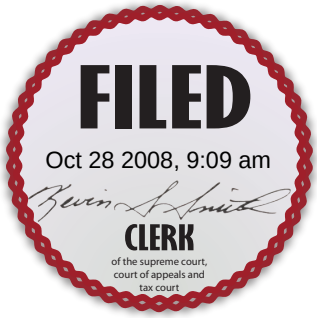

ATTORNEY FOR APPELLANT:

DOUGLAS J. MASSON
Hoffman, Luhman & Masson PC
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

DANIEL C. BLANEY
JESSICA L. HOOVER
Blaney & Walton
Morocco, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LAFAYETTE ACCOUNTS SERVICE, INC.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 56A03-0807-CV-343
	)	
LARRY RICHARD BARTLEY,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE NEWTON CIRCUIT COURT
The Honorable Jeryl F. Leach, Judge
Cause No. 56C01-0412-CC-85

October 28, 2008

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff Lafayette Accounts Service, Inc. (Lafayette), appeals the trial

court's order denying Lafayette's motion for summary judgment against appellee-defendant Larry Richard Bartley. Lafayette argues that inasmuch as there are no issues of material fact and it is entitled to judgment as a matter of law, the trial court should have granted summary judgment in its favor on its complaint against Bartley for an account stated based on medical bills that Bartley has allegedly failed to pay. Finding that Lafayette is entitled to judgment as a matter of law, we reverse and remand with instructions.

FACTS

Between November 1, 2001, and November 21, 2003, Bartley received medical services from Arnett Clinic doctors. Most significantly, Bartley underwent cardiac bypass surgery on November 13, 2001. The total value of Bartley's medical services during this two-year timeframe was $19,355, but he and his insurers allegedly remitted only $1,378.24 to Arnett Clinic. Consequently, Bartley allegedly owes $17,976.76 plus interest for those medical services.

Bartley's primary insurer was Caremark and his secondary insurer was Anthem. The only payments received by Arnett Clinic correspond to services received by Bartley in 2003. Those payments were remitted by Caremark. Arnett Clinic has never received any payments directly from Anthem. Anthem made a number of payments directly to Bartley with instructions to remit payment to Arnett Clinic if needed; for example: "The attached check no. 0191260148 includes our payment of $3,406. Amount due Carl R. Feind, MD [of Arnett Clinic] if you have not already paid it: $3,406." Appellant's App. p. 45. There is no evidence that Bartley remitted the corresponding amounts to Arnett Clinic.

On November 3, 2004, Arnett Clinic assigned its claim against Bartley for the unpaid medical bills to Lafayette, who filed a complaint against Bartley for an account stated on December 3, 2004. After a period of discovery, Lafayette filed a motion for summary judgment on July 10, 2006, arguing that it was entitled to judgment as a matter of law. Bartley responded on August 9, 2006, admitting that he received the medical services as described by Lafayette and not challenging the value of those services. Instead, Bartley argued that, in addition to a number of payments made by Anthem directly to him, there is evidence that Anthem made a payment of $12,779 but it is unclear to whom that payment was made. Therefore, Bartley argued that there is a genuine issue of material fact regarding the amount owed to Arnett Clinic.

The trial court held a hearing on the summary judgment motion on August 30, 2006, and summarily denied the motion on the same date. Subsequently, the court set a Trial Rule 41(E) hearing on its own motion for Lafayette's alleged failure to prosecute the complaint. On June 25, 2008, the trial court denied Lafayette's motion to set the action for trial and dismissed the case pursuant to Trial Rule 41(E). Lafayette now appeals the trial court's denial of its motion for summary judgment.

DISCUSSION AND DECISION

As we consider Lafayette's argument that the trial court erroneously denied its summary judgment motion, we observe that summary judgment is appropriate only if the pleadings and evidence considered by the trial court 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. Owens

Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001); see also Ind. Trial Rule 56(C). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the movant. Owens Corning, 754 N.E.2d at 909. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmovant. Id. If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. Id.

An appellate court faces the same issues that were before the trial court and follows the same process. Id. at 908. The party appealing from a summary judgment decision has the burden of persuading the court that the grant or denial of summary judgment was erroneous. Id. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having his or her day in court. Id.

Here, Bartley admits that he received the medical services as described by Lafayette. Furthermore, he does not challenge Lafayette's valuation of those services—$17,976.76 plus interest. Finally, he does not challenge Lafayette's assertion that he did not make any direct payments to Arnett Clinic for those services. Therefore, the only possible area of dispute is whether Arnett Clinic received any payment from Anthem.

In support of its motion for summary judgment, Lafayette designated the affidavit of Gloria Deaton, the Patient Financial Services Manager for Arnett Clinic. Deaton attested that Bartley owes Arnett Clinic $17,976.76 plus interest, that he had received itemized statements to that effect, and that after receiving those statements, he "did not indicate[] a dispute with

the services described or the principal balances stated, except to argue, after litigation commenced, that his insurer ought to have paid the bills." Appellant's App. p. 2.

In response, Bartley designated his own affidavit, in which he attested as follows:

> 7. It was my belief that whatever medical bills were not paid by my primary health insurer, would be paid by my secondary insurer.
>
> 8. Through my attorneys, I have contacted both of my health insurers to determine which insurer has paid which medical bills, including Arnett Clinic.
>
> 9. At this time, I have not received complete information from Anthem and Caremark despite repeated efforts to resolve this matter.
>
> 10. I have received some information from Caremark and Anthem that indicates that at least some of the medical bills included in this matter were paid by Caremark or Anthem.
>
> ***
>
> 12. Exhibit 2 is the relevant information I've received from Anthem. I understand this information is not complete.

Id. at 23-24. Based on this evidence—or, more precisely, the lack thereof—Bartley argued that:

> 5. Essentially, discovery is not yet complete, and material issues of fact remain.
>
> 6. [Bartley] believes that [Lafayette] is not entitled to judgment against [Bartley] because [Arnett Clinic] has already been paid by either [Bartley's] primary or secondary health insurer, but that these payments were not credited to his account appropriately.

Id. at 21. Bartley attached notices mailed by Anthem to him indicating that Anthem had remitted at least $4495 directly to him with instructions to pay his Arnett Clinic physicians directly if he had not already done so. Id. at 45-46. Bartley also attached an Anthem spreadsheet of claims related to Bartley's medical services, indicating, among other things,

the amount charged, the amount paid, and the provider. The spreadsheet denotes the payments made directly to Bartley by listing the provider as Arnett Clinic—nothing in the document indicates that the payments were made directly to Bartley.

Bartley directs our attention to a portion of the spreadsheet showing that on December 13, 2001, Anthem made a payment of $12,779 for some of Bartley's medical services that were performed by Arnett Clinic physicians. As with the payments remitted directly to Bartley, the spreadsheet indicates that the provider of the services was Arnett Clinic but does not reveal to whom the $12,779 payment was made. Id. at 42. Bartley argues that the fact that we cannot tell from the record to whom that payment was made necessarily means that summary judgment is inappropriate. In Bartley's estimation, it is possible that Arnett Clinic received those funds and simply failed to credit them to his account.

Merely raising a possibility with no evidence supporting it, however, is insufficient to withstand a motion for summary judgment. Lafayette designated evidence that Bartley owed $17,976.76 plus interest to Arnett Clinic for medical services. Initially, we note that Bartley's designated evidence establishes that he received at least $4495 directly from Anthem, and he does not even attempt to argue that he remitted a corresponding amount to Arnett Clinic as instructed by Anthem. At the very least, therefore, summary judgment should have been granted in Lafayette's favor in the amount of $4495 plus interest.

Moreover, Bartley designated no evidence establishing that, in fact, Arnett Clinic had received a $12,779 payment from Anthem. And the combination of the affidavit plus the spreadsheet does not suffice to create a question of fact regarding that payment. Instead, the

only reasonable inference to be drawn from the designated evidence—Arnett Clinic's affidavit, Anthem's other payments made directly to Bartley, and the spreadsheet that describes the $12,779 payment in the same way as those payments—is that the payment was made directly to Bartley rather than to Arnett Clinic. Bartley had nearly two years to conduct discovery; the trial court need not have afforded him more time to obtain documents from Anthem.[1] Under these circumstances, we find that Lafayette has established as a matter of law that Bartley owes $17,976.76 plus interest for the medical services he received from Arnett Clinic in 2001 and 2003. Thus, the trial court should have granted Lafayette's motion for summary judgment.

The judgment of the trial court is reversed and remanded with instructions to enter judgment in favor of Lafayette and calculate the amount of damages owed by Bartley.

NAJAM, J., and CRONE, J., concur.

[1] Indeed, the record reveals that Bartley served no discovery requests on Lafayette until September 5, 2006—after the summary judgment was entered and almost two years after the complaint was filed. Appellant's App. p. 102.