NOT FOR PUBLICATION

FILED

MAR 18 2019

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDREW GREGO and MARIA DOROSHCHUK, individually and on behalf of all others similarly situated, Plaintiffs-Appellants, v. KADLEC REGIONAL MEDICAL CENTER, a Washington non-profit corporation; et al., Defendants-Appellees.	No. 18-35064 D.C. No. 4:16-cv-05150-RMP MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Rosanna Malouf Peterson, District Judge, Presiding

Argued and Submitted March 4, 2019
Seattle, Washington

Before: GOULD and PAEZ, Circuit Judges, and BASHANT,** District Judge.

Andrew Grego ("Grego") and Maria Doroshchuk ("Doroshchuk")

(collectively, the "Plaintiffs") appeal the district court's order granting summary

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Cynthia A. Bashant, United States District Judge for the Southern District of California, sitting by designation.

judgment for Kadlec Regional Medical Center ("Kadlec") and Cardon Healthcare Network, LLC and Cardon Healthcare Holdings ("Cardon"). We review de novo a district court's grant of summary judgment. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008). We affirm.

I.

Where a medical provider treats a patient for traumatic injuries caused by a tortfeasor, Washington law authorizes the medical provider to place a lien on the patient's recovery from the tortfeasor or her insurer. Wash. Rev. Code § 60.44.010. The medical lien law limits the lien amount to 25 percent of the settlement. *Id*. A notice of the lien signed by the claimant must be filed with the auditor of the county where medical services were provided. *Id*. § 60.44.020. The liens expire one year after filing. *Id*. § 60.44.060.

Kadlec is a not-for-profit private corporation that operates a hospital. The Plaintiffs were treated for traumatic injuries at Kadlec's hospital. The bill for Doroshchuk's treatment was $8,555. The bill for Grego's treatment was $79,748.09.

Kadlec contracted with Cardon for certain billing services, including filing medical liens. On Kadlec's behalf, Cardon filed liens on the Plaintiffs' recovery from the tortfeasors. The values recorded and demanded with the lien were for the total cost of medical services rendered.

The Plaintiffs retained a personal injury attorney ("PI Attorney") to recover money from the tortfeasors. Doroshchuk's claim settled for $25,000, and therefore the total cost of medical services rendered exceeded the 25 percent statutory limit. After learning of the settlement amount, Cardon continued to pursue the full cost of Doroshchuk's medical services. The PI Attorney appears to have placed that amount in trust.

Grego recovered $250,000 from the tortfeasor, and therefore the total cost of medical services rendered exceeded the 25 percent statutory limit. The record does not reflect that Cardon or Kadlec ever learned of Grego's settlement amount. The PI Attorney initially retained in trust a portion of the settlement in excess of the 25 percent limit, but less than the full amount of Grego's medical bills. At Grego's request, the PI Attorney released the full amount to Grego.

The Plaintiffs have not paid for their medical services, and Kadlec has not received any payment for the Plaintiffs' treatment. The liens have expired. *See* Wash. Rev. Code § 60.44.060.

II.

The Plaintiffs contest Kadlec's "election" to pursue payment via lien rather than from Medicare or Medicaid. By seeking payment from a liable tortfeasor, however, Kadlec was acting in a way permitted by Washington's medical lien statute and in accordance with federal Medicare and Medicaid laws. 42 U.S.C.

§§ 1395y(b)(2)(A), 1396a(25)(A)-(B); Wash. Rev. Code § 60.44.010 .

III.

The Plaintiffs argue that the liens were invalid because they were signed by Cardon rather than the "claimant." Wash. Rev. Code § 60.44.020.

As the "operator . . . of a hospital" that treated the Plaintiffs for traumatic injuries, Kadlec is the claimant. Wash. Rev. Code § 60.44.010. Kadlec is a not-for-profit corporation, and "like any corporation, can act only through its agents." *Houser v. Redmond*, 586 P.2d 482, 485 (Wash. 1978). Cardon was Kadlec's agent for purposes of pursuing third-party liability services, and on each notice the Cardon signor identified himself or herself as an "Agent for KADLEC." The liens were claimed by Kadlec and properly signed by its agent, therefore the liens themselves were valid.

IV.

The Plaintiffs also argue that Kadlec and Cardon's practice of pursuing more than the statutory cap on lien collections is a deceptive practice under Washington's Consumer Protection Act ("CPA"). Wash. Rev. Code § 19.86.020.

"To prevail in a private CPA claim, the plaintiff must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation." *Panag v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 889 (Wash. 2009). "Whether

a particular act or practice is 'unfair or deceptive' is a question of law." *Id*. at 894 (citation omitted). "[T]here must be some demonstration of a causal link" between the deceptive act and the injury. *Indoor Billboard v. Integra Telecom of Wash., Inc.*, 170 P.3d 10, 22 (Wash. 2007).

It was not deceptive for Cardon and Kadlec to seek full payment from both Plaintiffs before the Plaintiffs settled with the tortfeasors because none of the parties knew whether the bill exceeded the statutory limit. Similarly, before Cardon and Kadlec learned of a settlement amount, it was not deceptive to seek full payment. Because Cardon and Kadlec did not learn the amount of Grego's settlement while seeking payment, there was no deceptive act with respect to Grego. After knowledge of Doroshchuk's settlement amount, however, Cardon and Kadlec's pursuit of full payment is analogous to "debt collection practices . . . where there is no dispute as to the validity of the underlying debt," which can be the basis of a CPA claim. *Frias v. Asset Foreclosure Servs., Inc.*, 334 P.3d 529, 538 (Wash. 2014).

Doroshchuk's loss of use of her settlement funds in excess of the 25 percent subject to medical services liens that the PI Attorney placed in trust was an injury under the CPA.[1] *See Sorrel v. Eagle Healthcare, Inc.*, 38 P.3d 1024, 1029 (Wash.

[1] Additionally, the Plaintiffs argue the existence of recorded—but expired—liens is an injury. Any such injury is not based on evidence in the record. Moreover, this

Ct. App. 2002). But the causal link between her injury and the deceptive act is missing. The PI Attorney could have retained in trust only the amount recoverable under the medical lien statute, or he could have released the funds to Doroshchuk as he did for Grego. The district court correctly held that the necessary causation element was missing for Doroshchuk's CPA claim. Because Grego failed to establish a deceptive practice and Doroshchuk failed to establish causation, the district court did not err in granting summary judgment to Cardon and Kadlec.[2]

AFFIRMED.

injury could not be the result of a deceptive or unfair act or practice because the liens were valid.

[2] The Plaintiffs also alleged a negligence claim, and the district court concluded causation was missing for that claim as well. The Plaintiffs' appellate briefing focused on the CPA, but to the extent they still claim negligence, we agree with the district court.