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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-695

Filed 21 March 2023

New Hanover County, No. 20 CVS 3859

APOLLO MEDFLIGHT, LLC, Plaintiff,

v.

LAQUETA NELSON, ADMINISTRATRIX OF THE ESTATE OF JANICE M. WILLIAMS; LARRY N. WILLIAMS; ALLEN H. WELLONS and WILKINS, WELLONS & COATS, a General Partnership, Defendants.

Appeal by plaintiff from order entered 22 March 2021 by Judge R. Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 24 January 2023.

*Hilton Silvers & McClanahan PLLC, by Nelson G. Harris, for plaintiff-appellant.*

*No brief filed for defendants-appellees Laqueta Nelson, Administratrix of the Estate of Janice M. Williams, and Larry N. Williams.*

*Cranfill Sumner LLP, by Steven A. Bader and Melody J. Jolly, for defendants-appellees Allen H. Wellons and Wilkins, Wellons & Coats.*

ZACHARY, Judge.

Plaintiff Apollo Medflight, LLC, appeals from the trial court's order granting the motion to dismiss filed by Defendants Allen H. Wellons and Wilkins, Wellons &

Coats (the “Partnership Defendants”). After careful review, we reverse and remand for further proceedings.

## **I. Background**

The relevant factual allegations of Plaintiff’s complaint, which are taken as true for purposes of this appeal, follow: On 14 April 2019, Janice M. Williams was involved in an automobile accident (“the Accident”) and suffered injuries for which she received emergency medical treatment. This treatment included air ambulance services, which were provided by Plaintiff.

In that Williams was unresponsive following the Accident and no authorized representative was available at the time that Plaintiff provided air ambulance services, a crew member and a representative from the receiving facility signed a consent form and assignment of benefits on Williams’s behalf. This document provided, *inter alia*, that Williams assigned and transferred to Plaintiff her rights to:

(b) any and all proceeds paid or payable to [Williams] or on [her] behalf from any settlement, judgment or other award which is obtained as a result of the injury or medical condition necessitating the Services; (c) any causes of action that may be assigned according to applicable State law, which [Williams] now ha[s] or may have in the future against any person or entity arising directly or indirectly from the injury or medical condition which necessitated the Services.

Williams died following the accident. The Partnership Defendants represented her estate (“the Estate”) in subsequent legal proceedings, which Plaintiff characterizes in its complaint as “personal injury claims and settlement in connection

with the Accident.” The Estate representative retained a Georgia law firm to assist with the administration of the Estate.

On 9 May 2019, Plaintiff served the Partnership Defendants with notice of a \$50,365.00 medical lien “against any sums recovered as damages for [Williams’s] personal injuries whether in litigation, settlement, or otherwise.” Thereafter, the Partnership Defendants secured a settlement for the Estate’s claims arising from the Accident, and on 28 October 2019, the Partnership Defendants sent the Georgia law firm a check for the funds received in settlement of the Estate’s claims (“the Proceeds”).

On 2 December 2020, Plaintiff filed a complaint against the Estate; Williams’s widower Larry N. Williams (“Husband”); and the Partnership Defendants. Against the Estate, Plaintiff asserted claims for breach of contract and, in the alternative, quantum meruit. Plaintiff also brought a claim against Husband under the doctrine of necessities, as well as claims of failure to honor a medical lien and unfair and deceptive trade practices (“UDTP”) against the Partnership Defendants.

The Partnership Defendants filed a motion to dismiss along with their answer to Plaintiff’s complaint on 25 February 2021. In their motion, the Partnership Defendants alleged that the Proceeds “were part of a wrongful death settlement” and, accordingly, were not subject to a medical lien arising under N.C. Gen. Stat. § 44-49 *et seq.* (2021). On 22 March 2021, the Partnership Defendants’ motion to dismiss came on for hearing in New Hanover County Superior Court, and that same day, the trial

court entered an order granting the motion and dismissing Plaintiff's claims against the Partnership Defendants.

On 22 February 2022, Plaintiff filed a motion for summary judgment as to its claims against the Estate. On 20 April 2022, the trial court entered an order granting Plaintiff's motion for summary judgment against the Estate in the amount of the principal sum of \$50,365.00 plus interest and costs.

Meanwhile, Husband died on 14 January 2022. On 22 March 2022, counsel for the Estate and Husband filed notice of his death and a motion for an order of abatement of Plaintiff's claims against Husband, which the trial court entered on 21 April 2022. On 2 May 2022, Plaintiff voluntarily dismissed its claims against Husband. The following day, Plaintiff filed notice of appeal from the trial court's order granting the Partnership Defendants' motion to dismiss.

## **II. Discussion**

Plaintiff argues that the trial court erred by granting the Partnership Defendants' motion to dismiss Plaintiff's claims against them. We agree.

### **A. Standard of Review**

Our appellate courts "review a dismissal under Rule 12(b)(6) de novo, viewing the allegations as true and in the light most favorable to the non-moving party. Dismissal is proper when the complaint fails to state a claim upon which relief can be granted." *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 370 N.C. 1, 5, 802 S.E.2d 888, 891 (2017) (citations and internal quotation marks omitted). "[U]nder de novo

review, the appellate court as the reviewing court considers the Rule 12(b)(6) motion to dismiss anew: It freely substitutes its own assessment of whether the allegations of the complaint are sufficient to state a claim for the trial court’s assessment.” *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679, 878 S.E.2d 798, 800 (2022).

A Rule 12(b)(6) motion to dismiss “should be granted when: (1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *USA Trouser, S.A. de C.V. v. Williams*, 258 N.C. App. 192, 195, 812 S.E.2d 373, 376 (citation and internal quotation marks omitted), *disc. review denied*, 371 N.C. 448, 817 S.E.2d 199 (2018).

## **B. Analysis**

Both of Plaintiff’s claims against the Partnership Defendants—failure to honor a medical lien and UDTP—are predicated on Plaintiff possessing an enforceable medical lien against the Proceeds pursuant to N.C. Gen. Stat. § 44-49 *et seq.*

“Chapter 44, Article 9 of the General Statutes contains a series of statutes enacted by the General Assembly to help medical providers recover payment for services rendered to patients who later collect compensation for medical treatment resulting from a personal injury incident.” *Nash Hosps., Inc. v. State Farm Mut. Auto. Ins. Co.*, 254 N.C. App. 726, 730, 803 S.E.2d 256, 260 (2017), *disc. review denied*, 370 N.C. 578, 809 S.E.2d 869 (2018). Section 44-49 “creates a lien upon any sums recovered as damages for personal injury in any civil action in this State.” *Id.* (citation

and internal quotation marks omitted); N.C. Gen. Stat. § 44-49(a). This Court has recognized that the “obvious intent of N.C. Gen. Stat. §§ 44-49 and 44-50 is to protect hospitals that provide medical services to an injured person who may not be able to pay but who may later receive compensation for such injuries which includes the cost of the medical services provided.” *Nash Hosps.*, 254 N.C. App. at 730, 803 S.E.2d at 260 (citation omitted).

Plaintiff contends that, in its complaint, it sufficiently alleged that (1) the Partnership Defendants represented the Estate in connection with personal injury claims arising from the Accident; (2) Plaintiff served the Partnership Defendants with notice of its medical lien, which the Partnership Defendants received; (3) the Partnership Defendants recovered the Proceeds in connection with settlement of the Estate’s personal injury claims arising from the Accident; and (4) the Partnership Defendants conveyed the Proceeds to the Georgia law firm without retaining sufficient funds with which to satisfy Plaintiff’s medical lien. Accordingly, Plaintiff asserts that “those facts are sufficient to state a claim for damages” against the Partnership Defendants for failure to honor a medical lien, which also “amounts to an inequitable assertion of the Partnership[ Defendants’] power, effectively depriving [Plaintiff] of funds to which it is entitled” and constituting an unfair and deceptive trade practice.

On the other hand, the Partnership Defendants asserted in their motion to dismiss that the Proceeds “were secured as part of a wrongful death settlement[.]”

rather than any personal injury claims, and are therefore “not subject to [N.C. Gen. Stat. §§] 44-49 and 44-50[.]” Consequently, the Partnership Defendants contend that Plaintiff’s claims against them must fail in the absence of an enforceable medical lien against the wrongful death proceeds. However, because these arguments rely on the resolution of issues of fact beyond the four corners of Plaintiff’s complaint, dismissal pursuant to Rule 12(b)(6) was inappropriate.

“A Rule 12(b)(6) motion focuses on the legal sufficiency of the allegations in the complaint. As such, when considering a Rule 12(b)(6) motion, the trial court is limited to reviewing the allegations made in the complaint.” *Blue v. Bhiri*, 381 N.C. 1, 5, 871 S.E.2d 691, 694 (2022) (citation omitted). “The function of a motion to dismiss is to test the law of a claim, not the facts which support it.” *Snyder v. Freeman*, 300 N.C. 204, 209, 266 S.E.2d 593, 597 (1980) (citation omitted). Accordingly, “[t]he court . . . is concerned with the law of the claim, *not the accuracy of the facts* that support a 12(b)(6) motion.” *Acosta v. Byrum*, 180 N.C. App. 562, 567, 638 S.E.2d 246, 250 (2006) (emphasis added).

Here, Plaintiff’s complaint alleges that, upon information and belief, “the Partnership [Defendants] represented the Estate in pursuit of personal injury claims and settlement in connection with the Accident” and that “the Partnership [Defendants] secured [the Proceeds] in connection with the Estate’s personal injury claims arising from the Accident.” In the light most favorable to Plaintiff as the nonmovant, and combined with the uncontroverted allegations that Plaintiff served

the Partnership Defendants with notice of its medical lien, which the Partnership Defendants received, and that the Partnership Defendants conveyed the Proceeds to the Georgia law firm without first satisfying Plaintiff's medical lien, the complaint's pleaded facts do not "disclose[] some fact that necessarily defeats [P]laintiff's claim[s]." *USA Trousers*, 258 N.C. App. at 195, 812 S.E.2d at 376 (citation omitted). Neither can we say that, on its face, Plaintiff's complaint "reveals that no law supports [P]laintiff's claim[s]" or "reveals the absence of facts sufficient to make . . . good claim[s]." *Id.* (citation omitted).

At the hearing on the Partnership Defendants' motion to dismiss, the parties argued extensively over whether the Proceeds were, in fact, recovered in settlement of a personal injury claim, a wrongful death claim, or some combination of the two. And when the trial court announced its ruling in open court, it specifically explained that N.C. Gen. Stat. §§ 44-49 and 44-50 "do not apply to a wrongful death action."

However, the complaint contains no allegation that Plaintiff recovered for wrongful death. Indeed, the complaint does not indicate the cause of Williams's death or state that her death was in any way related to the Accident. The assertion that the Proceeds were received in settlement of a wrongful death action was based entirely on the arguments of the Partnership Defendants' counsel, first in their motion to dismiss and then repeated extensively at the hearing upon the motion.

Whether the Proceeds were paid in settlement of a wrongful death action was a question of fact, and at this stage of the proceedings, the trial court is "concerned



with the law of [Plaintiff's] claim[s], not the accuracy of the facts that support [the Partnership Defendants'] 12(b)(6) motion.” *Acosta*, 180 N.C. App. at 567, 638 S.E.2d at 250.

We decline to express an opinion on the factual issue of whether the Partnership Defendants secured the Proceeds in connection with the settlement of claims for personal injury, wrongful death, or some combination of the two. On this record, at this point in the proceedings, it is premature to address such an issue of fact. The trial court's order granting the Partnership Defendants' Rule 12(b)(6) motion to dismiss must be reversed, and on remand, the trial court, as the finder of fact, may address this factual dispute.

### **III. Conclusion**

For the foregoing reasons, we reverse the trial court's order granting the Partnership Defendants' motion to dismiss, and this matter is remanded to the trial court for further proceedings.

REVERSED AND REMANDED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).