IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
August 28, 2019

Lyle W. Cayce
Clerk

No. 18-60514

MULTIPLAN, INCORPORATED; PRIVATE HEALTHCARE SYSTEMS, INCORPORATED,

Plaintiffs-Counter Defendants - Appellees

v.

STEVEN W. HOLLAND, doing business as Physical Therapy Clinic of Gulfport,

Defendant-Counter Claimant - Appellant

Appeal from the United States District Court
for the Southern District of Mississippi

Before KING, ELROD, and ENGELHARDT, Circuit Judges.

KURT D. ENGELHARDT, Circuit Judge.

This matter arises out of an agreement entered into by Steven W. Holland ("Holland"), a physical therapist who owned and operated a physical therapy clinic in Mississippi, and Private Healthcare Systems, Incorporated ("PHCS"), pursuant to which Holland became a health care provider in PHCS's preferred provider organization ("PPO") network. Several years into the agreement, after PHCS was acquired by MultiPlan, Incorporated ("MultiPlan" and, sometimes collectively with PHCS, "Appellees"), Holland began to notice and took issue with discounts applied by MultiPlan under his agreement with PHCS to charges for services he provided to patients that were covered by

workers' compensation insurance. The dispute escalated into a federal lawsuit, in which Holland asserted various federal and state causes of action against PHCS and MultiPlan. Two of his claims—civil conspiracy and breach of contract—proceeded to trial before a jury. Both were dismissed after the district court granted Appellees' motions for judgment as a matter of law. Holland now appeals these rulings. He also appeals rulings by the district court prohibiting one of his attorneys from participating in trial and declining to submit the issue of punitive damages to the jury. For the reasons set forth herein, we vacate the district court's grant of judgment as a matter of law as to and dismissal of Holland's breach of contract claim. Otherwise, the challenged judgments are affirmed. We further remand this matter to the district court for further proceedings consistent with this opinion.

INTRODUCTION

I. Facts and Background

Holland was a board-certified and licensed physical therapist in Mississippi, who owned and operated Physical Therapy Clinic of Gulfport. In September 2006, Holland and PHCS, a PPO,[1] entered into a "Participating Provider Agreement" ("the Agreement"), which forms the basis of this dispute. In sum, by entering into the Agreement, Holland agreed to be a health care provider in PHCS's PPO network and discount charges for services provided to patients covered by participating health plans. In exchange, PHCS promised Holland greater access to those patients resulting from them being directed—or steered—to Holland through various methods, as well as guaranteed timely payment.

[1] In describing its function as a PPO, PHCS states that it "contracts on the one hand with health care providers . . . , and on the other hand, with health plans . . . , including insured plans and self-funded plans." According to PHCS, by doing so, it "serves as a middleman establishing a network of providers that agree to discount their rates for medical services they render" to individuals covered by plans with PHCS's health plan clients.

Holland maintains that his goal in entering into the Agreement was to increase his group health patient volume and that he did not anticipate that treatment he provided to workers' compensation patients would fall within the Agreement. In support of his position, Holland asserts that, due to workers' compensation regulations, insurance companies cannot direct workers' compensation patients to physical therapists and, therefore, that the essential element of "steerage" in the Agreement cannot be fulfilled in the context of workers' compensation. In any event, at the time Holland and PHCS entered into the Agreement, PHCS did not offer workers' compensation network products.

In October 2006, MultiPlan, another PPO, acquired PHCS as a wholly-owned subsidiary. By letter dated June 26, 2007, Appellees informed Holland of the acquisition and notified Holland that MultiPlan's health plan—also known as "payor"—clients had joined PHCS's network. The letter further advised that Holland's "existing individual agreement with [PHCS would] continue[] in effect" and that MultiPlan would "direct[] members to [Holland] just as a primary PPO does."[2]

After MultiPlan acquired PHCS, unbeknownst to Holland, it entered into contracts with other entities granting them access to certain MultiPlan network discounts. Relevant to this case, in September 2010, MultiPlan entered into a contract entitled "Client Services Agreement" with Healthcare Solutions, Incorporated ("HCI"), on behalf of itself and HCI affiliates Procura Management, Incorporated and Cypress Care, Incorporated. Since the parties refer to these entities collectively as "Procura," we will as well. According to the Client Services Agreement, Procura provides "workers' compensation

[2] Whether the Agreement allowed for PHCS to incorporate the MultiPlan network into the Agreement is not at issue in this appeal. Further, Appellees do not dispute that when it acquired PHCS, MultiPlan became a party to and bound by the Agreement.

and/or automobile liability benefit program[s] for its participants, and certain administrative services to its plan sponsors, customers or users, who provide workers' compensation and/or automobile liability benefit plans or other programs to their participants." Pursuant to the Client Services Agreement, Procura obtained access to PPO network discount rates designated by MultiPlan in a "Directory of Network Providers." In exchange for receiving such access, Procura agreed to pay fees to MultiPlan equal to a certain percentage of the amount Procura's clients saved on medical providers' bills due to the discounts obtained through MultiPlan.

On approximately April 25, 2011, MultiPlan notified Holland by letter that it had acquired another company. Pertinent to this case, according to the letter, Holland was at the time participating in several "MultiPlan network products," including "MultiPlan Workers' Compensation Network." The letter further advised that "Workers' Compensation bills processed through the MultiPlan Network [would] be reimbursed at the lesser of the MultiPlan fee schedule or 15% off the state schedule."

In September 2011, MultiPlan entered into a contract with Coventry Health Care Workers Compensation, Incorporated ("Coventry"), entitled "Network Access Agreement." According to the Network Access Agreement, Coventry contracted with PPOs to offer its clients, which included "third party administrators, self-insured employers, managed care companies, resellers, and bill review companies," access to PPO network providers. Through this agreement, Coventry obtained access to PPO discount rates designated by MultiPlan in a "Provider List" that it would send to Coventry monthly. In exchange for such access, like Procura, Coventry agreed to pay MultiPlan fees equaling a percentage of savings that its clients enjoyed as result of the Network Access Agreement. Notably, the Network Access Agreement expressly allowed Coventry's clients to "enter into agreements with

downstream entities" for access to MultiPlan's designated network discount rates.

In November or December of 2011, Holland began noticing that some explanation-of-benefits notifications ("EOBs") that he received indicated that PPO discounts had been applied to claims for treatment of certain workers' compensation patients and that MultiPlan was the source of the discounts. Holland did not believe that such discounts were proper under the Agreement and disputed them with the payors and MultiPlan, but to no avail. On June 25, 2012, Holland sent a letter to MultiPlan advising that he wanted to terminate the Agreement immediately. Due to a provision in the Agreement indicating that a cancellation would take effect 90 days after notice, Appellees terminated the Agreement on September 25, 2012.

Ultimately, Holland determined that discounts had been applied to charges for services he provided to seven individuals who were considered injured workers under Mississippi's workers' compensation laws because of access by their insurers[3] to MultiPlan network providers through MultiPlan's contracts with Coventry and Procura. In full, MultiPlan discounted 46 claims by Holland for workers' compensation services provided in the total amount of $14,329.25. With respect to 39 of the discounted claims, the payors were organizations that had directly contracted with Coventry for access to MultiPlan network providers or had contracted with clients of Coventry for such access. With respect to the other seven challenged claims, the payors were organizations that had directly contracted with Procura or that were indirectly affiliated with Procura through contracting with clients of Procura.

[3] The payor insurance companies involved were Federal Insurance Company, Employers Mutual Casualty Company, Hartford Insurance Company, Sentry Insurance, Safety National Insurance Company and Great American Insurance Company, doing business as Strategic Comp.

In accordance with its agreements with Procura and Coventry, MultiPlan received fees in exchange for applying the discounts in dispute.

II. District Court Proceedings

For reasons not pertinent to the issues immediately before us, on August 13, 2014, Appellees filed suit against Holland in the United States District Court for the Southern District of Mississippi.[4] After initially filing a pro se response to Appellees' complaint, Holland obtained counsel and filed a counterclaim, alleging violations of RICO and asserting claims under Mississippi law for unjust enrichment, civil conspiracy, common law fraud, accounting and disgorgement, and breach of contract. In support of these claims, Holland alleged, *inter alia*, that Appellees had engaged in a "silent PPO" scheme in which they applied unauthorized discounts to claims for workers' compensation services; that applying these discounts violated Mississippi workers' compensation laws; that discounting claims for workers' compensation services did not satisfy the Agreement's requirement of steerage; and that MultiPlan's actions of leasing access to Holland's discount rate to outside entities was unlawful. Each of Holland's claims was dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6), except for his civil conspiracy, disgorgement and breach of contract claims. The disgorgement claim was later dismissed on summary judgment.

On March 13, 2018, less than two weeks before the commencement of trial on the remaining claims, attorney Jeffrey Lee "Jack" Gordon ("Attorney Gordon" or "Mr. Gordon") of Florida filed an application to appear pro hac vice on behalf of Holland. During a phone conference two days later, the district court granted the application but ruled that Mr. Gordon would not be allowed

[4] Specifically, Appellees sought declaratory and injunctive relief related to payment collection activities undertaken by a contractor hired by Holland. They also made a claim for tortious interference with business relationships.

to participate in trial on Holland's behalf.[5] Holland submitted a motion for reconsideration of the ruling. In support, he urged that he retained Attorney Gordon to replace Daniel Mitchell, who represented him from 2015 until he passed away in August 2017. According to Holland's affidavit, he hired both due to their extensive civil jury trial experience. As discussed in more detail below, the district court denied Holland's motion for reconsideration.

A five-day jury trial on Holland's civil conspiracy and breach of contact claims, as well as Appellees' claims against Holland, commenced on March 26, 2018. On March 29, after all evidence had been presented, the district court heard arguments on and considered motions by both sides for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a) ("Rule 50(a)"). At that time, the court orally granted Appellees' Rule 50(a) motion as to Holland's civil conspiracy claim but denied their Rule 50(a) motion as to Holland's breach of contract claim.[6] The court followed up its oral ruling regarding Holland's civil conspiracy claim with a written opinion, the reasons of which mirrored the reasons provided by the court on the record.

After ruling on the parties' post-trial motions, the court made an additional unprovoked ruling on the record, without hearing from either side, regarding punitive damages. Noting that "[t]here [was] no showing of malice" and "no showing of reckless disregard," the court concluded that Holland's claim for punitive damages was not justified under Mississippi law and ordered that the court would not hear additional evidence on punitive damages or submit the issue to the jury.

Subsequently, the jury rendered a verdict in Holland's favor on his breach of contract claim. The district court later entered a judgment ordering

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[5] The order apparently was verbal only and does not appear in the record.

[6] The court also orally granted Holland's Rule 50(a) motion as to Appellees' claim against him. Appellees did not appeal that ruling.

that Holland recover $14,329.25 from Appellees and noting that it would enter a supplemental judgment regarding interest and attorney's fees. It then ordered the parties to submit briefs regarding whether Holland was entitled to any additional damages based on the verdict, including interest and penalties under Mississippi Workers Compensation Commission regulations.

Before the parties submitted briefs on the issue of additional damages, Appellees filed a renewed motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(b) ("Rule 50(b)"), or, alternatively, a new trial, with respect to Holland's breach of contract claim, arguing that the verdict was "against the overwhelming weight of the evidence." The district court granted the Rule 50(b) motion, entered an amended final judgment in favor of Appellees, and dismissed the case with prejudice.

Holland now appeals the district court's rulings prohibiting Attorney Gordon from participating at trial on his behalf; prohibiting submission of the issue of punitive damages to the jury; granting judgment as a matter of law as to and dismissing Holland's civil conspiracy claim; and granting judgment as a matter of law as to and dismissing Holland's breach of contract claim. We consider each challenge in turn, beginning with Holland's challenge to the district court's grants of judgment as a matter of law on his civil conspiracy and breach of contract claims.

ANALYSIS

I. Judgment as a Matter of Law

A. Standard of Review

Rule 50(a) allows a district court to grant a motion for judgment as a matter of law in a jury trial before a case is submitted to the jury with respect to a claim or defense raised in the case if "a party has been fully heard on an issue during [the] trial;" "the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue;" and

"under the controlling law, [the claim or defense] can be maintained or defeated only with a favorable finding on that issue." FED. R. CIV. P. 50(a). In the event a district court denies a Rule 50(a) motion, the movant may file a renewed motion for judgment as a matter of law within 28 days after the entry of judgment pursuant to Rule 50(b). FED. R. CIV. P. 50(b).

We review a district court's grant of judgment as a matter of law "de novo, applying the same standard as the district court." *N. Cypress Med. Ctr. Operating Co. v. Aetna Life Ins. Co.*, 898 F.3d 461, 473 (5th Cir. 2018). "[T]he party moving for judgment as a matter of law can prevail only if the facts and inferences point so strongly and overwhelmingly in favor of the moving party that reasonable jurors could not have arrived at a contrary verdict." *Williams v. Manitowoc Cranes, L.L.C.*, 898 F.3d 607, 614 (5th Cir. 2018) (internal quotation marks and citation omitted). We must examine the evidence as a whole and draw all inferences in favor of the non-moving party—here, Holland. *N. Cypress Med. Ctr. Operating Co.*, 898 F.3d at 473. We may not weigh the evidence or make credibility determinations, since such tasks are functions of the jury. *Id.* Where a jury verdict has been rendered, as with Holland's breach of contract claim, we are "especially deferential" to the verdict. *Johnson v. Thibodaux City*, 887 F.3d 726, 731 (5th Cir. 2018).

B. Civil Conspiracy Claim

1. District Court's Opinion

The district court granted Appellees' Rule 50(a) motion as to Holland's civil conspiracy claim based on its conclusions that a civil conspiracy "must be based on an underlying tort"; "[a] breach of contract does not satisfy the requirement of an underlying tort"; and Holland had not established that Appellees committed an underlying tort. The court added that "since Holland failed to demonstrate that the PPO business model is unlawful, Holland did

not establish the existence of a contract to accomplish an unlawful purpose or a lawful purpose unlawfully."

2. Applicable Law

The elements of a civil conspiracy under Mississippi law are: "(1) an agreement between two or more persons, (2) to accomplish an unlawful purpose or a lawful purpose unlawfully, (3) an overt act in furtherance of the conspiracy, (4) and damage to the plaintiff as a proximate result." *Rex Distrib. Co. v. Anheuser-Busch, LLC*, 271 So. 3d 445, 455 (Miss. 2019) (quoting *Bradley v. Kelley Bros. Contractors*, 117 So. 3d 331, 339 (Miss. Ct. App. 2013)). The agreement "need not extend to all details of the scheme and may be express, implied, or based on evidence of a course of conduct." *Bradley*, 117 So. 3d at 339. However, there must be a "meeting of the minds on the object or course of action." *S. Health Corp. of Hous. v. Crausby*, 174 So. 3d 916, 920 (Miss. Ct. App. 2015) (internal quotation marks and citation omitted). Additionally, the alleged conspirators "must be aware of the fraud or wrongful conduct at the beginning of the agreement." *Bradley*, 117 So. 3d at 339.

3. Analysis

For purposes of our analysis, we will assume that the first element of a civil conspiracy—an agreement—is met here. Thus, we proceed to the second element—the requirement that the alleged conspirators agree "to accomplish an unlawful purpose or a lawful purpose unlawfully." *See Rex Distrib. Co.*, 271 So. 3d at 455. Initially, we note that we are not called upon to address whether a civil conspiracy claim "must be based on an underlying tort" to the exclusion of any other kind of "unlawful purpose" or action, as the district court suggested, since Holland urges that his civil conspiracy claim is based on the "unlawful purpose" of tortious breach of contract. Accordingly, we express no opinion on whether a non-tortious "unlawful purpose" or action would be sufficient to sustain a civil conspiracy.

Under Mississippi law, for a breach of contract to rise to the level of being tortious, "some intentional wrong, insult, abuse, or negligence so gross as to constitute an independent tort must exist." *Springer v. Ausbern Constr. Co.*, 231 So. 3d 980, 988 (Miss. 2017) (quoting *Wilson v. Gen. Motors Acceptance Corp.*, 883 So. 2d 56, 66 (Miss. 2004)). While Holland generally urges that "the evidence was more than sufficient to establish that Appellees' breach of contract was accompanied by some intentional wrong, insult, abuse, or negligence so gross as to constitute an independent tort," he does not point to any specific evidence to support his contention. Moreover, a review of the record does not reveal that any conduct by Appellees rose to this degree.

Additionally, Appellees are correct that there was no claim of tortious breach of contract before the trial court upon which Holland's civil conspiracy claim could be based. As they accurately point out, Holland sought to amend his counterclaim to add a tortious breach of contract claim well past the court-ordered deadline, but the district court denied his request. Holland has never challenged that order by the district court on appeal. For this reason too, Holland's argument that Appellees engaged in a tortious breach of contract that supports his civil conspiracy claim fails.[7]

Holland has not shown that the district court erred in determining that he did not establish an underlying "unlawful purpose" or unlawful activity on which to base his civil conspiracy claim. *See Rex Distrib. Co.*, 271 So. 3d at 455. Thus, we affirm the district court's Rule 50(a) grant of judgment as a matter of law as to and dismissal of that claim.

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[7] We note that to the extent Holland argues that the wrong underlying Appellees' civil conspiracy is their participation in a "silent PPO" scheme, there is no independent cause of action for participating in a silent PPO or rental network PPO, as Holland seems to suggest. Thus, Holland's arguments in this regard fail as well.

C. Breach of Contract Claim

1. District Court's Opinion

We next consider the district court's ruling on Holland's breach of contract claim. In its opinion and order granting Appellees' Rule 50(b) motion as to Holland's breach of contract claim, the district court framed Holland's contentions as follows:

> Holland has argued throughout this litigation that PHCS and Multiplan wrongfully applied Holland's discount rate to workers' compensation claims pursuant to Multi[P]lan's agreement with Coventry and Procura. Holland claims that these discounts constituted a breach of contract, because his contract with PHCS required insurers to provide direction or steerage of patients but Mississippi workers' compensation statutes and regulations effectively eliminate direction or steerage.

Moving to its analysis, the court indicated that "Holland conceded during his testimony at trial that the PHCS contract merely provides an opportunity for steerage" and, therefore, "there are no guarantees that a provider will receive additional patients pursuant to the PHCS contract." The court further noted that "[t]he PHCS contract did not specify that separate workers' compensation steerage had to be provided, but merely required each payor to give Holland the opportunity of receiving additional patients." Additionally, the court pointed to testimony of Jon Wampler, an "insurance expert" retained by Appellees, that, according to the court, established how "steerage is provided in the workers' compensation setting."[8]

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[8] Specifically, summarizing Mr. Wampler's testimony, the court explained that steerage is present in the context of workers' compensation claims "because physicians typically refer their patients with health insurance and their patients with workers' compensation coverage to the same specialists and physical therapists" and, therefore, "typically have one referral network for all of [their] patients." The court further noted that "physicians are contractually-obligated to refer patients to in-network providers where possible" and that, according to Mr. Wampler, "Mississippi's workers' compensation law allows managed care companies to assist patients in obtaining referrals to in-network specialists in certain circumstances."

The court then concluded that "[s]ince physicians within the Multiplan/PHCS network were required to refer patients to other providers within the network, no reasonable jury could have found that Multiplan and PHCS breached their contractual obligation to provide Holland the opportunity of receiving new patients." The court added that Appellees could not have breached the Agreement by "permitting additional companies to join the network without [Holland's] consent" because subsection 3.7 of the Agreement "permitted the unilateral addition of clients to the network."[9]

2. Applicable Law

Under Mississippi law, "[a] breach-of-contract case has two elements: (1) the existence of a valid and binding contract, and (2) a showing that the defendant has broken, or breached it." *Maness v. K&A Enters. of Miss.*, 250 So. 3d 402, 414 (Miss. 2018) (internal quotation marks and citation omitted). A breach is material "where there is a failure to perform a substantial part of the contract or one or more of its essential terms or conditions, or if there is such a breach as substantially defeats the purpose of the contract." *Id.* (alteration omitted) (internal quotation marks and citations omitted). A plaintiff has the burden to prove his breach of contract claim by a preponderance of the evidence. *Norman v. Anderson Reg'l Med. Ctr.*, 262 So. 3d 520, 527 (Miss. 2019). Courts construing contracts in accordance with Mississippi law must "enforce contract language as written and give it its plain and ordinary meaning if it is clear and unambiguous." *Miss. Farm Bureau Cas. Ins. Co. v. Britt*, 826 So. 2d 1261, 1266 (Miss. 2002).

Here, the parties agree that the Agreement constituted a valid and binding contract between them and that Holland, PHCS and, later, MultiPlan

[9] Subsection 3.7 provides, in pertinent part: "Upon written notice to Participating Professional, PHCS will, in its sole discretion, designate those individual product(s) for which Participating Professional participates as part of the PHCS provider network."

were bound by the terms of that contract. Neither side contends that any language in the Agreement is ambiguous. Further, it is uncontested that the district court properly charged the jury on the applicable law and Holland's burden of proof.

3. Analysis

Since the terms of the Agreement establish the obligations between the parties, they form the basis of our analysis as to Holland's breach of contract claim. *See Epperson v. SOUTHBank*, 93 So. 3d 10, 17 (Miss. 2012) ("With limited exceptions, persons enjoy the freedom to contract. When they do, they are bound by the terms of their contract." (internal quotation marks and citation omitted)). Curiously, while the district court recited the language of some of the Agreement's relevant provisions—specifically, subsections 4.5, 1.5, 1.1 and 1.3—in the background portion of its opinion, it did not at all discuss the requirements of, or the facts as they relate to, these subsections or any other relevant provision in its analysis. Rather than the precise language of the Agreement, the district court appears to have given primary importance to broad concepts gleaned from the Agreement and the testimony of Appellees' "insurance expert" in determining whether there was a breach. This is problematic, as our analysis below of the specific contractual provisions relevant to this dispute demonstrates.

The contractual provisions that are relevant to our analysis include both definitions, which are contained in section 1 of the Agreement, and substantive provisions, which are contained in section 4 of the Agreement. These provisions are set forth below:

> 1.1 Contract means any insurance policy, benefit plan or other health plan or program that includes Direction (as defined in Section 4.5) to Preferred Providers.

1.2 Covered Care means care, treatment, and supplies for which payment is available pursuant to a Contract.

1.3 Covered Individual means any individual and/or dependent covered by a Contract.

1.4 Participating Professional means the Participating Professional identified in paragraph one, (i) who PHCS has determined, in its sole discretion, satisfies the applicable credentialing criteria; and (ii) who agrees to provide Covered Care to Covered Individuals within the scope of his or her applicable license, registration, certification, and privileges and pursuant to this Agreement.

1.5 Payor means an insurance company, employer health plan, Taft-Hartley Fund, or other organization liable to pay or arrange to pay for the provision of health care services to Covered Individuals through a PHCS provider network.

. . .

1.7 Preferred Payment Rates means the rates paid to Participating Professionals for Covered Care, as set forth in Exhibit A. . . .

1.8 Preferred Provider(s) means a licensed facility or licensed, registered, or certified health care professional that agrees to provide health care services to Covered Individuals and has been selected by PHCS for participation in the PHCS provider network. Preferred Providers may be referred to in this Agreement and in the administrative handbook(s) individually as 'Preferred Facility' and 'Preferred Professional' respectively.

. . .

4.2 Payor Acknowledgement. PHCS agrees that it has entered into agreements with Payors for the use of the PHCS provider network ("Payor Acknowledgement"). Each Payor Acknowledgement between PHCS and a Payor will obligate the Payor to pay or arrange to pay for Covered Care rendered to

> Covered Individuals in accordance with the provisions of Article VII of this Agreement. . . .
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> . . .
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> 4.5 Marketing. PHCS will require each Payor to make available and promote Contracts which provide Direction to Preferred Providers. Direction may occur through, but is not limited to, (i) greater plan benefits, (ii) access to lists or directories of Preferred Providers in printed form or by phone or website, or (iii) the provision of financial incentives that provide Covered Individuals with savings when they obtain health care services from Preferred Providers.
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> . . .
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> 4.6 Use of Preferred Payment Rates. PHCS will include in its Payor Acknowledgement with Payors, a representation from Payor that Payor will use the Preferred Payment Rates agreed to in this Agreement solely for Covered Care rendered to Covered Individuals covered under a Contract which utilizes the PHCS provider network. . . .

Considering these definitions and substantive provisions in conjunction with each other makes apparent what relevant obligations Appellees had to Holland under the Agreement. In sum, the Agreement obliged Appellees to discount Holland's rates *only* on claims for services that he rendered to individuals covered by "an insurance policy, benefit plan or other health care plan or program" that: (1) provided direction, or steerage, to Appellees' network providers; and (2) was made available or promoted to such individuals by a Payor—an organization that is paying for or arranging to pay for the services rendered and entered into a Payor Acknowledgement with Appellees requiring them to provide direction, or steerage, to Appellees' network providers.

With the obligations of Appellees under the Agreement properly laid out, it is clear that "the facts and inferences [*do not*] point so strongly and overwhelmingly in favor of [Appellees] that reasonable jurors could not have" found they breached the Agreement. *See Williams*, 898 F.3d at 614 (internal quotation marks and citation omitted). First, the testimony of MultiPlan's corporate representatives, Shawn McLaughlin, Adrienne Cromwell and Tanya Fisette, clearly demonstrated that Appellees did not have any direct contracts or enter into Payor Acknowledgements, as anticipated by the Agreement, with *any* of the entities responsible for paying the claims at issue. MultiPlan did have direct contracts with Coventry and Procura. However, Ms. Cromwell confirmed that those organizations are not Payors, as defined by the Agreement. Rather, as they relate to Appellees, they are intermediary organizations that enter into downstream contracts with Payors or other intermediary organizations, such as Mitchell International—a bill review company. A reasonable juror could have found the failure of Appellees to have direct contracts with the Payors on the claims at issue to alone be a violation of subsections 4.2 and 4.6.

Additionally, because Appellees did not have direct contracts with any of the entities responsible for paying the challenged claims, as to such claims, they did not directly satisfy the requirement of subsection 4.5 that they compel Payors "to make available and promote" insurance policies or health plans or programs that provide direction to network providers. Appellees seem to take the position that subsection 4.5's requirements were indirectly satisfied through "contractual linkage," *i.e.* language in downstream contracts requiring ultimate Payors to comply with the Agreement. However, a review of MultiPlan's agreements with Procura and Coventry reveals no specific obligation that Procura or Coventry require their clients to promote insurance policies or health plans that direct patients to MultiPlan's network providers.

In light of this and the fact that these are the only documents in existence that define Appellees' relationships with Coventry and Procura, as confirmed by Ms. Cromwell, a reasonable juror could have found that subsection 4.5's requirements were also not indirectly satisfied.

Further, there is no evidence in the record indicating that the companies responsible for paying the claims at issue in fact provided or promoted insurance policies or heath plans or programs that directed patients to MultiPlan network providers. To the contrary, the relevant evidence adduced at trial indicated that the referral of the patients involved in the claims at issue by their physicians to Holland had nothing to do with any contractual requirements. For instance, Holland gave unrefuted testimony that he developed personal referral relationships with each of the referring physicians associated with the disputed claims before he ever contracted with PHCS. One of these physicians, Dr. Hull, testified and confirmed that he met Holland several years before 2006; that he referred patients to Holland because of the positive reports patients provided about Holland; and that he was unaware of whether he and Holland were in the same PPO network or of any obligation he may have had to refer patients to in-network physical therapists.

Appellees' argument that its obligations under the Agreement were necessarily modified by the addition of workers' compensation products to their network products lacks merit. Subsection 3.7 of the Agreement allowed Appellees to "in [their] sole discretion, designate those individual product(s) for which [Holland] participate[d] as part of the PHCS provider network." That subsection did not, however, allow Appellees to unilaterally amend the requirements contained in the Agreement. As Holland correctly points out, subsection 9.4 required amendments of the Agreement to be "by mutual consent in writing signed by [Holland] and [Appellees]." Appellees do not dispute that the substantive provisions of the Agreement at issue were not

explicitly amended in writing by the parties. Thus, following the addition of workers' compensation products to Appellees' network products, their obligations to Holland under the Agreement remained the same.

Because a reasonable jury could have found based on the evidence presented that Appellees breached the Agreement, the district court erred in granting Appellees renewed motion for judgment as a matter of law as to Holland's breach of contract claim and disturbing the jury's verdict. *See Williams*, 898 F.3d at 614 (internal quotation marks and citation omitted). Accordingly, we vacate the district court's judgment granting Appellees' motion and dismissal of Holland's breach of contract claim.

II. Punitive Damages

We next turn to Holland's challenge to the district court's ruling prohibiting additional evidence on punitive damages and submission of the issue of punitive damages to the jury. Notably, Holland did not object to or in any way attempt to challenge such ruling at the time it was rendered. Additionally, he failed to adequately brief his argument on this issue on appeal, by omitting, among other items, any discussion of the Mississippi statute governing punitive damage awards. Considering the foregoing, we conclude that Holland has waived his argument that the district court erred in its punitive damages ruling. *See* FED. R. APP. P. 28(a)(8) (requirements for arguments in appellate briefs); *JTB Tools & Oilfield Services, L.L.C. v. United States*, 831 F.3d 597, 601 (5th Cir. 2016) (appellant must identify relevant legal standards to avoid waiver); *Cent. Sw. Tex. Dev., L.L.C. v. JPMorgan Chase Bank, Nat'l Assn.*, 780 F.3d 296, 300 (5th Cir. 2015) (arguments not raised before the district court are generally considered waived and will not be considered on appeal absent extraordinary circumstances).

We note, however, that even absent waiver, Holland's challenge to the district court's ruling on the issue of punitive damages fails on the merits,

since, as noted above, the record reveals no evidence of egregious conduct by Appellees. *See T.C.B. Const. Co. v. Fore Trucking, Inc.*, 134 So. 3d 701, 704 (Miss. 2013) (In breach of contract cases in which punitive damages are sought, "the plaintiff must prove that the breach was the result of an intentional wrong or that a defendant acted maliciously or with reckless disregard of the plaintiff's rights." (internal quotation marks and citation omitted)). Accordingly, we affirm the district court's ruling prohibiting additional evidence on punitive damages and the issue of punitive damage from reaching the jury.

III. Preclusion of Attorney Participation at Trial

A. The District Court's Order

Finally, we address Holland's challenge to the district court's ruling prohibiting Attorney Gordon from participating in trial on his behalf. The district court denied Holland's motion for reconsideration of its verbal order as to Attorney Gordon in a "text only order." The sole reason provided for the denial was that "Holland's attorneys [had] not demonstrated that they [were] incapable of adequately representing Holland at trial" or "exceptional circumstances that would warrant ignoring Local Rule 16(j)(6)(A)."

B. The Parties' Arguments

Holland asserts that neither the local rule relied upon by the district court nor its inherent powers allowed the court to prohibit Mr. Gordon from participating in trial. He further contends that such prohibition violated his constitutional right to have the attorney of his choice represent him and deprived him of the ability to meaningfully determine how to best present his case.

Appellees respond that Holland was not prejudiced by the district court's ruling given that Mr. Gordon sought to enroll as his counsel just weeks before trial began. Appellees point out that one of Holland's trial attorneys, David

Mitchell, had been representing Holland since 2015, and that Holland's other trial attorney, Norman Pauli, Jr., had been working on the case for several months prior to trial. Appellees further state that both attorneys, who were chosen by Holland, have significant experience and that the addition of a third attorney at such a late date would have been disruptive.

C. Analysis

Whether conduct violates a local rule and whether a constitutional right has been violated are issues of law subject to de novo review. *See In re Goode*, 821 F.3d 553, 557 (5th Cir. 2016); *Samnorwood Indep. Sch. Dist. v. Tex. Educ. Agency*, 533 F.3d 258, 267 (5th Cir. 2008); *Milligan v. City of Slidell*, 226 F.3d 652, 654 (5th Cir. 2000). We also review "*de novo* a district court's invocation of its inherent power." *Positive Software Sols., Inc. v. New Century Mortg. Corp.*, 619 F.3d 458, 460 (5th Cir. 2010) (internal quotation marks and citation omitted).

Our review of the record leaves us unconvinced that the district court's ruling prohibiting Attorney Gordon from participating in trial was justified by Local Rule 16(j)(6)(A) or invocation of the court's inherent powers. As to Local Rule 16(j)(6)(A), since Mr. Gordon did not miss any scheduled district court conferences after he enrolled in this case, he did not violate the rule. *See* Local Rule 16(j)(6)(A). Further, we note that inherent powers—those implied powers that are necessary for a court to manage its affairs—should only be used "to achieve the orderly and expeditious disposition of cases," *Chambers v. NASCO, Inc.* 501 U.S. 32, 43 (1991) (internal quotation marks and citation omitted), and when they are "essential to preserve the authority of the court." *Positive Software Sols.*, 619 F.3d at 460 (internal quotation marks and citation omitted). That David Mitchel and Norman Pauli, Jr. were "[]capable of adequately representing Holland at trial" does not warrant invocation of the court's inherent power, as this factor does not implicate the court's need "to

achieve the orderly and expeditious disposition of cases."[10] *Chambers*, 501 U.S. at 43.

Nevertheless, we conclude that the district court's ruling does not provide grounds for disturbing any of its judgments because Holland has not shown, or even attempted to show, that the ruling affected any outcome in the case and, as a result, his substantial rights. *See* 28 U.S.C. § 2111; FED. R. CIV. P. 61; *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 553 (1984) ("The harmless error rules adopted by this Court and Congress embody the principle that courts should exercise judgment . . . and ignore errors that do not affect the essential fairness of the trial"); *Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 842 (5th Cir. 2004) (recognizing that "this Court is bound to disregard any errors . . . that do not affect the substantial rights of the parties" and that "[t]he burden of proving substantial error and prejudice is upon the appellant.") Accordingly, we decline to reach the question of whether Holland was constitutionally entitled to have Attorney Gordon participate in trial.

CONCLUSION

For the reasons stated above, the rulings of the district court granting judgment as a matter of law as to and dismissal of Holland's civil conspiracy claim and claim for punitive damages are AFFIRMED. The district court's ruling granting judgment as a matter of law as to and dismissal of Holland's breach of contract claim is VACATED. Because Holland has not shown that

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[10] Perhaps the court's refusal to allow Mr. Gordon to participate in trial would be warranted if his enrollment as counsel of record was a dilatory tactic, or his participation would have resulted in a continuance. But, there is no indication by either party or in the record that this was the case. To the contrary, the evidence in the record demonstrates that Holland sought to have Mr. Gordon, an experienced trial attorney, represent him for the legitimate purpose of replacing his former similarly-experienced attorney that had passed away.

the district court's order prohibiting Attorney Holland from participating in trial affected his substantial rights, such ruling does not form a basis for otherwise disturbing any of the district court's judgments. Further, this matter is REMANDED to the district court for further proceedings consistent with this opinion.