IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-420

No. COA21-501

Filed 21 June 2022

Mecklenburg County, No. 19 CVS 2575

MATTHEW GLEASON, on behalf of himself and all others similarly situated, Plaintiff,

v.

THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY, a North Carolina Hospital Authority, d/b/a Atrium Health; and DOES 1 through 25, inclusive, Defendants.

Appeal by plaintiff from orders filed 3 December 2020 and 25 May 2021 by Judge Jesse B. Caldwell, III, in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 April 2022.

Higgins Benjamin, PLLC, by John F. Bloss, for plaintiff-appellant.

Robinson, Bradshaw & Hinson, P.A., by Robert W. Fuller, Pearlynn G. Houck, and Travis S. Hinman, for defendant-appellee Atrium.

ARROWOOD, Judge.

¶ 1 Matthew Gleason ("plaintiff"), on behalf of himself and all others similarly situated, appeals from the trial court's 3 December 2020 order denying plaintiff's motion for class certification, and the trial court's 25 May 2021 order denying

plaintiff's motion to strike and motion for summary judgment and granting summary judgment to The Charlotte-Mecklenburg Hospital Authority d/b/a Atrium Health ("defendant Atrium"). Plaintiff contends the trial court erred in granting summary judgment to defendant Atrium on the grounds that defendant Atrium failed to disclose hospital facility fees to plaintiff in a Request of Treatment and Authorization Form ("Consent Form") and accordingly was not entitled to bill plaintiff for the fees. Defendant Atrium argues the trial court properly granted summary judgment on the breach of contract claim because "[t]he Consent Form is unambiguous and, as a matter of law, required [plaintiff] to pay his hospital account at Atrium's regular rates." Defendant Atrium also filed a motion to dismiss plaintiff's appeal from the order denying class certification. For the following reasons, we dismiss plaintiff's appeal from the order denying class certification and affirm the trial court's order denying plaintiff's motion to strike and granting summary judgment to defendant Atrium.

I. Background

¶ 2 Plaintiff filed a class action complaint in Mecklenburg County Superior Court on 4 February 2019. Plaintiff alleged that on 4 October 2018, he presented to the Emergency Department of defendant Atrium's hospital in Pineville, North Carolina, and prior to receiving treatment he signed defendant Atrium's "standard Contract[,]" which was the Consent Form. Plaintiff alleged that he "received no notice or

warning . . . as to the substantial additional Emergency Department Facility Fees that are charged by the Hospital in addition to its charges for the specific treatments and services provided, or as to the amounts thereof." Plaintiff was charged a total of $4,692.00, consisting of $1,731.25 in charges for specific treatment and services provided, and $2,960.75 for "an Emergency Department Level 5 Facility Fee[.]"

¶ 3 Plaintiff sought a declaratory judgment that defendant Atrium cannot bill an undisclosed facility fee to emergency room patients under its existing Consent Form, as well as injunctive relief preventing defendant Atrium from collecting amounts attributable to the surcharge from plaintiff. The complaint also requested class certification on behalf of similarly situated patients.

¶ 4 On 13 May 2019, defendant Atrium filed a motion to dismiss pursuant to Rule 12(b)(6). In support of the motion to dismiss, defendant Atrium filed several exhibits, including the Consent Form plaintiff signed on 4 October 2018, an itemized bill issued to plaintiff, and an excerpt from defendant Atrium's "chargemaster" document, effective in October 2018. In the "Request for Treatment" portion of the Consent Form, plaintiff agreed "to receive the services even if my insurance plan may not cover or continue to cover specific services, including the specific services rendered during the admission." In the "Payment Guaranty" portion of the Consent Form, plaintiff agreed, in relevant part:

> to pay all charges for services rendered by the Hospital and

> my providers during my hospitalization or treatment. This guaranty includes charges for services not covered by my insurance, regardless of the reason that insurance coverage is denied. I agree to pay the Hospital account I incur in accordance with the regular rates and terms of the Hospital at the time of my discharge.

The itemized bill includes a "HC ED Visit Level 5" for $2,960.75, which is consistent with the excerpt from defendant Atrium's chargemaster.

¶ 5 The trial court conducted a hearing on the motion to dismiss on 28 June 2019 and entered an order denying the motion on 9 August 2019.

¶ 6 On 29 August 2019, defendant Atrium filed an answer responding to the allegations of the complaint and asserting counterclaims to collect the full amount due on the hospital bill. Several of defendant Atrium's defenses asserted that plaintiff could not challenge the facility fee negotiated by his insurance carrier, Blue Cross Blue Shield, because plaintiff had "chosen to be insured by a Blue Cross high-deductible policy, with concomitant reduction in insurance premiums as compared to a policy with a lower deductible[.]" The first counterclaim asserted that plaintiff had breached the contractual obligations set forth in the Consent Form by failing to pay a total of $3,463.42, and the second counterclaim asserted that defendant Atrium was entitled to recover the reasonable value of medical treatment and services provided in *quantum meruit*.

¶ 7 Plaintiff filed a reply to the counterclaims on 4 October 2019, pleading "all

equitable defenses, including but not limited to doctrines of laches, waiver, estoppel, unclean hands, fraud and set-off in bar or limitation of [defendant Atrium]'s claims and damages to the maximum extent permitted by applicable law." Plaintiff requested dismissal of defendant Atrium's counterclaims with prejudice, as well as entry of judgment against defendant Atrium and in favor of plaintiff and class members.

¶ 8 On 4 May 2020, plaintiff filed a motion for class certification. On 3 December 2020, the trial court entered an order denying the motion for class certification. Plaintiff did not enter an appeal from the order at this stage, and proceeded with his claims on an individual basis.

¶ 9 Both parties filed motions for summary judgment on 21 January 2021. On 9 March 2021, plaintiff also filed a motion to strike the affidavit, interrogatory responses, and testimony of defendant Atrium's expert witness Dr. Robert Bitterman ("Bitterman"), arguing Bitterman's testimony and opinion "(1) inappropriately seeks to introduce expert testimony on the law and (2) lacks adequate foundation." During a 7 January 2021 deposition, Bitterman testified regarding notice of the facility fee, stating that the facility fee covered "charges for hospital services," and when looking at "the totality of the document[,] . . . there's at least three or four places where [the Consent Form is] very direct and very appropriately states exactly" that the patient is "going to be responsible to pay for hospital services[.]" Bitterman also testified

regarding legal requirements under the Emergency Medical Treatment and Active Labor Act ("EMTALA") and the obligations of hospitals to disclose costs, stating in part that Center for Medicare and Medicaid Services ("CMS") guidance directs providers "not to initiate cost conversations. . . . until after the screening exam has been completed for that, unless the patient raises the issues themselves." Bitterman described this as CMS's belief that advertising fees prior to screening "discourages the individual from staying for their required medical screening exam."

¶ 10 The trial court conducted a hearing on the motions on 23 April 2021. On 25 May 2021, the trial court entered an order denying plaintiff's motion to strike and motion for summary judgment and granting defendant Atrium's motion for summary judgment.

¶ 11 In granting defendant Atrium's motion for summary judgment, the trial court determined the following facts were undisputed: plaintiff admitted that he signed the Consent Form, did not read the form before signing it, and did not ask questions about the cost of his care before treatment; plaintiff also admitted that defendant Atrium's charges were at the regular "chargemaster" rates, with discounts negotiated for his benefit by Blue Cross Blue Shield. Based on these facts, the trial court found that "enforcement of the outstanding contractual payment obligation created by the Consent Form presents a pure issue of law under *Shelton v. Duke University Health System, Inc.*, 179 N.C. App. 120, 633 S.E.2d 113 (2006), *rev. denied*, 643 S.E.2d 590

(2007)." The trial court viewed the case as "indistinguishable from *Shelton*," as neither plaintiff argued that they were charged anything other than the regular rates. Additionally, the trial court stated that "[e]ven if Atrium was not entitled to summary judgment on its contractual claim for relief, [plaintiff]'s decision not to challenge the amount of his bill as unreasonable entitles Atrium to summary judgment under the doctrine of quantum meruit."

¶ 12 In denying plaintiff's motion for summary judgment, the trial court determined that Bitterman's testimony was "substantial evidence that [defendant Atrium] cannot make the disclosures [plaintiff] seeks without violating the EMTALA. At a minimum, this evidence raises an issue of material fact that precludes summary judgment for [plaintiff]." The trial court noted that "there would remain a genuine dispute of material fact regarding [plaintiff]'s knowledge of the facility fee[,]" because plaintiff had been treated at a California emergency department in May 2013 and was charged a facility fee but "raised no concerns about the ED bill or the facility fee from that ED visit." The trial court also noted that "[i]f [plaintiff]'s disclosure claims had legal merit, a genuine dispute of material fact would also exist regarding whether, even if Atrium had made the disclosure [plaintiff] now seeks, that disclosure would have changed [plaintiff]'s behavior in any material way[,]" as plaintiff acknowledged his failure to read the Consent Form.

¶ 13 Plaintiff filed notice of appeal from both the 3 December 2020 order and the

25 May 2021 order on 9 June 2021. On 17 September 2021, defendant Atrium filed a motion to dismiss plaintiff's appeal from the order denying class certification. On 29 September 2021, plaintiff filed a response stating that he did not oppose the motion.

II. Discussion

¶ 14 Plaintiff contends the trial court erred in granting summary judgment to defendant Atrium because defendant Atrium failed to disclose the facility fees to plaintiff and was accordingly not entitled to bill plaintiff for the fees. Plaintiff further asserts the trial court should have granted his motion for summary judgment.

¶ 15 Defendant Atrium moves to dismiss plaintiff's appeal from the order denying class certification on the grounds that this Court lacks jurisdiction and that plaintiff failed to appeal at the proper time. Plaintiff does not oppose the motion to dismiss. Accordingly, we dismiss plaintiff's appeal from the order denying class certification and proceed to address plaintiff's individual claims.

A. Standard of Review

¶ 16 Upon a party's motion, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2021). "Appeals arising from summary judgment orders are decided

using a de novo standard of review." *Midrex Techs., Inc. v. N.C. Dep't of Revenue*, 369 N.C. 250, 257, 794 S.E.2d 785, 791 (2016) (citation omitted). The same standard of review applies to orders based upon contract interpretation, which "present[ ] a question of law." *Internet East, Inc. v. Duro Commc'ns, Inc.*, 146 N.C. App. 401, 405, 553 S.E.2d 84, 87 (2001) (citation omitted).

¶ 17 When considering a motion for summary judgment, "[a]ll facts asserted by the adverse party are taken as true, and their inferences must be viewed in the light most favorable to that party." *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523, 723 S.E.2d 744, 747 (2012) (citation and quotation marks omitted).

> The showing required for summary judgment may be accomplished by proving an essential element of the opposing party's claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense, . . . or by showing through discovery that the opposing party cannot produce evidence to support an essential element of [their] claim.

Dobson v. Harris, 352 N.C. 77, 83, 530 S.E.2d 829, 835 (2000) (citations omitted).

B. Summary Judgment

¶ 18 Plaintiff contends the trial court erred in granting summary judgment to defendant Atrium because the Consent Form does not provide for the payment of a facility fee and because defendant Atrium "failed to disclose the facility fees to plaintiff."

1. Contract Claims

¶ 19 Our standard of review is *de novo* since the order appealed from is based upon contract interpretation and therefore presents a question of law. *Internet East*, 146 N.C. App. at 405, 553 S.E.2d at 87 (citation omitted).

¶ 20 "Where the terms of a contractual agreement are clear and unambiguous, the courts cannot rewrite the plain meaning of the contract. The construction of such language is a matter of law for the court to determine." *Montgomery v. Montgomery*, 110 N.C. App. 234, 238-39, 429 S.E.2d 438, 441 (1993) (citations omitted).

> "The heart of a contract is the intention of the parties, which is to be ascertained from the expressions used, the subject matter, the end in view, the purpose sought, and the situation of the parties at the time." When a contract is in writing and free from any ambiguity which would require resort to extrinsic evidence, or the consideration of disputed fact, the intention of the parties is a question of law. The court determines the effect of their agreement by declaring its legal meaning.

Shelton, 179 N.C. App. at 123, 633 S.E.2d at 115 (2006) (citing *Lane v. Scarborough,* 284 N.C. 407, 409-11, 200 S.E.2d 622, 624-25 (1973)).

¶ 21 In the context of hospital bills, the court must consider "whether the 'regular rates' language in the agreement was sufficiently definite to allow a meeting of the minds on the price term." *Id.* (citation omitted). In *Shelton*, the plaintiff contended "that the hospital keeps a list of the rates it charges the uninsured (or under-insured) in a document called the 'charge master'. Plaintiff further allege[d] that she was not

provided with this document before she signed the consent form." *Id.* However, "[p]laintiff [made] no allegation that she attempted to gain access to the 'charge master' to ascertain the regular rates and was denied access to this 'charge master' by defendant." *Id.* The *Shelton* Court determined that the contested contractual language was "free from ambiguity. It [was] clear that plaintiff was agreeing by her signature to pay the 'regular' rates charged by defendant for the services it was to render." *Id.* at 124, 633 S.E.2d at 116.

¶ 22 In addition, because the "charge master" included the price of the facility fee, "the price term of 'the regular rates and terms of the Hospital at the time of patient's discharge' was 'definite and certain *or capable of being made so.*' " *Id.* at 125, 633 S.E.2d at 116 (citation omitted) (emphasis in original). The Court also noted that "it is entirely reasonable and predictable that patients would agree to pay the hospital's regular rates for whatever services might be necessary in treating their particular ailments or afflictions[,]" but "[n]one of this is to suggest that patients have no right to question hospitals concerning any particular treatment and the costs therefore, or that patients cannot refuse treatment for reasons of cost." *Id.* at 124-25, 633 S.E.2d at 116.

¶ 23 Although plaintiff strenuously characterizes the facility fee as a "separate surcharge," this characterization is not supported by the evidence or by plaintiff's own pleadings. As the trial court noted in its order, plaintiff admitted that he was charged

at the rates listed on defendant Atrium's chargemaster list, which included the facility fee. As in *Shelton*, plaintiff has not alleged that he was charged anything other than the "regular rates" found in defendant Atrium's chargemaster document. Significantly, the facility fee covered some costs for nurses, medical supplies, and other direct services necessary to plaintiff's treatment; the facility fee was not an arbitrary charge unrelated to the treatment plaintiff received.

¶ 24 Despite plaintiff's assertions that *Shelton* supports his claims, we agree with the trial court that this case is indistinguishable from *Shelton*. Plaintiff acknowledged that he did not read the Consent Form but did sign it, and also acknowledged that the facility fee was included on defendant Atrium's chargemaster document, which plaintiff had access to prior to signing the Consent Form. Plaintiff had the right and opportunity to question defendant Atrium with respect to cost, but failed to do so. Simply put, the Consent Form amounts to a clear and unambiguous contractual agreement, which plaintiff signed. His arguments that the facility fee should not be included in his contractual obligations are without merit.

¶ 25 Plaintiff also argues that the only "signage" defendant Atrium posted to alert patients of the facility fee are "laminated and printed Consent Forms" and "brochures stating that the patient 'agree[s] to pay any bills not covered by your insurance.' " Contrary to this argument, however, the Consent Form signed by plaintiff includes essentially the same language as the brochures: "[t]his guaranty includes charges for

services not covered by my insurance, regardless of the reason that insurance coverage is denied." Although plaintiff asserts that adequate signage disclosing the facility fee was necessary, the Consent Form and other documents provided to plaintiff prior to his treatment were sufficient to notify plaintiff of his obligation to pay the full hospital bill, including the facility fee.

2. *Quantum Meruit*

¶ 26 Plaintiff contends defendant Atrium's *quantum meruit* counterclaim fails as a matter of law "due to its failure to disclose its intention to collect a facility fee," and that defendant Atrium may "only . . . collect the charges billed to [p]laintiff for 'services rendered' to [p]laintiff." Defendant Atrium, on the other hand, argues that North Carolina law implies a promise to pay for medical services, and that the only relevant inquiries are whether defendant Atrium provided medical services to plaintiff, and a determination of the reasonable value of those services.

¶ 27 On an order granting summary judgment on a *quantum meruit* claim, we review "the forecasted evidence to see if there is a genuine issue of material fact regarding whether plaintiff's bill represents the reasonable value of plaintiff's medical services." *Charlotte-Mecklenburg Hosp. Auth. v. Talford*, 366 N.C. 43, 48, 727 S.E.2d 866, 870 (2012). "[W]hen determining what a service is 'reasonably worth' " it is appropriate "to look to 'the time and labor expended, skill, knowledge and experience involved, and other attendant circumstances, rather than . . . the

benefit to the person for whom the services are rendered.' " *Id.* at 49, 727 S.E.2d at 870 (citation omitted). Additionally, if an adverse party does "not challenge the amount of the hospital bill as not indicative of the reasonable value of the medical services rendered[,]" it is appropriate for the trial court to grant "summary judgment in favor of [the movant] for the amount of the bill . . . ." *Forsyth Cty. Hosp. Auth., Inc. v. Sales*, 82 N.C. App. 265, 269, 346 S.E.2d 212, 215 (1986).

¶ 28 In this case, the trial court relied on plaintiff's complaint, which alleged that "[p]laintiff is not asking the Court to make any determinations as to the reasonable value of hospital services, or as to the amount owing to [d]efendant by plaintiff or any other patients." Although plaintiff asserts on appeal that he "*does* indeed challenge the amount of his bill as unreasonable[,]" the trial court did not err in relying on plaintiff's pleadings to determine whether plaintiff was in fact challenging the reasonable value of the medical services rendered, in accordance with this Court's opinion in *Sales*.

3. EMTALA

¶ 29 Plaintiff argues the EMTALA does not give defendant Atrium the right to conceal the facility fee, citing several authorities that allegedly "directly controverted Bitterman's position[,]" while also arguing the trial court should have given "little or no weight" to Bitterman's testimony about the EMTALA. Plaintiff's argument, however, fails to identify any violation of EMTALA or a failure to adequately disclose

the facility fee. As previously discussed, plaintiff had access to the chargemaster document and signed the Consent Form, which obligated him to pay the full hospital bill at the regular charged rates. Although the trial court did rely on Bitterman's testimony, the trial court primarily granted summary judgment based on the Consent Form and the terms contained therein. Even if Bitterman's opinion did not align with current federal regulations, the trial court did not err in granting summary judgment in defendant Atrium's favor.

C. Motion to Strike

¶ 30 Although plaintiff's notice of appeal includes a reference to the trial court's order denying his motion to strike Bitterman's testimony, plaintiff has not presented a distinct argument with respect to his appeal from the trial court's denial of his motion to strike. Accordingly, and in light of our agreement with the trial court regarding the motions for summary judgment, we affirm the trial court's denial of plaintiff's motion to strike.

III. Conclusion

¶ 31 For the foregoing reasons, we dismiss plaintiff's appeal with respect to the motion for class certification, and affirm the trial court's order granting summary judgment to defendant Atrium and denying plaintiff's motion to strike.

DISMISSED IN PART, AFFIRMED.

Judges CARPENTER and JACKSON concur.

Report per Rule 30(e).