

IN THE COURT OF APPEALS OF IOWA

No. 2-1015 / 12-0831
Filed February 27, 2013

**CITY OF AMES d/b/a MARY
GREELEY MEDICAL CENTER,**
Plaintiff-Appellee,

vs.

**DANIEL J. GONNERMAN and
LISA GONNERMAN,**
Respondents-Appellants.

Appeal from the Iowa District Court for Story County, Kurt Wilke, Judge.

Daniel and Lisa Gonnerman appeal from the orders granting the city's motion for summary judgment on their claims for breach of contract and violation of the federal and state fair debt collection practices acts. **AFFIRMED.**

Daniel J. Gonnerman, Ames, for appellants.

Kristine Stone, Assistant City Attorney, Ames, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

BOWER, J.

Daniel and Lisa Gonnerman appeal from the orders granting the city's motion for summary judgment on their claims for breach of contract and violation of the federal and state fair debt collection practices acts. They contend their due process rights were violated because they were not allowed to participate in the hearing on the city's motion for summary judgment. They also contend the district court erred in entering summary judgment in favor of the city.

We conclude the Gonnermans were given notice and an opportunity to be heard on the summary judgment matter. We also conclude that the city is entitled to judgment as a matter of law on the Gonnermans' claims. Because summary judgment was properly granted, we affirm.

I. Background Facts and Proceedings.

In 2006 and 2007, Daniel Gonnerman rented and purchased medical equipment and supplies from Homeward Home Medical Equipment (HHME), a division of Mary Greeley Medical Center.¹ The invoices signed by Gonnerman provide that HHME would file an insurance form for payment with Gonnerman's insurance provider, but that if the insurance did not compensate HHME "with the entire fee or [did] not reimburse them directly or without delay," Gonnerman would pay the unpaid charges promptly.

¹ Mary Greeley Medical Center is a municipal hospital that is governed by a board of trustees, which was created by the Ames City Council. The attorney for the City of Ames acts as the attorney for the hospital and acted as the debt collector on the hospital's behalf.

On July 29, 2010, the city demanded \$1959.09 from Gonnerman and his wife, Lisa,² for the medical equipment and supplies provided. The Gonnermans answered and counterclaimed, alleging breach of contract and a violation of the federal fair debt collection practices act (FDCPA). On September 17, 2010, Gonnermans' insurance paid \$1511.91, leaving a debt of \$448.18. On July 15, 2011, the Gonnermans confessed judgment in the amount of \$448.18.

The city, on August 10, 2011, filed a motion for summary judgment seeking to dismiss the Gonnermans' counterclaims. The court granted summary judgment on November 15, 2011. In the meantime, the Gonnermans filed a motion for leave to amend their petition to include a claim under the Iowa FDCPA. The district court granted leave to amend their petition the same day it entered its order granting summary judgment under the federal act.

The city filed a second motion for summary judgment on February 14, 2012, seeking to dismiss the Gonnermans' remaining claims. On February 16, 2012, the district court set a hearing for February 24, 2012. When neither party appeared, the district court surmised that there had been a problem with the notice that was electronically filed. That hearing was rescheduled for March 2, 2012. That order was also filed electronically. In addition, the district court sent copies of the new order to both counsel by email. The Gonnermans filed a written resistance to the summary judgment motion on February 29, 2012, but did not appear at the summary judgment hearing.

² In addition to being a defendant, Gonnerman, an attorney, represented himself and his wife in this matter.

On March 2, 2012, the district court entered summary judgment in favor of the city. The court found the undisputed facts showed the city did not violate the Iowa FDCPA by sending correspondence to the Gonnermans when they were represented by counsel. The court noted that Daniel Gonnerman represented both defendants, and the correspondence was addressed to Daniel Gonnerman at his home address, rather than at his business address. The court found that if there was any violation of the Iowa FDCPA, it was unintentional.

The Gonnermans filed a motion for rehearing on March 8, 2012, arguing they were not given notice and the opportunity to be heard, in violation of their due process rights. This motion was denied.

On March 19, 2012, the Gonnermans filed a motion to enlarge the findings of the summary judgment order. In its March 29, 2012 order, the district court clarified that the first ruling on summary judgment was intended to dismiss all of the Gonnermans' claims against the city, save for the Iowa FDCPA claim. The court stated:

The Gonnermans conceded at the hearing on the first motion for summary judgment that these claims should be dismissed as they would not be pursued. Contrary to the Gonnermans' allegation in paragraph seven of their motion, the Court never overruled the plaintiff's motion as to these claims. The Court's ruling on the first motion for summary judgment should be clarified. These claims should be dismissed, either by operation of the ruling on the first motion for summary judgment or by this ruling.

The court also addressed the Gonnermans' claim regarding alleged violations of the Iowa FDCPA in more detail. The court surmised that the Gonnermans' confession of judgment largely disposed of these issues. The Gonnermans appealed.

II. Due Process.

The Gonnermans first contend their due process rights were violated because they were not given an opportunity to participate in the hearing on the second motion for summary judgment. They argue they were not given sufficient notice of the hearing on the second motion for summary judgment because the electronic filing of the order was unsuccessful. They also complain the court initially set the hearing before the time to file a resistance expired and that the court provided only four days' notice before the hearing. Our review of constitutional issues is de novo. *Lewis v. Jaeger*, 818 N.W.2d 165, 175 (Iowa 2012).

Notice and an opportunity to be heard are required when a person's protected liberty or property interest is at stake. *Owens v. Brownlie*, 610 N.W.2d 860, 870 (Iowa 2000). However, the requirements of notice and an opportunity to be heard are flexible depending upon "(a) the private interests implicated; (b) the risk of an erroneous determination by reason of the process accorded and the probable value of added procedural safeguards; and (c) the public interest and administrative burdens, including costs that the additional procedure would involve." *Id.* When a hearing is afforded, due process demands contestants be given notice thereof sufficient to permit a reasonable opportunity to appear and assert their rights. *Id.* at 871.

In its order denying rehearing, the district court notes that the electronic filing of the order setting the March 2, 2012 hearing was unsuccessful. The court then states, "Nevertheless, counsel for the Defendants fails to explain why he did

not receive notice when it was sent by email to the email address he continues to use on his filings.”

We find the Gonnermans were afforded a right to be heard. After the first order setting the hearing failed to be docketed properly in the electronic system, the court emailed copies of the second order to the parties to prevent a reoccurrence. The court emailed Daniel Gonnerman at the address supplied by him. Notice may be constitutionally sufficient even though not received, but the notice provided for must at least be one which is reasonably calculated to accomplish its purpose. *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 473 (Iowa 1973). Additionally, the court was provided with the Gonnermans' written resistance to the summary judgment, which the court considered in making its ruling.

III. Summary Judgment.

The Gonnermans also contend the court erred in granting summary judgment on their counterclaims.

Our review of summary judgment rulings is for correction of errors at law. *Frontier Leasing Corp. v. Links Eng'g, LLC*, 781 N.W.2d 772, 775 (Iowa 2010). We review a summary judgment to determine whether the moving party has demonstrated the absence of any genuine issues of material fact and established entitlement to judgment on the merits as a matter of law. *C & J Vantage Leasing Co. v. Outlook Farm Golf Club, LLC*, 784 N.W.2d 753, 756 (Iowa 2010). An issue is “material” if it might affect the outcome of the suit, and is “genuine” if a reasonable jury could return a verdict for the nonmoving party. *Id.*

In reviewing the grant of summary judgment, we view the record in the light most favorable to the opposing party and afford the opposing party every legitimate inference the record will bear. *Frontier Leasing*, 781 N.W.2d at 775. Even if the facts are undisputed, summary judgment is inappropriate if reasonable minds could draw different inferences from those facts. *Id.* at 775-76. If no material fact is in dispute, our job is to determine whether the district court correctly applied the law. *Zimmer v. Vander Waal*, 780 N.W.2d 730, 732 (Iowa 2010).

1. Breach of Contract and Federal FDCPA Claims.

The Gonnermans brought a breach of contract counterclaim against the city. The claim is premised on the Gonnermans' contention that they had full insurance coverage for the services giving rise to the debt, and that the city never gave them notice it would not accept the insurance coverage, or that the insurance coverage was inadequate to cover the costs.

The Gonnermans also claimed the city had violated the federal FDCPA. In its November 15, 2011 order, the court found the city was shielded from liability as a municipal hospital that was being represented by the municipal attorney's office. On appeal, the Gonnermans argue that because the city contracted with a third-party collection agency to collect the debt, it is subject to the federal law.

In its ruling on the motion to enlarge, the district court clarified that its November 15, 2011 order granted summary judgment in favor of the city on both claims. The court stated, "The Gonnermans conceded at the hearing on the first

motion for summary judgment that these claims should be dismissed as they would not be pursued.” The Gonnermans have waived error with regard to these claims.

In its ruling on the motion to enlarge, the district court also found “the Gonnermans rested upon the mere allegations in their pleading and failed to set forth specific facts showing the existence of a genuine issue for trial on those claims.” In order to avoid summary judgment, the Gonnermans were required to set forth specific facts showing a genuine factual issue exists. See *Peak v. Adams*, 799 N.W.2d 535, 542 (Iowa 2011). It is not enough to rest upon the mere allegations set forth in the pleadings. *Cemen Tech, Inc. v. Three D Indus., L.L.C.*, 753 N.W.2d 1, 5 (Iowa 2008). We also affirm on this basis.

2. State FDCPA Claim.

The Gonnermans also appeal the summary judgment of the state FDCPA claim, arguing the city engaged in the following violations of the act:

Actions by Plaintiff include attempting to . . . collect a debt knowing it was not a bonafide debt of the debtor; continuing collection action after refusing payment in full when tendered by Gonnerman’s insurance company, UnitedHealth; representing that an existing obligation of the debtor may be increased by the addition of attorney’s fees, investigation fees, service fees or other fees or charges, when in fact such fees or charges may not legally be added to the debt; attempting to collect attorney fees pursuant to an agreement knowing the agreement is a contract of adhesion and unconscionable; communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney’s name and address are known.

In its motion for summary judgment, the district court found there was no violation of the Iowa FDCPA when the city sent a letter to the Gonnermans’ home. The court found: “Since the attorney was one of the debtors, it was

logically impossible to communicate with the attorney without simultaneously communicating with the debtors.” The court further found that any alleged violation was an unintentional error in light of the evidence presented. We find no error.

In its ruling on the motion to enlarge, the district court addressed the Gonnermans remaining allegations with regard to violations of the Iowa FDCPA. The court found that by confessing judgment, the Gonnermans were acknowledging the debt was a bonafide debt. Because they confessed judgment in part to stop the accrual of attorney fees, the court also rejected the Gonnermans’ claim that the fees and charges alleged to exist on the debt could not be legally added to the existing obligation. The court also found the Gonnermans failed to present any evidence showing a factual dispute regarding whether the underlying agreement was unconscionable. Finally, the court found that the Gonnermans failed to show the city continued the collection action after refusing payment in full because the insurance company never offered to pay the additional fees the city demanded.

The record before us is thin, at best, regarding the Gonnermans’ allegations. Aside from their pleadings, the record contains nearly identical affidavits from both Daniel and Lisa Gonnerman and two letters from the city attorney’s office, rejecting payment from the Gonnermans’ insurance provider on the basis that the offered payment does not include payment for attorney fees. The record does not disclose any genuine issue of material fact in dispute. Additionally, the record does not provide a basis of support for the Gonnermans’

claims regarding the Iowa FDCPA. Because the city is entitled to judgment as a matter of law, we affirm the district court order granting summary judgment on all of the Gonnermans' claims.

AFFIRMED.