

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEVEN M. HEEB,

No. 28763-7-III

Appellant,

v.

Division Three

**COLUMBIA BASIN HEALTH
ASSOCIATION,**

Respondent.

UNPUBLISHED OPINION

Siddoway, J. — Steven M. Heeb appeals the superior court’s orders granting summary judgment dismissing his complaint and denying his motion for reconsideration. As the plaintiff and the party seeking reconsideration, Mr. Heeb had certain burdens of production and proof that he did not meet. We therefore affirm.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

On May 12, 2009, Mr. Heeb commenced this action against Columbia Basin Health Association by a complaint for patient care and damages from failure to communicate materials requested. The allegations of the complaint and its attachments

reveal that Mr. Heeb was a patient of Columbia Basin Health beginning in or before January 2006. Mr. Heeb made payments to Columbia Basin Health that he alleges should have sufficed to cover the uninsured cost of his care. He nonetheless was billed for a \$199.90 balance that he questioned. Columbia Basin Health eventually referred the balance for collection to Central Bonded Collectors, without, according to Mr. Heeb, first responding to his request for documentation in support of the contested balance. After collection action was commenced, Mr. Heeb asserts that he tendered a payment for the contested balance but with a further request for an accounting of the amount. He alleges that his requests for documentation were not honored and that he became liable for what he contends were unwarranted collection and court costs. Mr. Heeb's complaint does not identify a statutory or common law basis for a claim, but alleges that Columbia Basin Health has caused him monetary and credit damage, as well as traumatizing him. He prays for substantial damages.

Columbia Basin Health appeared and on October 16, 2009 moved for summary judgment dismissing Mr. Heeb's complaint, noting its motion for December 8, 2009. In support of its motion, it presented evidence, in the form of a declaration and supporting exhibits, that Mr. Heeb became a patient of Columbia Basin Health in or about December 2005; that he signed a treatment/payment agreement; that it mailed billing statements or invoices monthly, in accordance with its customary billing practice; that Mr. Heeb made

some payments toward his care, as did his insurer; that as of June 2006 an account balance of \$199.90 remained due and owing; that it corresponded with Mr. Heeb about the balance and proposed payment arrangements on several occasions; that in March 2007, no payment arrangements having been made, it assigned the account to a collection agency; and that when contacted by Mr. Heeb after the collection had been assigned, two representatives spoke to him about why the matter had been assigned for collection and told him that he should have received explanations of benefits from his insurer identifying the amounts it had paid and his deductible or co-pay obligations.

Mr. Heeb did not file materials in response. He did not appear at the time of hearing. The superior court entered an order granting summary judgment.

On December 18, 2009, Mr. Heeb filed a motion to reconsider, asserting that he had mistakenly believed that the hearing was scheduled for a later date. On January 11, 2010, the court sent a letter to Mr. Heeb and Columbia Basin Health's counsel stating:

It has come to the Court's attention that Mr. Heeb on the 18th of December, 2009 filed a Motion to Reconsider in the above entitled matter. The file does not reflect that this motion was ever noted for hearing nor that it was served on [opposing counsel]. Despite the inadequacy's [sic] of the procedure the Court has nonetheless read the Motion and considered that which is set forth therein. Even giving Mr. Heeb the benefit of the doubt, it does not appear that he has alleged or proved any of the nine grounds for reconsideration set forth in CR 59. Therefore the Court has no choice but to deny the same.

It is hereby ordered that plaintiff[']s Motion for Reconsideration be denied.

Clerk's Papers at 92. This appeal follows.

ANALYSIS

We review a summary judgment order de novo, viewing the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. *Schaaf v. Highfield*, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A moving defendant may meet its initial burden of demonstrating no genuine issue of material fact by pointing out that there is an absence of evidence to support the plaintiff's case. If a moving defendant meets this initial showing, then the inquiry shifts to the party with the burden of proof at trial, the plaintiff. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225 & n.1, 770 P.2d 182 (1989). The plaintiff must then set forth specific facts demonstrating a genuine issue for trial. *Id.* at 225. Mere allegations or conclusory statements of facts, unsupported by evidence, do not sufficiently establish such a genuine issue. *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). The nonmoving party "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

Columbia Basin Health made a proper motion for summary judgment by pointing

out the absence of evidence to support a claim by Mr. Heeb. Mr. Heeb did not file any response materials prior to the time of the hearing or appear. Under CR 56(c), “The judgment sought shall be rendered forthwith” if the showing required by the rule has been made. The trial court properly granted summary judgment.

We generally review a denial of a motion for reconsideration for abuse of discretion. *Lilly v. Lynch*, 88 Wn. App. 306, 321, 945 P.2d 727 (1997). Abuse of discretion occurs when the trial court’s decision is manifestly unreasonable or based on untenable grounds. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 683, 15 P.3d 115 (2000). Mr. Heeb has not demonstrated that the superior court’s basis for its decision was untenable. *Cf.* RAP 10.3(a)(6) (an appellant’s brief must contain his argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record). We note that Mr. Heeb did not accompany his motion for reconsideration with materials demonstrating specific facts and meeting the requirements of CR 56(e), but only argumentative assertions and conclusory statements of the sort that cannot defeat summary judgment. The superior court was therefore not presented even belatedly with a demonstration that Mr. Heeb had a viable defense to the motion. The court did not abuse its discretion in denying the motion for reconsideration.

We affirm.

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A majority of the panel has determined that this opinion will not be printed in the

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Washington Appellate Reports but it will be filed for public record pursuant to RCW
2.06.040.

Siddoway, J.

WE CONCUR:

Korsmo, A.C.J.

Brown, J.