STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1536

Accounts Receivable Services, LLC,
as Successor in Interest to Allina Health System,
Respondent,

Allina Health System,
Nonparty Respondent,

vs.

Michael C. Ojika, et al.,
Appellants.

Filed April 24, 2017
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-16-1712

Brad D. Welp, Stewart, Zlimen & Jungers, Ltd., Minneapolis, Minnesota (for respondent Accounts Receivable Services, LLC)

Michael A. Klutho, Jessica L. Klander, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent Allina Health System)

Darren B. Schwiebert, DBS Law LLC, Minneapolis, Minnesota (for appellants)

Considered and decided by Johnson, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellants challenge the district court's grant of summary judgment in favor of respondent's account-stated claim and against appellants' counterclaim under the Minnesota Health Records Act (MHRA), Minn. Stat. § 144.291-.298 (2016). Because there are no genuine issues of material fact and respondent is entitled to judgment as a matter of law on its account-stated claim, we affirm the grant of summary judgment on that claim. But because the district court erred by concluding that respondent had shown that the release of health records was authorized by law, we reverse the grant of summary judgment on appellants' MHRA counterclaim and remand for further proceedings.

FACTS

Appellants Michael Ojika and Precious Ojika, husband and wife, each received medical services from respondent Allina Health Systems, for which they purportedly made only partial payments. Respondent Accounts Receivable Services (ARS) is the alleged assignee of the unpaid accounts. ARS brought a conciliation court action against the Ojikas to recover the balance. The conciliation court dismissed ARS's claim after a contested hearing, concluding that ARS did not satisfy the chain-of-title requirements of Minn. Stat. § 548.101 (2016).

ARS removed the matter to district court and moved for summary judgment, attaching an affidavit of Allina's executive vice president and chief financial officer (Gallagher affidavit), with exhibits, to establish Allina's assignment of the Ojika accounts to ARS. Four days later, the Ojikas' counsel wrote to ARS's counsel, asserting that

Exhibits 1A and 2 to the Gallagher affidavit were "private health records," which ARS made available to the public by filing the records in district court. Exhibits 1A and 2 contain the Ojikas' account numbers, service dates and locations, dates of last payment, and the unpaid balance for each visit. ARS promptly filed redacted exhibits, and filed the originals under seal. The Ojikas interposed a counterclaim for violation of the MHRA, alleging that they suffered harm from the original, unredacted filing of Exhibits 1A and 2.

On June 2, the district court held a hearing on and denied ARS's summary-judgment motion, apparently for lack of evidence of unpaid bills. On June 20, the Ojikas served notice that they would depose ARS's president and its corporate designee on July 6. The next day, the Ojikas moved for summary judgment on their counterclaim, and ARS moved for summary judgment on all claims. In support of its motion, ARS submitted billing statements under seal. The Ojikas responded with sworn affidavits that they have no record or memory of receiving the billing statements. A motion hearing was set for July 19.

On June 23, the Ojikas served a subpoena duces tecum on nonparty Allina, seeking documents on July 1 and the deposition of a corporate designee on July 5. Allina objected to the subpoena, and on July 1, moved the district court to quash it, noticing a July 19 hearing. ARS similarly moved for a protective order, objecting to the noticed depositions of its president and corporate designee.

On July 11, the Ojikas requested additional time for discovery under Minn. R. Civ. P. 56.06. After a July 19 hearing on all motions, the district court granted Allina's motion

to quash, awarded attorney fees and costs to Allina, and granted ARS's summary-judgment motion in full. The Ojikas appeal.[1]

D E C I S I O N

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, we must determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review the evidence de novo, in a light most favorable to the nonmoving party. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009).

I. The district court did not abuse its discretion by declining to continue ARS's summary-judgment motion to permit additional discovery.

A party opposing summary judgment may ask the district court to deny or continue the motion on the grounds that the non-moving party should be permitted to conduct additional discovery. Minn. R. Civ. P. 56.06. "An affidavit filed pursuant to rule 56.06 must be specific about the evidence expected, the source of discovery necessary to obtain the evidence, and the reasons for the failure to complete discovery to date." *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010) (quotation omitted). We review a district court's refusal to grant a continuance to conduct discovery for abuse of discretion.

[1] This court dismissed the part of the Ojikas' appeal challenging the award of fees and costs to Allina.

Cherne Contracting Corp. v. Wausau Ins. Cos., 572 N.W.2d 339, 346 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998).

The Ojikas' rule 56.06 affidavit asserts, "Defendants cannot present facts essential to justify their opposition to ARS's motion for summary judgment as a result of Plaintiff's refusal to proceed with noticed depositions." And it details counsel's efforts, after ARS renewed its summary-judgment motion, to take depositions. The affidavit does not specify the evidence expected or explain why this discovery was not pursued earlier.

When considering a rule 56.06 request, the district court considers,

> first, whether the non-moving party is seeking further discovery in the good faith belief that material facts will be uncovered, or . . . merely engaging in a fishing expedition, and, second, whether the non-moving party has been diligent in obtaining or seeking discovery before requesting denial or continuance under rule 56.06.

Molde, 781 N.W.2d at 45 (quotations omitted). Because the Ojikas' rule 56.06 request lacks both specificity and a showing of diligence, we discern no abuse of discretion by the district court in declining to grant the Ojikas the opportunity to conduct additional discovery.

II. ARS is entitled to summary judgment on its account-stated claim.

A. Minn. Stat. § 548.101 does not apply to contested proceedings.

Minn. Stat. § 548.101 establishes procedures a party must follow if it seeks default judgment in a conciliation court or district court action upon an assigned consumer debt. Minn. Stat. § 548.101(a). The Ojikas argue that section 548.101, which, among other

things, requires the moving party to submit admissible evidence of the debt assignment, also applies to contested actions. We are not persuaded.

The Ojikas do not argue that the statute is ambiguous. When a statute is unambiguous, a "court's role is to enforce the language of the statute and not explore the spirit or purpose of the law." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012). Based on the plain language of Minn. Stat. § 548.101, the district court properly determined that its requirements do not apply to a contested action.

B. ARS is entitled to judgment as a matter of law.

"To establish and recover on an account stated, the claimant must show (1) a prior relationship as debtor and creditor, (2) a showing of mutual assent between the parties as to the correct balance of the account, and (3) a promise by the debtor to pay the balance of the account." *Mountain Peaks Fin. Servs., Inc. v. Roth-Steffen*, 778 N.W.2d 380, 387 (Minn. App. 2010), *review denied* (Minn. Apr. 28, 2010).

The Ojikas first assert that summary judgment is inappropriate because there are genuine issues as to whether they received and retained a statement of account and whether the accounts were paid in full. A party seeking summary judgment must demonstrate that no genuine issue of material fact exists, but "when the moving party makes out a prima facie case, the burden of producing facts that raise a genuine issue shifts to the opposing party." *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). A genuine issue of material fact exists "when reasonable persons might draw different conclusions from the evidence presented." *DLH Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). "[T]here is no genuine

issue of material fact . . . when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue." *Id.* at 71.

ARS presented evidence that (1) the Ojikas signed agreements to pay medical bills not covered by insurance, (2) Allina sent billing statements to the Ojikas, and (3) the Ojikas made partial payments. No competent evidence in the record suggests that the Ojikas paid the accounts in full or objected to any billing statements. The Ojikas point to their own affidavits, in which they aver that they have no record or memory of receiving the billing statements. But the Ojikas "must do more than rest on mere averments" to resist summary judgment. *Id.* On this record, we conclude that ARS demonstrated the absence of genuine fact issues, and the Ojikas did not meet their burden of producing evidence to show otherwise.

The Ojikas next argue that ARS failed to establish the first and second elements of their account-stated claim. They frame their argument as a question of standing—whether ARS has standing to bring a claim against the Ojikas. Subject to certain exceptions not applicable here, "a debtor has no standing to question the validity of an assignment which is accepted as valid between the creditor and his assignee." *Gen. Underwriters v. Kline*, 233 Minn. 345, 350, 46 N.W.2d 794, 797-98 (1951). ARS and Allina agree that Allina assigned the Ojika accounts to ARS. Nevertheless, ARS must establish a debtor-creditor relationship with the Ojikas to show that it is entitled to judgment as a matter of law. *See* Minn. R. Civ. P. 56.03; *Mountain Peaks Fin. Servs., Inc.*, 778 N.W.2d at 387 (listing elements of account stated).

Contractual rights and duties are generally assignable, *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 270 (Minn. 2004), including the right to receive payment on debts, *Wilkie v. Becker*, 268 Minn. 262, 267, 128 N.W.2d 704, 707 (1964). Minnesota law recognizes that "[a]n assignment operates to place the assignee in the shoes of the assignor, and provides the assignee with the same legal rights as the assignor had before assignment." *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004).

ARS submitted the Gallagher affidavit and an affidavit of ARS's president. Both affiants attested to the assignment of the accounts and the validity of the exhibits attached to the Gallagher affidavit, including a bill of sale. The Ojikas challenge the admissibility of the Gallagher affidavit, but not the affidavit of ARS's president. A district court's evidentiary rulings made in connection with a summary-judgment ruling are reviewed for abuse of discretion. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). On this record, we see no abuse of discretion by the district court in determining that ARS submitted admissible evidence showing the assignment. Thus, the district court properly determined that ARS met its burden of showing a debtor-creditor relationship between the Ojikas and ARS.

The Ojikas also argue that ARS failed to establish mutual assent as to the account balance. Under certain circumstances, retention of a statement of account without objection, for more than a reasonable amount of time may constitute an admission that the statement is correct. *Meagher v. Kavli*, 251 Minn. 477, 487, 88 N.W.2d 871, 879 (1958). Partial payment on an account without objection may "strengthen the inference" that an

account stated exists. 1A C.J.S. *Account Stated* § 35 (2016). Here, ARS offered evidence that billing statements were sent to the Ojikas, no objection was made, and the Ojikas made partial payments. The Ojikas submitted no evidence, only their averments, that they objected to the billing statements. And they provided no explanation for the payments they made on the account. Viewing the record in the light most favorable to the Ojikas, we cannot conclude that "reasonable persons might draw different conclusions from the evidence presented." *See DLH, Inc.*, 566 N.W.2d at 69. ARS is entitled to summary judgment on its account-stated claim.[2]

III. ARS is not entitled to summary judgment on the Ojikas' MHRA claim.

The MHRA governs the release or disclosure of health records. Minn. Stat. § 144.293, subds. 1-2 (2016). "Health record" is defined as "any information . . . that relates to . . . the provision of health care to a patient; or the past, present or future payment for the provision of health care to a patient." Minn. Stat. § 144.291, subd. 2(c) (2016). The MHRA prohibits the release or disclosure of "a patient's health records to a person" without, in relevant part, consent or "specific authorization in law." Minn. Stat. § 144.293, subd. 2. It is undisputed that Exhibits 1A and 2 to the Gallagher affidavit are "health records," and that ARS released the records without the Ojikas' consent.

The district court determined that specific authorization in law for the release is provided by a related regulation promulgated under the Health Insurance Portability and

[2] The Ojikas also argue that the district court abused its discretion in quashing the subpoena served on Allina. Because we conclude that the district court did not abuse its discretion in declining to grant additional time for discovery, and properly granted summary judgment to ARS on its account-stated claim, the subpoena issue is moot.

Accountability Act (HIPAA). The district court reasoned that HIPAA "specifically permits or allows a covered entity (or its business associate), such as ARS, to use or disclose protected health information [to seek payment]," and that this provision constituted "specific authorization in law" under the MHRA.[3]

The Ojikas argue that HIPAA cannot provide specific authorization in law because the MHRA is not coextensive with HIPAA. We disagree. Nothing in the MHRA suggests that the specific authorization in law must emanate from the MHRA itself.

We next consider whether ARS has shown that HIPAA specifically authorizes the release of the records in this case. The HIPAA regulation relied upon by the district court provides, "a covered entity may use or disclose protected health information for its own treatment, payment, or health care operations." 45 C.F.R. § 164.506(c)(1) (2016). "Protected health information," similar to "health record," is defined as "individually identifiable health information," which "[r]elates to the past, present, or future . . . provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual." 45 C.F.R. § 160.103 (2016). "Payment" includes activities undertaken by a health-care provider to obtain reimbursement for the provision of health care, including billing and collection activities. 45 C.F.R. § 164.501 (2016). A "covered entity" is defined in relevant part as a "health care provider who transmits any health

[3] The district court also concluded that ARS did not violate the MHRA because Exhibits 1A and 2 are not "medical records" under the Rules of Public Access to Records of the Judicial Branch. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(f). But because "health record" is defined in the MHRA, we need not look to other sources to define it.

information in electronic form in connection with a transaction covered by this subchapter." 45 C.F.R. § 160.103.

ARS does not argue that it meets the definition of a covered entity, but asserts that it is a business associate of a covered entity and is also entitled to use or disclose protected health information under 45 C.F.R. § 164.506(c). A "business associate" is defined as an entity that (i) "[o]n behalf of such covered entity" creates, receives, maintains, or transmits protected health information for functions such as claims processing, quality assurance, or billing, or (ii) provides legal, accounting, administrative, or financial services "to or for such covered entity." 45 C.F.R. § 160.103.

ARS's position throughout this litigation has been that it is a separate legal entity from Allina and that it purchased the Ojika accounts from Allina to pursue collection efforts on its own behalf. On this record, ARS has not shown that it meets the definition of a "business associate" of a covered entity. Because ARS points to no other specific authorization in law permitting its release of health records under the MHRA, the district court erred in granting summary judgment to ARS on the Ojikas' MHRA claim. We therefore reverse that determination and remand for the district court to consider the merits of the MHRA claim and ARS's potential defenses.

Affirmed in part, reversed in part, and remanded.