a claim for medical expenses and thus lacks standing to pursue that claim. *Pirrello v. Maryville Acad., Inc.*, 19 N.E.3d 1261 (Ill. App., 2014), ¶18.

Where the claimed lien is for medical expenses incurred treating the injury that forms the basis for the recovery in the same personal injury litigation where the lien is asserted, there is a causal connection between the lien and the injured person's case. The statutory attachment of a lien consequently has a rational basis. However, could a legislature impress a lien against funds recovered by a person in a claim entirely unrelated to that medical care, as the appellate court found in *Manago I*?

In that scenario, the legislature would be giving the person claiming the lien, in this case a governmental entity, a property interest in another person's property without any

nexus between the claim and the property, potentially without any notice to the person with the right to that property. That is an unconstitutional taking.

Furthermore, allowing the hospital to recover directly from a child's recovery (for pain, suffering, permanent scarring, disability, loss of earning potential, ect.) would mean the child would have a lien on his or her award for the medical bills, but would not have the commensurate right to pursue the tortfeasor for the amount of those bills. An adult in the same situation would be able to recoup those costs from the tortfeasor. The Act thus discriminates against minors with no reasonable basis for doing so, and that violates the tenet of equal protection. The equal protection clauses in the federal and Illinois constitutions (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2) require the government to treat similarly situated individuals in a similar manner. *Bartlow v. Costigan*, 2012 IL App (5th) 110519, at ¶ 69, 974 N.E.2d 937, 953. The state can draw distinctions among categories, but the criteria drawing the distinction must be related to the purpose of the legislation id.), and that is missing here.

This construction of the Act also implicates due process concerns. *Anderson* would have recognized that issue immediately if the plaintiff had raised it, and surely would have omitted the sentence that the appellate court relied on in *Manago I.* That would have been the result because when construing a statute, a court must assume that the legislature did not intend an absurd result (*Mason v. John Boos & Co.*, 2011 IL App (5th) 100399, 959 N.E.2d 209, 212), and unconstitutionality would be an absurd result. For that reason, this Court should not rely on that sentence in *Anderson.*

Here, Akeem did not have or make a claim for the medical costs, and the circuit court denied his mother's effort to recover those expenses from the tortfeasor. That means there is

no causal relationship or nexus between the funds received by Akeem and the hospital, and thus no basis for the legislature to give Cook County in interest in Akeem's personal recovery.

The constitutional problems do not exist if courts recognize that the parent and not the child is the injured person to which the Lien Act refers. The legislature had to be aware of the long-standing case law defining a minor's parent, not the child, as the injured party for purposes of causes of action involving medical bills. See, *Beck v. Yatvin*, 235 Ill.App.3d 1085, 603 N.E.2d 558 (1992); and *Peterson v. Hinsdale Women's Clinic*, 278 Ill.App.3d 1007, 664 N.E.2d 209 (1996), discussing amendments to the statute of limitations and their impact on a parent's cause of action pursuant to the Family Expense Statute. In *Claxton by Claxton v. Grose*, 226 Ill.App.3d 829, 589 N.E.2d 954 (1992), the court similarly held that a parent was an "injured person" with respect to his claims for medical bills under the family expense act where his son was bitten by a dog in an Animal Control Act claim. In *Harvel v. City of Johnston City*, 146 Ill.2d 277, 586 N.E.2d 1217, 166 Ill.Dec. 888 (Ill., 1992) the term "party injured" was intended to include an injured worker's spouse who suffers a loss of consortium as a result of the defendant's willful violation of the Act. The same reasoning was applied in *Pirrello*, 19 N.E.3d 1261, ¶3, where the underlying claim was for professional negligence in failing to properly evaluate the plaintiff and to recognize her propensity for self-harming behavior and failure to take precautions to protect her.

Where medical treatment is provided to a minor, the injured person for purposes of a Health Care Services Lien is that minor's parent. Therefore the lien extends to and attaches to the claims and causes of action of the parent and not the child. That is so because the child is not the "injured person" with respect to claims involving the medical bills.

D. A minor child is not liable for and cannot sue to recover medical expenses.

Akeem's mother claimed the costs of that child's medical care from the same tortfeasor against whom Akeem filed his claim, pursuant to the Family Expense Act. 750 ILCS 65/15. In *Clark v. the Children's Memorial Hosp.*, 2011 IL 108656, ¶50, 955 N.E.2d 1065, our this Court described the Act this way:

> The Family Expense Act is a codification and expansion of common law doctrine of necessaries, under which a wife or minor child could obtain necessary goods or services on credit and the husband or father was liable, based on his duty to support his family. See, e.g., Hunt v. Thompson, 4 Ill. 179, 180 (1840) ('[A] parent is under an obligation to provide for the maintenance of his infant children, is a principle of natural law; and it is upon this natural obligation alone that the duty of a parent to provide his infant children with the necessaries of life rests.')

The Family Expense Act claim was brought pursuant to a long line of cases holding that only a parent is liable for a child's medical care expenses. That was so because a minor is only liable for the cost of "necessaries", and even then is liable *only* if the sale or performance of the necessary was on the minor's credit and not the credit of another. *Woodring's Estate v. Liberty Mutual Fire Ins. Co.*, 71 Ill.App.3d 158, 160, 389 N.E.2d 211, 212 (1979). The lien documents submitted in this case show the plaintiff's mother as guarantor (C.367-374, 377-384). Medical expenses are admittedly necessaries, but only the parent is liable or responsible for them because, at least in this case, the medical care was not on the minor's credit. The hospital therefore could look only to the mother for payment, something it acknowledged when it sent the bills only to the mother. (C.367-374, 377-384).

This rule was reiterated in *Estate of Hammond* where the court specifically held that the obligation to pay such expenses is on the parent, "*not* on the child". *Estate of Hammond*

v. Aetna Casualty, 141 Ill.App.3d 963, 965-66, 491 N.E.2d 84, 85-86 (1986) (emphasis added). A minor is prevented from bringing an action for the medical bills unless the parent assigns that right to the child. *Id.* Even when the parent assigns the cause of action to the child (which did not happen in this instance), such a claim is subject to defenses which are peculiar to the parent but not necessarily the minor. *Kennedy v. Kiss*, 89 Ill.App.3d 890, 412 N.E.2d 624 (1980) (parents' contributory negligence); *Curtis v. Womeldorff*, 145 Ill.App.3d 1006, 496 N.E.2d 500 (1986) (statute of limitations for adult).

In *Estate of Aimone v. State Health Benefit Plan/Equicor*, 248 Ill.App.3d 882, 619 N.E.2d 185, 188 (1993), the court similarly held that an insurance plan was not without a remedy in a similar situation because the common law, and additionally the insurance plan, gave the plan a cause of action against the parents for the child's medical expenses.

Those cases addressed subrogation claims brought by the insurance carrier which had paid the minor plaintiff's medical bills and was now seeking repayment. However, the underpinning of those cases, regardless of the lien scenario they addressed, was the rule that minors are not liable for their medical bills (absent care being given on their own credit). That basic premise exists regardless of the fact scenario in which it is applied, and that premise is dispositive here.

The only case which appears to cut the other way is *Estate of Enloe*, 109 Ill.App.3d 1089, 441 N.E.2d 868 (1982). Unlike this case *Enloe* involved a settlement of a minors claim where the petition to settle the minor's estate stated that the minor had been injured and hospitalized at the lien claimant's hospital. There was no family expense claim alleged by the minor's parent nor was there a judgment expressly denying an award for the medical expenses which formed the basis for the lien claim. The opinion makes no mention of

whether the parents in *Enloe* assigned their right to sue for the medical expenses. The court in Enloe found that the hospital prior version of the lien statute created a debt where one might not otherwise exist stating: "we interpret the clear and mandatory language of the statute as creating such debts and liability of the injured person secured by lien, regardless of any such remedy at common law." (441 N.E.2d 868, 870, 109 Ill.App.3d 1089, 1091) . While this argument was potentially more tenable where the prior lien statute demanded a causal connection between the recovery and the medical treatment, it certainly cannot be sustained where the hospital has a lien against "any verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person", because the new lien statute creates two classes of minors who receive medical treatment, those who receive their treatment for injuries and those who do not.[2] Only those minors who receive treatment for injuries are held financially responsible for the medical bills by having liens impressed upon all legal claims that they have without limitation. See, *Memedovic v. Chicago Transit Authority*, 574 N.E.2d 726, 214 Ill.App.3d 957, 158 Ill.Dec. 613 (Ill. App. 1 Dist., 1991) where the court refused to apply the five year statute of limitations to a hospital lien claim stating "no time limit is set forth in the statute for perfecting the lien, the only requirement is that the notice be served before the proceeds have been distributed." (*Memedovic,* 574 N.E.2d at 727, 158 Ill.Dec. at 614); and *Illini Hosp. v. Bates*, 482 N.E.2d 235, 237, 135 Ill.App.3d 732, 735, 90 Ill.Dec. 528, 530 (Ill.App. 3 Dist., 1985). Construing the statute as to create a debt upon injured children without a nexus requirement between the medical care and the claims in the lawsuit creates an unjustifiable distinction between children who receive treatment for injuries versus children who are treated for disease, imposing financial

[2] Such as treatment for diseases.

obligations only upon those who are treated for injuries. Both classes of children have the potential of securing verdicts, judgments, awards, settlements, or compromises, yet according to the *Enloe* opinion only one group of children could have liens placed against all of their legal claims.

Furthermore, *Enloe* looked at *Woodring's* and said the distinction between being primarily liable and secondarily liable was critical in *Woodring's,* but not in the case before it. *Id.*, at 1091-92. That is where *Enloe* first goes astray, because that court seemed to think that *Woodring's* had acknowledged that *both* the parent *and* the child could be liable, one primarily and the other secondarily. But that was not correct. *Woodring's*, like all the other cases, held that a minor is *not* liable. The minor might technically be secondarily liable *if* the care was given premised on the minor's own credit, but that was not the case here nor was it the case there.

Additionally, as *Aimone* noted in distinguishing *Enloe*, the *Enloe* court only perfunctorily said the Family Expense statute provided an alternative remedy to the medical provider. For that statement, it relied on that statute's language that such expenses "shall be *capable of being charged* to the family's property". That language was there because without it, a medical provider had nowhere to look for payment due to the rule that a minor child is not liable for such costs. That was enabling language allowing the provider to seek recovery.

The *Enloe* court instead construed that "capable of being charged" language to mean that the Family Expense Act was not an exclusive remedy and that it did not conflict with the lien-based subrogation statute. The court seemed to reason that if the parent was *capable* of being charged, then the child must also have been liable. However, that court never squarely

said a minor is liable for charges for medical care even if that care is not rendered on his credit, and that reasoning is not logical. And *Enloe* never squarely addressed the question of how a minor who is not liable for the bills and consequently could *not* recover the cost of his care from the tortfeasor, could somehow find himself liable to pay the hospital from money awarded to the minor for his personal injury but *not* for those costs.

The *Enloe* court never had to address that last question because its sparse facts reflect only that there was a general settlement, and that settlement presumably included or took into consideration the child's medical bills. If a child requests compensation for medical bills from the tortfeasor or receives such payment from the tortfeasor (as happens when the parents assign their right of action against the tortfeasor to the minor), that is a much different scenario than the case now before this Court.

If the plaintiff in *Enloe* had clearly pointed all that out to that court, the *Enloe* court would either have come to a different conclusion, in line with all other authority, or it would have clarified that it allowed the lien there because the medical bill had been included in the child's recovery. In the latter instance, denying a lien would have given that child a windfall because the bill would have been left unpaid but the child would have been allowed to keep the money representing compensation for that bill. That is not what occurred here.

E. The parent is the "injured person" for purposes of the health care lien statute

The petitioner/lien-claimant cites to Black's law dictionary for the definition of "injured person" under the Health Care Services Lien Act rather than looking to Illinois precedence for such a definition. See *Claxton by Claxton v. Grose*, (Ill.App. 4 Dist. 1992) 589 N.E.2d 954, 226 Ill.App.3d 829, (a parent was an "injured person" with respect to his

claims for medical bills under the family expense act where his son was bitten by a dog in an animal control act claim). The county asserts:

> "Therefore, under the plain language of the Lien Act, the "injured person" was the person who sustained damage to his body, i.e., Akeem Manago, not his mother. Accordingly, under the plain language of the Lien Act the County had a lien that attached to the "judgment...secured by or on [Akeem Manago's] behalf...." (Brief of Petitioner page 17).

The absurdity of this contention is obvious. Consider the situation where the parent does in fact sue to recover medical expenses under a separate family expenses count or potentially a separate lawsuit. If minor's parent does not assign the family expense claim to the minor and secures a separate recovery for the medical expenses, under the counties interpretation of the meaning of "injured person," the lien would still attach to the minor's recovery and not the parent's. This scenario is an untenable situation where the child is forced to pay for the medical expenses out of her award for scarring, pain and suffering, and loss of a normal life (in other cases this could potentially include awards for increased risk of harm (IPI 30.04.03), shortened life expectancy (IPI 30.04.05), emotional distress (IPI 30.05.01), and Loss of Earnings or Profits (IPI 30.07 & 30.08)) while the parent is allowed to keep their award for the medical bills. This would truly be an absurd result that clearly was not contemplated by the legislature. See *Harvel v. City of Johnston City*, 146 Ill.2d 277, 586 N.E.2d 1217, 166 Ill.Dec. 888 (Ill., 1992).

F. There is no lien because there is no debt.

There is no lien against Manago because there was no underlying debt. The Uniform Fraudulent Transfer Act 740 ILCS 160/2) defines a lien as follows:

> "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

The Uniform Commercial Code Article 2A (810 ILCS 5/2A-103) defines lien in the following manner:

> (r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

For an equitable lien to exist there must be "(1) a debt, duty, or obligation owing by one person to another, and (2) a res to which that obligation attaches." *Lewsader v. Wal-Mart Stores, Inc.*, 296 Ill.App.3d 169, 694 N.E.2d 191 (1998) quoting *Paine/Wetzel*, 174 Ill.App.3d at 393, 528 N.E.2d at 360; see also *Leveyfilm, Inc. v. Cosmopolitan Bank & Trust*, 274 Ill.App.3d 348, 653 N.E.2d 875 (1995).

The petitioner/lien-claimant construes the Lien Act provisions as creating a lien against the minor's recovery even though the minor had no debt or obligation to the health provider for payment of the medical treatment and even though the minor did not have the ability to bring an action to recover those sums. There was no debt or obligation owed to the hospital by Akeem Mango. Consequently there could be no lien.

CONCLUSION

The construction of the lien statute given to it by both the trial and appellate courts is the only just and logical interpretation. It supports the public policies of protecting the rights of minors involved in litigation, the right of litigants to full and fair compensation under our tort laws for claims and causes of action held by minor plaintiffs. It does not invade the family relationship between parent and child by shifting onto the child the parent's obligation to care for the child. It does not violate the minor's due process rights by requiring the child to pay for a debt that it has no legal right to recover from the wrongdoer, and lastly where the parent, or child under an assignment, sue for and recover medical expenses the Health Care

Services Lien claimant is able to recover from the verdict, judgment, award, settlement, or compromise and if there is insufficient funds the Lien Act and Family Expense Act allow the hospital to pursue the parent for the medical bills. "[T]hat a distinction should be made-that the child shall be punished for the sins of the parents,--shocks every sense of justice and right." *Robinson v. Ruprecht*, 191 Ill. 424, 61 N.E. 631 at 634 (1901) *In re Estate of Bartolini*, (Ill.App. 1 Dist. 1996) 674 N.E.2d 74, 285 Ill.App.3d 613.

A lien in gross against each and every lawsuit that an injured minor may bring cannot be the intention of the legislature when they combined all of the various medical lien claims into a single statute. For the reasons stated, plaintiff requests that the order striking and denying the lien be affirmed.

Respectfully submitted,

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No. 121078

IN THE SUPREME COURT OF ILLINOIS

AKEEM MANAGO, a deceased minor by and through April Pritchett, Mother and Next Friend,
Plaintiff-Appellee,

APRIL PRITCHETT as court appointed special administrator for the **Estate of AKEEM MANAGO,**
Plaintiff-Appellee,

v.

THE COUNTY OF COOK,
Lienholder-Appellant

(Chicago Housing Authority, a Municipal Corporation, and H.J. Russell and Company, Defendants).

Appeal from the Appellate Court of the First District of Illinois

No. 1-12-1365

Circuit Court of Cook County
Case No. 08 L 13211

Honorable Thomas L. Hogan,
Judge Presiding.

PLAINTIFF APPELLEE'S CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 35 pages.

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NOTICE OF FILING

To: See service list below.

YOU ARE HEREBY NOTIFIED that on April 4, 2017, before 5:10 P.M., the undersigned filed Plaintiff Appellee's Brief, along with the Plaintiff Appellee's Certificate of Compliance with the Clerk of the Illinois Supreme Court, Supreme Court Building, 200 E. Capitol Springfield, IL 62701, by e-filing.

Estate of AKEEM MANAGO, by court appointed special administrator APRIL PRITCHETT

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PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that I transmitted the above described document(s) via e-mail, at the hour of 12:38 PM on April 4, 2017 from the Law Office of Mark Rouleau to the persons below listed at the e-mail address identified below and that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

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