

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DEBT RECOVERY SOLUTIONS OF OHIO, INC.	:	JUDGES:
	:	Hon: Sheila G. Farmer, P.J.
	:	Hon: W. Scott Gwin, J.
	:	Hon: Julie A. Edwards, J.
Plaintiff-Appellee	:	
	:	
-vs-	:	Case No. 09-COA-012
	:	
JEFFREY S. LASH AND MARY P. LASH	:	<u>OPINION</u>
	:	
Defendants-Appellants	:	

CHARACTER OF PROCEEDING: Civil appeal from the Ashland Municipal Court, Case No. 08-CVF-1634

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 18, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendants-Appellants

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Gwin, J.

{¶1} Defendants-appellants Jeffrey S. and Mary P. Lash appeal a summary judgment of the Ashland Municipal Court of Ashland County, Ohio, entered in favor of plaintiff-appellee Debt Recovery Solutions of Ohio, Inc. Appellants assign two errors to the trial court:

{¶2} “I. THE APPELLEE DID NOT PROVE COMPLIANCE WITH OHIO REVISED CODE 1319.12 IN ITS SUMMARY JUDGMENT MOTION.

{¶3} “II. A BILLING CLERK CANNOT ATTEST TO THE REASONABLENESS OR NECESSITY OF MEDICAL SERVICES.”

{¶4} Appellee’s complaint alleged appellants received various medical services from Samaritan Regional Health Systems and Ashland Radiology Consultants. The complaint alleged Samaritan Regional Health Systems and Ashland Radiology Consultants assigned the accounts to appellee. Appellee’s complaint alleged the services were reasonable and necessary.

{¶5} Appellants’ answer raised the affirmative defense of statute of frauds.

{¶6} Subsequently, appellee filed for summary judgment. Appellee attached affidavits from Jan Stuart of Ashland Radiology Consultants and Hanni VanAusdale of Samaritan Regional Health Systems. The affidavits alleged although appellants’ insurance company paid a portion of the bills, appellants had not paid the balances due.

{¶7} Appellants’ memorandum in opposition asserted the affidavits were insufficient because the persons who prepared the billings did not have knowledge of the reasonableness and necessity of the medical services provided. Appellants asserted the two affiants are not custodians of the records as required by Ohio Evid. R.

803 (6). Appellants stated the affiants could only testify that appellants were billed and did not pay, which did not satisfy appellee's burden of proving its case.

{¶8} Appellants challenged the standing of the appellee to bring the claim, citing R.C. 1319.12. Finally, appellant's argued appellee did not submit sufficient records with the affidavits pursuant to Civ. R. 56 (E).

I.

{¶9} In their first assignment of error, appellants argue appellee did not prove it complied with R.C. 1319.12 in its motion for summary judgment. The statute provides in pertinent part:

{¶10} "(B) A collection agency with a place of business in this state may take assignment of another person's accounts, bills, or other evidences of indebtedness in its own name for the purpose of billing, collecting, or filing suit in its own name as the real party in interest.

{¶11} "(C) No collection agency shall commence litigation for the collection of an assigned account, bill, or other evidence of indebtedness unless it has taken the assignment in accordance with all of the following requirements:

{¶12} "(1) The assignment was voluntary, properly executed, and acknowledged by the person transferring title to the collection agency.

{¶13} "(2) The collection agency did not require the assignment as a condition to listing the account, bill, or other evidence of indebtedness with the collection agency for collection.

{¶14} "(3) The assignment was manifested by a written agreement separate from and in addition to any document intended for the purpose of listing the account,

bill, or other evidence of indebtedness with the collection agency. The written agreement shall state the effective date of the assignment and the consideration paid or given, if any, for the assignment and shall expressly authorize the collection agency to refer the assigned account, bill, or other evidence of indebtedness to an attorney admitted to the practice of law in this state for the commencement of litigation. The written agreement also shall disclose that the collection agency may consolidate, for purposes of filing an action, the assigned account, bill, or other evidence of indebtedness with those of other creditors against an individual debtor or co-debtors.”

{¶15} Civ. R. 56 states in pertinent part:

{¶16} “(C) Motion and proceedings

{¶17} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

{¶18} ***

{¶19} “(E) Form of affidavits; further testimony; defense required

{¶20} “Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

{¶21} A trial court should not enter a summary judgment if it appears a material fact is genuinely disputed, nor if, construing the allegations most favorably towards the non-moving party, reasonable minds could draw different conclusions from the undisputed facts, *Houndshell v. American States Insurance Company* (1981), 67 Ohio St. 2d 427. The court may not resolve ambiguities in the evidence presented, *Inland Refuse Transfer Company v. Browning-Ferris Industries of Ohio, Inc.* (1984), 15 Ohio St. 3d 321. A fact is material if it affects the outcome of the case under the applicable substantive law, *Russell v. Interim Personnel, Inc.* (1999), 135 Ohio App. 3d 301.

{¶22} When reviewing a trial court's decision to grant summary judgment, an appellate court applies the same standard used by the trial court, *Smiddy v. The*

Wedding Party, Inc. (1987), 30 Ohio St. 3d 35. This means we review the matter de novo, *Doe v. Shaffer*, 90 Ohio St.3d 388, 2000-Ohio-186.

{¶23} The party moving for summary judgment bears the initial burden of informing the trial court of the basis of the motion and identifying the portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the non-moving party's claim, *Drescher v. Burt* (1996), 75 Ohio St. 3d 280. Once the moving party meets its initial burden, the burden shifts to the non-moving party to set forth specific facts demonstrating a genuine issue of material fact does exist, *Id.* The non-moving party may not rest upon the allegations and denials in the pleadings, but instead must submit some evidentiary material showing a genuine dispute over material facts, *Henkle v. Henkle* (1991), 75 Ohio App. 3d 732.

{¶24} Appellants urge appellee did not attach any evidence establishing the above to its motion for summary judgment. Appellee responds it attached the executed assignment documents to the complaint.

{¶25} Civ. R. 10 (D)(1) states: "When any claim or defense is founded on an account or other written instrument, a copy of the account or written instrument must be attached to the pleading. If the account or written instrument is not attached, the reason for the omission must be stated in the pleading."

{¶26} The trial court's judgment entry stated it had carefully reviewed the statute and case law in conjunction with the assignment documents appellee attached to his complaint. The court found the documents comply with the requirements of the Code.

{¶27} Appellants cite *Recovery Management Systems, Ltd. v. Coburn*, Richland App. No. 2008-CA-0007, 2008-Ohio-5713, and *Recovery Management Systems, Ltd v.*

Bathea, Richland App. No. 2008-CA-0057, 2009-Ohio-572. In the *Recovery* cases, we reversed summary judgments in favor of the collection agency, finding a factual issue whether Recovery had properly commenced the action because it did not present sufficient evidence to comply with the statute. Appellee notes appellants do not argue the assignment documents are insufficient, but argue the documents were not submitted properly.

{¶28} We find the documents were properly before the court, and the court did not err in finding appellee established it had met the requirements of R.C. 1319.12.

{¶29} The first assignment of error is overruled.

II

{¶30} In their second assignment of error, appellants argue the affidavits of Stuart and VanAusdale are insufficient to support appellee's claim, because the affiants are not competent to state the medical services alleged were reasonable and necessary, or even were actually provided.

{¶31} Appellee responds that its cause of action is in implied contract for payment of medical services rendered. Appellants did not argue the services were not provided, nor did they offer any defense that the services or bills were not reasonable and necessary.

{¶32} We find the affidavits appellee presented were properly before the court, and contain sufficient information from which the court could conclude, in conjunction with the other pleadings, that appellee was entitled to a judgment as a matter of law. We agree.

{¶33} The second assignment of error is overruled.

{¶34} For the foregoing reasons, the judgment of the Ashland Municipal Court of Ashland County, Ohio, is affirmed.

By Gwin, J.,
Farmer, P.J., and
Edwards, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

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