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IN THE COURT OF APPEALS OF INDIANA

ELIZABETH A. RIGGS, M.D.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 79A02-0610-CV-895
	)	
LAFAYETTE EMERGENCY CARE, P.C.,	)	
	)	
Appellee-Defendant,	)	
	)	
and	)	
	)	
PRONATIONAL INSURANCE COMPANY,	)	
	)	
Defendant.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0504-CT-41

January 31, 2008
MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Plaintiff, Elizabeth A. Riggs, M.D. (Riggs), appeals the trial court's grant of summary judgment in favor of Appellee-Defendant, Lafayette Emergency Care, P.C. (LEC).

We reverse and remand.

ISSUE

Riggs raises two issues on appeal, which we restate as the following single issue: Whether the trial court properly determined Riggs' promissory estoppel claim against LEC, which is based on an allegation that LEC orally promised to maintain Riggs' professional liability insurance after her termination from LEC, fails as a matter of law.

FACTS AND PROCEDURAL HISTORY

On July 1, 1997, LEC and Riggs entered into an Employment Agreement, whereby LEC employed Riggs as an emergency care physician. The Employment Agreement required LEC to "maintain, at its cost, medical malpractice insurance coverage in an amount to qualify [Riggs] as a Qualified Health Care Provider under the Indiana Patients Compensation Act." (Appellant's App. p. 37). In December 1999, during Riggs' employment with LEC, ProNational Insurance Company (ProNational) issued a Certificate of Insurance to the Indiana Department of Insurance Patients Compensation Division indicating Riggs was a Qualified Health Care Provider. The policy was effective from December 4, 1999 to December 4, 2000.

Effective February 29, 2000, LEC and Riggs mutually agreed to terminate Riggs' employment with LEC. On that date, the parties signed two written Termination

Agreements.[1] The first Termination Agreement was lengthier and more specific than the second; however, in both Agreements, Riggs acknowledged that with payment of her normal salary for the period ending February 29, 2000, she would have received all amounts due to her under the Employment Agreement except accrued benefits owed to her from LEC's Qualified Retirement Plans. Additionally, in the first Termination Agreement, Riggs released LEC from any and all claims or rights of action of "every nature whatsoever" she may have had relating to or arising out of her employment with LEC. (Appellant's App. p. 42). Neither of the Termination Agreements addressed the issue of professional liability insurance coverage, but Riggs alleges Dr. Martin Maassen (Dr. Maassen), President of LEC, orally promised to maintain her professional liability insurance until the policy's lapse on December 4, 2000.

At or about the time Riggs was terminated, LEC notified ProNational that Riggs was no longer employed by LEC and requested that ProNational cancel her malpractice insurance. On March 10, 2000, ProNational issued a Change Endorsement form to LEC, indicating Riggs' policy was cancelled as of March 1, 2000. Following her termination from LEC, Riggs was immediately employed as an emergency care physician at St. Vincent Williamsport Hospital, Inc. (St. Vincent). On April 24, 2003, Riggs learned she was named as the defendant in a medical malpractice complaint arising out of care she provided a patient on July 15, 2000, while employed by St. Vincent. Riggs immediately notified ProNational and submitted a claim; however, ProNational denied her claim because the policy had been cancelled March 1, 2000.

[1] From our review of the record, there is no way to discern whether one Termination Agreement trumps

On April 26, 2005, Riggs filed a complaint against LEC and ProNational, wherein Riggs alleged LEC had orally promised her it would maintain her medical malpractice insurance policy until the policy period ended on December 4, 2000. Specifically, Riggs claimed: (1) LEC failed to fulfill its promise; (2) she was not notified of the policy's cancellation; (3) she relied on LEC's promise to her detriment by not obtaining other professional liability coverage during the period of March 1 to December 4, 2000; and (4) LEC is estopped from breaching its promise to insure her against professional liability claims because injustice can be avoided only by enforcing the promise. As to the Defendant, Pro-National, Riggs alleged ProNational was obligated to notify her it had cancelled her professional liability insurance policy.

On April 13, 2006, LEC filed a Motion for Summary Judgment, along with a brief and designation of evidence in support thereof. On May 12, 2006, Riggs filed a Response Brief in Opposition to LEC's Motion for Summary Judgment. On June 26, 2006, the trial court held a hearing on LEC's Motion for Summary Judgment. On September 20, 2006, the trial court entered an Order granting summary judgment in favor of LEC, but finding that Riggs' case against ProNational should proceed.

Riggs now appeals the trial court's grant of summary judgment in favor of LEC. Additional facts will be provided as necessary.

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the other. Both parties indicate they entered into two agreements.

DISCUSSION AND DECISION

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. Ind. Trial Rule 56(C). In reviewing a trial court's ruling on summary judgment, this court stands in the shoes of the trial court, applying the same standards in deciding whether to affirm or reverse summary judgment. *AutoXchange.com, Inc. v. Dreyer and Reinbold, Inc.*, 816 N.E.2d 40, 47 (Ind. Ct. App. 2004). Thus, on appeal, we must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id.* In doing so, we consider all of the designated evidence in the light most favorable to the non-moving party. *Id.* The party appealing the grant of summary judgment has the burden of persuading this court that the trial court's ruling was improper. *Id.* at 47-48. Accordingly, the grant of summary judgment must be reversed if the record discloses an incorrect application of the law to the facts. *Id.* at 48.

Riggs contends it was improper for the trial court to grant summary judgment in favor of LEC because the designated evidence fails to eliminate genuine issues of material fact concerning her promissory estoppel claim against LEC. Specifically, Riggs claims a genuine issue of material fact exists as to whether the Termination Agreements released LEC from its obligation to provide her with professional liability insurance in light of LEC's oral promise that it would maintain such insurance for Riggs until the end of the policy's term. On the other hand, LEC argues Dr. Maassen's oral promise is inadmissible parol evidence. We address LEC's assertion first.

Where the parties to an agreement have reduced the agreement to a written document

and have included an integration clause that the written document embodies the complete agreement between the parties, the parol evidence rule prohibits courts from considering extrinsic evidence for the purpose of varying or adding to the terms of the written contract. *Krieg v. Hieber*, 802 N.E.2d 938, 943 (Ind. Ct. App. 2004). In the case before us, LEC and Riggs reduced the terms of Riggs' termination to two written documents, and the alleged oral agreement between Riggs and Dr. Maassen would alter the terms of the first Termination Agreement, wherein Riggs released LEC from "any and all claims or rights of action of every nature whatsoever" arising out of her employment with LEC. (Appellant's App. p. 42). Nevertheless, our review of the documents indicates that neither Termination Agreement includes an integration clause. Further, the fact that there are two non-identical Termination Agreements makes it difficult to determine whether the parties intended the written documents to represent a completely integrated agreement. *See America's Directories Inc., Inc. v. Stellhorn One Hour Photo, Inc.*, 833 N.E.2d 1059, 1067 (Ind. Ct. App. 2005), *trans. denied* (an integration clause does not control the question of whether a writing is or was intended to be a completely integrated agreement). Therefore, we conclude that LEC's argument that the alleged oral agreement is inadmissible parol evidence fails and now turn to reviewing Riggs' promissory estoppel claim.

"Estoppel" is a concept by which one's own acts or conduct prevents the claiming of a right to the detriment of another party who was entitled to and did rely on the conduct. *Farm Bureau Ins. Co. v. Allstate Ins. Co.*, 765 N.E.2d 651, 657 (Ind. Ct. App. 2002), *aff'd on reh'g, trans. denied*. The doctrine of promissory estoppel is applicable where there is: "(1) a promise, (2) which the promisor should reasonably expect to induce action or forbearance of

a definite and substantial character, (3) which does, in fact, induce such action or forbearance, and (4) injustice can only be avoided by enforcement of the promise." *Id*. (quoting *Tincher v. Greencastle Federal Sav. Bank*, 580 N.E.2d 268, 272 (Ind. Ct. App. 1991)).

Our review of the designated evidence reveals that when LEC filed its motion for summary judgment, it failed to claim that it was entitled to summary judgment on the injustice element of Riggs' promissory estoppel claim. The only element contested was whether Riggs' reliance on the oral promise was reasonable. In fact, at the hearing on the motion, LEC's attorney conceded that Riggs had been harmed by being uninsured:

> [Riggs] was serving in another emergency room capacity and a patient of her filed a lawsuit . . . against her asserting that she was guilty of medical malpractice. As I understand it, a very serious injury indeed if [Riggs] was guilty of malpractice. Substantial damages would be owing to the plaintiff if the plaintiff in that case is successful and . . . [Riggs] said ["]I thought I had insurance continued from [LEC] . . . and I don't have any other insurance["] and indeed she didn't have any other insurance so that the plaintiff injured party in the malpractice suit . . . and [Riggs], *neither party is bound by the Indiana Malpractice Act which means there is no limitation on damages that the plaintiff can recover and [Riggs] is looking at substantial*—assuming . . . she is responsible for her alleged malpractice in that case—*there are substantial personal liability* [sic] she is facing.

Tr. pp. 7-8 (emphasis added).

The Medical Malpractice Act, applicable to acts of malpractice occurring after June 30, 1975, set up a system under which health care providers meeting the qualifications as set forth in the act would enjoy certain benefits, including a limitation on liability. *In re Stephens*, 867 N.E.2d 148, 150 (Ind. 2007). For an act of malpractice occurring after June 30, 1999, the total amount recoverable for an injury or death is now capped at $1,250,000.

Id. A qualified health care provider's liability for an occurrence of malpractice is now limited to $250,000. *Id*. However, the act is explicit that "[a] health care provider who fails to qualify under this article is not covered by this article and is subject to liability under the law without regard to this article. If a health care provider does not qualify, the patient's remedy is not affected by this article." *Wisniewski v. Bennet*, 716 N.E.2d 892, 894 (Ind. 1999). Accordingly, it is clear that injustice can only be avoided by enforcement of the alleged promise. *See Farm Bureau Ins. Co.*, 765 N.E.2d at 657.

Nevertheless, LEC now argues that the grant of summary judgment should be affirmed because Riggs released any claim against LEC by signing both termination agreements. We disagree. Pursuant to the terms of the agreements, Riggs released LEC from "any and all claims . . . based upon . . . the employment or shareholder relationship between [LEC] and Riggs" and covenanted that she would not institute "any action . . . arising directly or indirectly out of [her] employment." (Appellant's App. pp. 42-43). However, Riggs alleges that Dr. Maassen promised to maintain her professional liability insurance for the remainder of the policy year. Nonetheless, a few days later, after she had left, LEC cancelled the policy. Thus, the alleged misconduct took place after Riggs had signed the release. Furthermore, as we find that Riggs' employment with LEC is not the basis of her action, but rather, LEC's failure to honor the promise made, we conclude that Riggs' promissory estoppel claim is not barred by the termination agreements.

The parties disagree about whether LEC orally promised to continue Riggs' malpractice insurance and whether her reliance on such a promise was reasonable. Thus, there appear to be genuine issues of material fact. As a result, the trial court improperly

granted LEC's motion for summary judgment. We reverse and remand to the trial court to allow Riggs to have her day in court. *See Tack's Steel Corp. v. ARC Constr. Co., Inc.*, 821 N.E.2d 883, 889 (Ind. Ct. App. 2005) (where there exists a genuine issue of material fact, summary judgment would improperly preclude appellant from having his day in court to present evidence).

CONCLUSION

Based on the foregoing, we conclude that the trial court improperly granted summary judgment in favor of LEC.

Reversed and remanded for further proceedings.

SHARPNACK, J., and FRIEDLANDER, J., concur.