

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-11699
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT NOV 19, 2008 THOMAS K. KAHN CLERK

D.C. Docket No. 06-80162-CV-DTKH

ERIC KAPLAN,
BONNIE KAPLAN,

Plaintiffs-Appellants,

versus

BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(November 19, 2008)

Before ANDERSON, HULL and COX, Circuit Judges.

PER CURIAM:

In late 2003, Plaintiffs Eric and Bonnie Kaplan (“the Kaplans”) began receiving BOTOX Cosmetic (“BOTOX”) injections from Bach McComb, a one-time

osteopath who had lost his license to practice medicine in Florida. The Kaplans sought the BOTOX injections for purely cosmetic purposes. After receiving several injections without incident, the Kaplans suffered severe injuries when, on November 24, 2004, McComb substituted raw botulinum-A toxin for BOTOX.

The Kaplans submitted approximately \$800,000 of resulting medical bills to their health insurer, Blue Cross and Blue Shield of Florida, Inc. (BCBSF). BCBSF denied their claims, finding that the November 24, 2004 injections were “cosmetic services,” not covered under their health insurance plan and that the medical care the Kaplans required as a result of those injections were “complications of non-covered services,” also not covered under their health insurance plan.

After an administrative review process yielded affirmance of BCBSF’s coverage determination, the Kaplans sued BCBSF in district court, alleging violation of ERISA. On cross-motions for summary judgment, the district court denied the Kaplans’ motion and granted summary judgment to BCBSF. The Kaplans now appeal that judgment.

We find no reversible error. The district court correctly found that BCBSF did not misinterpret the language of the Kaplan’s health insurance plan when it denied their claims. (R.1-28 at 11.) Like the district court, we decline to accept the Kaplans’ arguments that McComb’s substitution of raw botulinum-A toxin for BOTOX

transformed the medical services they later received to treat their resulting injuries into covered services.

AFFIRMED.