

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000112-MR

JOHNNY W. BROWN AND
AMY BROWN

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 03-CI-00201

HEALTH CARE COLLECTION
SERVICE, INC., ASSIGNEE
OF THE UNIVERSITY OF Kentucky
MEDICAL CENTER

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: Johnny W. Brown and Amy Brown appeal from a summary judgment entered by the Fayette Circuit Court on December 11, 2003, ordering them to pay to Health Care Collection Service, Inc., a Kentucky Corporation, and assignee of the University of Kentucky Medical Center the sum of \$7,675.73, plus costs and interest. We affirm.

The Browns incurred various medical expenses at the Medical Center between 1995 and 1999. Some of Johnny's expenses were covered by Medicare and the Medical Center took a contractual adjustment loss on some. However, after these payments and adjustments, Johnny still owed \$2,101.46 and \$8.73 for medical services. No adjustments or payments were made towards Amy's medical treatment and the Medical Center alleged she owed \$42.00, \$320, \$5,103.54 and \$100 for various medical services rendered. The Medical Center assigned the outstanding balances to Health Care Collection Services, Inc., which eventually filed a complaint to recover these sums on January 16, 2003. The Browns filed an answer admitting that they had received the medical services but asserting as an affirmative defense that they qualified or should have qualified upon proper notice, for payment of these services by the Kentucky Hospital Care Program pursuant to KRS 205.640 et. seq.

After limited discovery (interrogatories which are not included in the record) had occurred, the collection service filed a motion for summary judgment. Its motion included an affidavit of Dennis Kamann, executive director of Health Care that indicated the Medical Center had provided the medical services in question and that the Browns still owed \$7,675.73. The affidavit also stated the following:

4) In the Answers to Interrogatories, the Defendants indicated that they did receive the medical treatment at the University of Kentucky Medical center claimed in the Complaint but they take the position that following payment by Medicare they should have been covered by a "spend-down" program or received benefits through the Kentucky Hospital Care Program. They indicate they did not recall receiving statements from UKMC regarding their account balances.

5) The computer pad notes of the Patient Accounts Department and also of Health Care Collection Service, Inc., indicate that many statements were sent to the Defendants after each date of service and after any payment by Medicare. Also, there were numerous telephone contacts with the Defendants regarding their unpaid account balances. The Defendants indicated that they were attempting to obtain a spend-down medical card but never provided any type of card or further information to the Plaintiff or UKMC. If they are eligible for Medicare or Medicaid benefits under a spend-down program, they are not eligible for KHCP benefits.

The Browns responded to the motion for summary judgment and argued that genuine issues of material fact existed as to whether or not the Medical Center had complied with KRS 205.640(5). Specifically, the Browns argue that:

[Health Care's] [a]ffidavit raises other issues of material fact related to UKMC's dealings with [the Browns]. [Health Care] states that UKMC sent [the Browns] "many statements" and had "numerous telephone contacts" with them. [The Browns] have answered through interrogatories that they heard nothing from UKMC until they received correspondence from [Health Care's]

counsel in early 2003. Additionally, an issue of material fact exists regarding the [Brown's] attempts to qualify for a spend-down program. Under KRS 205.640(5), UKMC should have requested [the Browns] to apply for Medicaid if they did not qualify for that statute's benefits. Again, this relates to the aforementioned fact issue of whether UKMC evaluated [the Browns'] economic status.

...

In this case, it would not be impossible for [the Browns] to show they were not liable for these charges. KRS 205.640(5) required UKMC to determine whether [the Browns] were eligible for its benefits, and if not, to assist them in applying for other benefits. Thus, UKMC should have given [the Browns] the opportunity to seek assistance under the law. Whether that was done goes to the heart of [the Browns'] response, and that issue has not been conclusively resolved. Indeed, the facts in this case have not developed sufficiently to show that [Health Care] would prevail under every circumstance. Accordingly, summary judgment is inappropriate.

No affidavit or additional exhibits were included in the Browns' response.

On August 29, 2003, the circuit court held a hearing on Health Care's motion for summary judgment. Each party was represented by counsel and presented arguments to the court. The court submitted on the motion and allowed Health Care to file a reply to the Browns' response. Health Care subsequently did file a reply in which it argued that the requirements under KRS 205.640(5) do not apply to individuals who have health

insurance such as Medicare. It also stated that the Medical Center uses an indigent care eligibility form (DSH-001) to assess a patient's financial situation. Finally, it reiterated the statement that the Browns had indicated that they had applied for a Medicaid spend-down card but never informed the Medical Center whether they had received Medicaid coverage or not. Health Care also argued that the Browns had not provided any factual or legal basis why summary judgment should not be entered.

On November 13, 2003, the circuit court entered an opinion and order granting Health Care's motion for summary judgment. In its opinion and order, the court determined that KRS 205.640(5) did not apply because the Browns "had Medicare health insurance coverage." The court further held that the Medical Center had complied with 907 KAR 1:013E§§ 18 and 19 by providing form DSH-001 to the Browns. Based upon this opinion and order, the court entered summary judgment in favor of Health Care on December 11, 2003. This appeal followed.

On appeal, the Browns continue to argue that summary judgment was not appropriate because there remains disputed issues of fact as to whether the Medical Center assessed the Browns for the hospital indigent care program. Health Care on the other hand contends that there are no disputed issues of fact based upon the uncontroverted affidavit of Dennis Kamann.

While the record is unusually sparse as to documentation, we believe the uncontroverted affidavit attached to the motion for summary judgment placed the burden upon the Browns to present at least some affirmative evidence showing that there was a genuine issue of material facts for trial.

The standard of review on appeal of a summary judgment is well settled and expressed in Scifres v. Kraft, Ky.App., 916 S.W.2d 779 (1996), as follows:

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." Steelvest v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." Steelvest, 807 S.W.2d at 480, citing Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor ..." Huddleston v. Hughes, Ky.App., 843 S.W.2d 901, 903 (1992), citing Steelvest, supra (citations omitted).

Id. at 781. In Steelvest, 807 S.W.2d at 482, the Court also addressed the issue of the party opposing summary judgment presenting some affirmative evidence when it stated:

Finally, under both the Kentucky and the federal approach, a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial. See, Gullett v. McCormick, Ky., 421 S.W.2d 352 (1967); Continental Cas. Company v. Belknap Hardware & Manufacturing Co., Ky., 281 W.W.2d 914 (1955).

In this case, Health Care met its burden by providing the Court an affidavit which stated that the Browns had incurred the medical expenses at issue, failed to pay for the services and failed to provide any proof that they were entitled to have the medical expenses charged to the Hospital Indigent Care Program. The Browns had a duty to present "at least some affirmative evidence showing that there is a genuine issue of material fact for trial." Steelvest, at 482. There is nothing in the record that indicates they notified the Medical Center that they were eligible for the indigent care program, or that they provided the Medical Center with any financial data, or that they conveyed to the Medical Center their need for additional financial assistance. The Browns also failed to refute the Medical Center's assertion that the Browns had notified it that they had applied for a Medicaid spend-down card

but never advised the Medical Center with proof of coverage or denial. In fact, the Browns, in their brief, concede that previous trial counsel "could have created a more compelling record in support of their eligibility by offering proof of their financial status at the time of service."¹

On appeal, the Browns continue to make various arguments that the Medical Center failed to meet its burden of complying with KRS 205.640(5) and that the circuit court erred in finding that the Medical Center complied with its statutory duties and 907 KAR 1:013E. However, based upon the record before the circuit court we believe it correctly found that the Browns had failed to present any evidence on which they could succeed at trial. Without presenting some affirmative evidence on their behalf, the Browns failed to show that they could prevail under any circumstances. Based upon the evidence before the court, there was no genuine issue as to any material fact and Health Care was entitled to summary judgment.

For the foregoing reasons, the summary judgment entered by the Fayette Circuit Court is affirmed.

ALL CONCUR.

¹ Browns reply brief at 4.

BRIEF FOR APPELLANTS:

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