

Judgment rendered June 26, 2019
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 52,658-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

IRMA RABUN, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

Plaintiffs-Appellees

versus

ST. FRANCIS MEDICAL CENTER, INC.

Defendant-Appellant

* * * * *

Appealed from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 20141389

Honorable Daniel Joseph Ellender, Judge

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* * * * *

Before WILLIAMS, GARRETT, and COX, JJ.

COX, J.

This case reaches our Court on appeal for the second time from the Fourth Judicial District Court, Ouachita Parish, Louisiana.¹ In the current appeal, St. Francis Medical Center, Inc. (“St. Francis”) is appealing the trial court’s judgment granting Irma Rabun’s motion to certify the matter as a class action. For the following reasons, we affirm.

FACTS

On February 1, 2013, Ms. Rabun was involved in a automobile accident and subsequently treated at St. Francis. Ms. Rabun filed a suit for damages against the other driver in the accident. St. Francis filed a medical lien for the full cost of her medical treatment against the settlement Ms. Rabun would receive in connection with the underlying accident. Ms. Rabun had health insurance and St. Francis was a contracted health care provider, which would have allowed for a discounted rate on medical services. However, St. Francis did not file a claim with Ms. Rabun’s insurer, only filing the medical lien against Ms. Rabun’s judgment. Ms. Rabun filed suit against St. Francis claiming St. Francis was required to submit all claims for medical bills to her health insurer for the contracted rate, in accordance with the Health Care Consumer Billing Disclosure Protection Act, La R.S. 22:1871, *et seq.* (hereinafter referred to as the “Balance Billing Act”).

¹ The first opinion is *Rabun v. St. Francis Med. Ctr., Inc.*, 50,849 (La. App. 2 Cir. 8/10/16), 206 So. 3d 323.

This appeal does not encompass the merits of Ms. Rabun's claim, but is limited to a review of the trial court's certification of the class action. Ms. Rabun defined the class to be certified as follows:

All persons currently and/or formerly residing in the State of Louisiana during the relevant time period:

(1) Having "Health Insurance Coverage" [as defined by La. R.S. 22:1872(18)] provided coverage for themselves or for others for whom they are legally responsible, with any "Health Insurance Issuer" [as defined by La. R.S. 22:1872(19)] at the time "covered health care services" [as defined by La. R.S. 22:1872(8)] were provided by any company owned and/or operated by St. Francis Medical Center; and,

(2) With which "Health Insurance Issuer" any company owned and/or operated by St. Francis Medical Center was a "contracted health care provider" at the time of service [as defined by La. R.S. 22:1872(6)]; and,

(3) From whom St. Francis Medical Center and/or any company owned and/or operated by St. Francis Medical Center collected, and/or attempted to collect, the "Health Insurance Issuer's Liability" [as defined by La. R.S. 22:1872(20)], including, but not limited to, any collection or attempt to collect from any settlement, judgment or claim made against any third person or insurer who may have been liable for any injuries sustained by the patient (which insurers include those providing liability coverage to third persons, uninsured/underinsured coverage, and/or medical payments coverage); and/or,

(4) From whom St. Francis Medical Center and/or any company owned and/or operated by St. Francis Medical Center, collected, and/or attempted to collect, any amount in excess of the "Contracted Reimbursement Rate" [as defined by La. R.S. 22:1872(7)], including but not limited to, any collection or attempt to collect from any settlement, judgment, or claim made against any third person or any insurer which may have been liable for any injuries sustained by the patient (which insurers include those providing liability coverage to third persons, uninsured/underinsured coverage, and/or medical payments coverage); and or

(5) From whom St. Francis Medical Center and/or any company owned and/or operated by St. Francis Medical Center, collected, and/or attempted to collect, any amount without first receiving any explanation of benefits or other information from

the Health Insurance Issuer setting forth the liability of the insured as required by La. R.S. 22:1874(A)(2) and (3).

She requested the class extend back to January 1, 2004, the effective date of the Balance Billing Act.

Ms. Rabun argued before the trial court that she met the requirements of a class action—numerosity, commonality, typicality, superiority, and predominance. In proving numerosity, Ms. Rabun claimed there are well over 100 patients affected by the liability accident billing procedure. She argued that because there are over 100 patients effected, it would be a strain and undue burden on the court to adjudicate such a large number of suits. She argued that for this reason, the class action procedure would be more useful and judicially expedient than mere joinder.

As to commonality, Ms. Rabun stated that each claim shares a common issue that is central to the validity of each claim. She argued it is uncontested that St. Francis had a special policy for attempting to collect and collecting from insured patients involved in a motor vehicle crash. She argued that all persons sought to be made class members received services at St. Francis; St. Francis was a contracted healthcare provider of their health insurers; all were subject to St. Francis's policy to collect or attempt to collect amounts in excess of the contracted reimbursement rate; and, all were subject to these collection attempts before St. Francis received an explanation of benefits from any health insurer.

Ms. Rabun argued typicality was met because her claim arises from the same course of conduct that gives rise to the claims of other class members, and her claims are based on the same legal theory. Ms. Rabun claimed her case is also subjected to St. Francis's policy of attempting to

collect from patients with health insurance amounts in excess of the contracted reimbursement rate.

As to the adequacy of representation, Ms. Rabun claimed there is no evidence of conflicting or antagonistic claims between herself and the class members; she and the class members have the same interest in the outcome; and, she is willing to see this matter to the end and is dedicated to the prosecution of the case. She further argued that her counsel is experienced in class action litigation and have all been appointed as class action counsel in many Balance Billing Act actions.

Ms. Rabun argued she meets the requirements of La. C.C.P. art. 591. She argued that this is not a case involving multiple causation elements or alleged liability and damages, but the case fundamentally revolves around the interplay of St. Francis's billing policy with the Balance Billing Act. She also argued the management of this class action would not be overly complex or unduly burdensome on either party. Finally, she maintained that the vindication of public policies and rights of patients justifies the time, costs, and expenses of pursuing class certification.

St. Francis opposed the class action certification, arguing Ms. Rabun's claims are inappropriate for class certification. First, St. Francis pointed out that Ms. Rabun filed a class action petition for damages, for breach of contract, for declaratory relief, and for injunctive relief, but made no mention of certifying the breach of contract claims in her motion to certify. St. Francis also argued that Ms. Rabun was unable to show that there is a "definable group of aggrieved persons" with plausible claims sufficient to satisfy numerosity; she is an inadequate representative for the proposed class

that she purports to represent; and, the adjudication of her claims requires consideration of numerous individualized issues which predominate over any common questions of law or fact.

A hearing on Ms. Rabun's motion for class action was held on December 20, 2017. Ms. Georgia Martin testified at the hearing. Ms. Martin is the patient account manager/business office manager at St. Francis. She stated that she is familiar with St. Francis's billing policies, practices, and lien policies involving liability accidents. Ms. Martin testified that St. Francis had a hospital participation agreement with United Healthcare, Ms. Rabun's insurance company, which had been in effect since 1999. She explained St. Francis's procedure for car accident patients as follows:

[T]hey ask the patient if they were in a motor vehicle accident during that time, and we would – or they would ask them if they wanted to file it on their liability insurance. If so, they would ask these questions to that patient and fill the form out and then have the patient or the representative sign it.

They explain to the patient they wouldn't have co-insurance or deductibles to pay.

Ms. Martin further testified that the admissions clerks do not tell the patients that they will pay a lower rate if they file with their health insurance, and a higher rate if they file with their liability insurance. She stated that when the patient agrees to file with their liability insurance, St. Francis uses Medfax Recovery, which is operated by an attorney who researches the patient's auto accident and files the liens.

Ms. Martin reviewed St. Francis's written policy involving auto accidents, which was filed in the record. She verified that the document was correct, it was approved in 2004, and was amended in July 2014. She stated

that it was amended to state that St. Francis will file health insurance first, then liability insurance second, which would take care of any co-insurance or deductible. She testified that the policy in effect when Ms. Rabun was treated would be filing the liability insurance first, and the health insurance would be the secondary insurance.

Ms. Martin testified that when the liability insurance was used as the primary insurance, St. Francis would seek to recover the full charge on the patient's bill. She stated that this policy was used for every auto accident patient, regardless of their health insurance provider. She testified that once St. Francis prepared a bill for an auto accident patient, it would be sent over to Medfax Recovery, which would file a lien and determine to whom a copy of the lien should be sent (i.e. the patient's attorney or a liability insurance company).

The trial court granted Ms. Rabun's motion for class action. The trial court stated in its written reasons for judgment that the numerosity requirement does not have a strict numbers threshold. The trial court found that Ms. Rabun's allegation of over 100 members of the proposed class, along with the ability to access the patient information in the hospital records made the class definable and identifiable. The trial court found that the numerosity requirement was met.

In addressing commonality, the trial court stated that St. Francis's policy for attempting to collect and collecting from insured patients involved in motor vehicle accidents as uniform across the board regardless of the health insurer. It found that the careful language of the class definition forms an aggrieved group whose common facts and issues predominate over

any individual issues. The trial court found that the commonality requirement was met.

The trial court found that the claims and defenses of Ms. Rabun are typical of the claims and defenses of the class. It stated that Ms. Rabun was subjected to St. Francis's policy of attempting to collect amounts from patients covered by health insurance in excess of the contracted reimbursement rate and amounts representing a health insurance carrier's liability. The trial court found the typicality element was met.

Next, the trial court addressed the adequacy of representation. It noted St. Francis's objections that Ms. Rabun was not representative of the class because she cannot demonstrate actual incurred damages and she is not a part of the class of individuals where payments were made on liens. The trial court stated that in *Vallare v. Ville Platte Med. Ctr., LLC*, 2014-261 (La. App. 3 Cir. 11/5/14), 151 So. 3d 984, *writ denied*, 2015-0121 (La. 8/28/15), 176 So. 3d 401, the court determined it was not necessary to have separate class representatives for those who paid and those who did not, since they were both subjected to the same policies. For this reason, the trial court found that the proposed class representative is in accordance with La C.C.P. art. 591.

The trial court found that the number of potential plaintiffs is substantial and does warrant class action status. It further found that the proposed class representative's and proposed class members' claims are based on the same acts, omissions, and legal theories that have given rise to the damages sought. The trial court's reasons for judgment were signed on

January 30, 2018. The judgment certifying the class was signed on April 19, 2018. St. Francis now appeals the trial court's judgment certifying the class.

DISCUSSION

St. Francis argues the trial court abused its discretion in granting Ms. Rabun's motion to certify class action where she failed to establish by a preponderance of the evidence that she is an adequate class representative; there are questions of law or fact common to the members of the purported class which predominate over those questions affecting only individual members; and, a class action is the superior method to adjudicate these claims. St. Francis asserts that Ms. Rabun has not proven that all of the requisite elements of class certification are satisfied sufficient to certify this matter as a class action.

In reviewing a class certification, the trial court's factual findings are subject to the manifest error standard; however, the ultimate decision of whether or not to certify the class is reviewed under an abuse of discretion standard. *Doe v. S. Gyms, LLC*, 2012-1566 (La. 3/19/13), 112 So. 3d 822. Implicit therein "is recognition of the essentially factual basis of the certification inquiry and of the district court's inherent power to manage and control pending litigation." *Baker v. PHC-Minden, L.P.*, 2014-2243 (La. 5/5/15), 167 So. 3d 528.

Under Louisiana law, the requirements for class certification are set forth in La. C.C.P. art. 591. Article 591(A) provides five threshold prerequisites for class certification, often referred to as numerosity, commonality, typicality, adequacy of representation, and objective definability of class:

A. One or more members of a class may sue or be sued as representative parties on behalf of all, only if:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of law or fact common to the class.
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class.
- (4) The representative parties will fairly and adequately protect the interests of the class.
- (5) The class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case. This prerequisite shall not be satisfied if it is necessary for the court to inquire into the merits of each potential class member's cause of action to determine whether an individual falls within the defined class.

Once these five prerequisites have been met, La. C.C.P. art. 591(B) lists three additional criteria, one of which must also be satisfied for certification depending on the type of class action sought. Here, the parties submit the additional requirement that must be met for certification is set forth in La. C.C.P. art. 591(B)(3), which provides:

- (3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to these findings include:
 - (a) The interest of the members of the class in individually controlling the prosecution or defense of separate actions;
 - (b) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
 - (c) The desirability or undesirability of concentrating the litigation in the particular forum;

(d) The difficulties likely to be encountered in the management of a class action;

(e) The practical ability of individual class members to pursue their claims without class certification;

(f) The extent to which the relief plausibly demanded on behalf of or against the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation.

The burden of establishing that the statutory criteria have been satisfied falls on the party seeking to maintain the class action. *Baker, Supra*. Here, Ms. Rabun was required to prove the five prerequisites of La. C.C.P. art. 591(A), namely numerosity, commonality, typicality, adequacy of the representative party, and objectively definable class. Then, she was required to prove common questions of law or fact predominate over individual issues and the class action is superior to any other method for resolving the controversy fairly and efficiently under La. C.C.P. art. 591(B).

Adequacy of Class Representative

St. Francis argues that Ms. Rabun is not an adequate representative for the proposed class that she purports to represent because she knows “next to nothing about the claims filed on her behalf” and there are unique defenses to her claims. It also asserts that Ms. Rabun is antagonistic to the claims of the class and specific class members. It argues that because Ms. Rabun’s claims for general damages were dismissed, general damages will be unavailable for all class members. St. Francis argues that it has a defense of prescription because Ms. Rabun filed her suit more than a year after the lien. It claims that this unique defense of prescription against her claims makes her an inadequate class representative. Finally, St. Francis argues Ms. Rabun is an inadequate class representative because she has failed to assert

claims against her health insurer or seek certification of those claims against the relevant health insurers. It asserts that her failure to name a potential liable party means the other members of the class may not recover on their claims.

The following are factors which may be relevant to determining whether a class representative is adequate:

- (1) The representative must be able to demonstrate that he or she suffered an actual-vis-à-vis hypothetical-injury;
- (2) The representative should possess first hand knowledge or experience of the conduct at issue in the litigation;
- (3) The representative's stake in the litigation, that is, the substantiality of his or her interest in winning the lawsuit, should be significant enough, relative to that of other class members, to ensure that representative's conscientious participation in the litigation; and
- (4) The representative should not have interests seriously antagonistic to or in direct conflict with those of other class members, whether because the representative is subject to unique defenses or additional claims against him or her, or where the representative is seeking special or additional relief.

Baker, supra. Ms. Rabun claims an actual injury, in that she was financially harmed when St. Francis breached its contract by attempting to collect medical payments in violation of the Balance Billing Act. Although Ms. Rabun did not demonstrate intricate knowledge of the process of a class action law suit, she did have knowledge of St. Francis billing her for medical services without filing the claim with her health insurance provider. The heart of this suit questions St. Francis's policy regarding the Balance Billing Act and use of medical liens. The record does not show that Ms. Rabun's interest is in conflict with the other class members, and she has agreed to see

this suit through to end. Further, we do not doubt the competency or qualifications of either party's chosen counsel.

The trial court has not made a finding of fact regarding prescription, and defendants have not filed an exception of prescription. However, because the class was certified back to 2004, Ms. Rabun would be in a similar position to those who had liens filed before her, making her an adequate representative for defending prescription, if it is raised.

Additionally, we note that at this juncture, we are only determining whether the trial court properly ruled on the procedural issue of whether or not this matter should proceed as a class action. The merits of any individual claims or damages is not properly before us. We find that the trial court did not err in finding Ms. Rabun is an adequate class representative.

Predominance & Superior Method of Adjudication

Next, St. Francis asserts that Ms. Rabun has failed to establish by a preponderance of the evidence that there are questions of law or fact common to the members of the purported class which predominate over those questions affecting only individual members and that a class action is the superior method to adjudicate these claims. It acknowledges that there may be some common facts that are operative to Ms. Rabun's proposed class and some common issues that would impact the class as a whole, but asserts it is not enough that some common issues exist; they must predominate. St. Francis claims that any common issues that may exist are overshadowed by numerous individual issues, such as whether or not the hospital knew the patient was insured; whether the hospital filed a medical lien and/or filed an

insurance claim; the language of each insurance agreement; and, the amount ultimately negotiated or recovered.

La. C.C.P. art. 591(B)(3), as cited and quoted previously, lists the matters pertinent to finding that common question of law predominate over individual issues and that the class action is superior to other methods of adjudication. The Legislature has specifically provided, emphasizing the commonality and predominance requirements, that class “[c]ertification shall not be for the purpose of adjudicating claims or defenses dependent for their resolution on proof individual to a member of the class.” La. C.C.P. art. 591(C); *Baker, supra*. It is well settled that individual questions of quantum do not preclude a class action when predominant liability issues are common to the class. *Dumas v. Angus Chem. Co.*, 635 So. 2d 446 (La. App. 2 Cir. 3/30/1994), *writ denied*, 640 So. 2d 1349 (La. 1994).

When a common character of right exists, a class action is superior to other available adjudicatory methods in effectuating substantive law, and promoting judicial efficiency and individual fairness. *Duhon v. Harbor Homeowners' Ass'n, Inc.*, 2015-0852 (La. App. 4 Cir. 6/30/16), 197 So. 3d 322, *writ denied*, 2016-1448 (La. 11/15/16), 209 So. 3d 779. In *Baker, supra*, the Louisiana Supreme Court summarized its finding of superiority by stating, “[W]e find the class action is the superior method for adjudicating the common issue regarding the legality, under the Balance Billing Act, of a health care provider’s collection policy of filing medical liens to recover its full rate for services from an insured’s settlement or judgment with a third-party tortfeasor.

In the matter before us, the claims do not require highly individualized inquiries into the cause of the damages. The alleged damages were caused by St. Francis's acting pursuant to its collection policy and procedure. The ultimate question for the factfinder is whether or not St. Francis violated the Balance Billing Act. Once that is determined, liability and causation for all class members is decided. There is no indication that each class member will require an individual trial based on their individual issues. The fact that different health insurance providers and participation agreements are involved does not outweigh the common question of whether St. Francis's collection policy, in effect at the time, violated the Balance Billing Act.

In the interest of judicial economy, a class action will diminish the need to have numerous individual suits regarding the same issue. Additionally, the class action ensures fairness among the class members. For these reasons, we find that the trial court was not manifestly erroneous in determining class action is the superior method for adjudication, as the common question is most efficiently answered in the context of a class action suit. We find the trial court did not abuse its discretion in certifying Ms. Rabun's motion to certify the matter as a class action.

CONCLUSION

For the foregoing reasons, we affirm the trial court's granting of Ms. Rabun's motion to certify the matter as a class action. Costs associated with this appeal are assessed to the defendants.

AFFIRMED.