STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0281

Ola Abdelaziz,
Appellant,

vs.

Jeffrey D. Baker,
Respondent.

Filed October 5, 2020
Affirmed
Slieter, Judge

Carver County District Court
File No. 10-CV-19-51

Joel M. Anderson, White Bear Lake, Minnesota (for appellant)

Kelly A. Putney, Anuradha Chudasama, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Florey, Judge; and Slieter, Judge.

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

SLIETER, Judge

Respondent-doctor Jeffrey D. Baker performed a bariatric weight loss procedure on appellant Ola Abdelaziz. Because the procedure he performed was not the procedure that she now asserts she wanted, Abdelaziz sued Baker for breach of contract and assault and battery. The district court granted Baker's motion for summary judgment because

Abdelaziz signed an informed-consent form approving the procedure performed, leaving no genuine disputes of material fact. Because Abdelaziz presented no contract to perform a different surgery and because there can be no battery when the consent signed by Abdelaziz approved the performed surgery, we affirm.

FACTS

Abdelaziz met with Baker in October 2016 to discuss possible bariatric weight loss procedures. At this appointment, Abdelaziz expressed her interest in the "sleeve" procedure and the two discussed the surgery.[1] Approximately one month later, Abdelaziz called Baker to express her interest in the "band" procedure.[2] Later, Abdelaziz met with Baker to discuss the band procedure. After that appointment, Baker recalled that Abdelaziz was to inform him if she wanted to switch to the band procedure but that, absent any change, they would proceed with the sleeve procedure.[3]

Subsequently, Abdelaziz arrived at the medical facility for her surgery. The medical record notes that an interpreter was present to aid Abdelaziz but that she declined this service as her daughter agreed to interpret for her.[4] Abdelaziz recalled differently, and

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[1] During the laparoscopic sleeve procedure, the patient's stomach is cut and about 80% of it is removed to reduce its size and limit the patient's food consumption.

[2] In the laparoscopic adjustable gastric band procedure, an adjustable band is placed around the patient's stomach to create a smaller stomach pouch, which limits the patient's food consumption. Notably, the "sleeve" procedure is permanent and the "band" procedure is reversible.

[3] Both procedures were authorized through Abdelaziz's medical insurance.

[4] Abdelaziz is originally from Egypt and Arabic is her primary language. She can converse "lightly" in English but cannot read written English.

believed that the interpreter did not appear for her procedure so her daughter interpreted for her. Her daughter believed that there was an interpreter available though not present at the time.

A nurse met with Abdelaziz before her procedure and recalled that Abdelaziz confirmed that she was having the vertical sleeve procedure. Because Abdelaziz cannot read English, the nurse orally read the consent form to Abdelaziz. The form stated that Abdelaziz was consenting to a "Laparoscopy Sleeve Gastrectomy." Abdelaziz did not remember "going over a consent form" but stated that her daughter interpreted the consent form for her. Abdelaziz did not ask any questions about the form or procedure and signed the form.[5] Abdelaziz acknowledged that she did not have any questions that required her daughter's interpretation.[6]

Abdelaziz met with a second nurse before her procedure, who stated that it was her standard practice to ask the patient to describe in her own words which procedure she was having. This nurse also stated that she would have confirmed that this was the same procedure as listed on the consent form, and that the consent form indicates that Abdelaziz was having the sleeve procedure. While she did not remember Abdelaziz specifically, she

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[5] In her deposition, Abdelaziz could not "remember" if the signature on the consent form was hers but she remembered that she signed a consent that she was having surgery and that the signature on the form looked like hers.

[6] Abdelaziz also stated that she knows the English words for "band" and "sleeve" refer to the different procedures and that she knew that "sleeve" meant the procedure where the doctor would "cut" her stomach as opposed to inserting a temporary band.

noted that if there were any issues or questions, she would have documented them in Abdelaziz's medical record. There was no such documentation.

Abdelaziz also met with Baker, and he confirmed that she wanted to move forward with the sleeve procedure. According to Baker, she responded affirmatively, "Yes, yes, yes, the sleeve, the sleeve." Abdelaziz stated that she did not remember meeting with Baker before the surgery.

Baker performed the laparoscopic vertical sleeve gastrectomy without complication. Following the procedure, Abdelaziz and her family recalled expressing surprise that Baker performed the sleeve procedure and not the band.

Approximately a year and a half after the surgery, Abdelaziz served Baker with a complaint alleging breach of contract and assault and battery. Following discovery, Baker moved for summary judgment. Abdelaziz opposed, alleging that there were genuine disputes of material fact that precluded summary judgment. In a written order, the district court found that the only contract between the parties was the written consent form referring to the sleeve procedure, that it could not consider parol evidence to interpret that unambiguous consent, and that no genuine issues of material fact remained. Accordingly, it granted summary judgment on both counts and dismissed the matter with prejudice. Abdelaziz appeals.

D E C I S I O N

Abdelaziz alleges two substantive claims in her complaint: breach of contract and assault and battery. To analyze these claims, it is essential to consider our role in analyzing appeals from orders granting summary judgment. Appellate courts "review the grant of

summary judgment *de novo* to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). Appellate courts "view the evidence in the light most favorable to the party against whom summary judgment was granted." *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). With this framework in mind, we address Abdelaziz's substantive claims.

I. The district court did not err by granting summary judgment on Abdelaziz's breach-of-contract claim.

We begin with Abdelaziz's claim that Baker breached the parties' contract. To prevail on a breach-of-contract claim, Abdelaziz needs to prove three elements: "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). The first element is dispositive because, when viewing the entire record in favor of Abdelaziz, she has not shown the existence of a contract to perform the band procedure.

Contract Formation

Abdelaziz contends that the district court erred by concluding that there was no contract for Baker to perform the band procedure. This question requires us to consider whether the record presents sufficient evidence to reasonably conclude that a contract for the band procedure was formed. "Whether a contract exists generally is a question for the fact-finder." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). But "[t]o

defeat a summary-judgment motion, the nonmoving party cannot rely on denials or general averments, but must offer specific facts to show that there is a genuine issue of material fact for trial." *Southcross Commerce Ctr., LLP v. Tupy Props., LLC*, 766 N.W.2d 704, 707 (Minn. App. 2009).

Abdelaziz does not offer any evidence that she and Baker had a contract to perform the band surgery. Instead, she argues generally that contracts may be made orally, implicitly, or by the conduct of the parties. However, we detect no evidence in the record that a contract existed for Baker to perform the band procedure, and Abdelaziz fails to point to any specific facts showing such a contract existed. She merely suggests that there was some oral or implicit agreement that Baker would perform the band procedure instead of the sleeve procedure. But this general assertion of an agreement is insufficient to overcome summary judgment. *See Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (stating that "general assertions" are not enough to create a genuine issue of material fact).

Because Abdelaziz fails to demonstrate any genuine issues of material fact as to whether there was a contract for Baker to perform the band rather than the sleeve procedure, summary judgment was not erroneous.

Consent Form

Abdelaziz also argues that the district court erred by concluding that her signed consent form, which approved the sleeve procedure that was performed, was an enforceable contract. We first note that, as described above, Abdelaziz presented no evidence of a contract to perform the band procedure. Therefore, whether the signed

consent form is an enforceable contract has no effect on this court's determination that summary-judgment dismissal of the breach of contract claim was proper. However, because analysis of the consent form was integral to the consideration of the breach-of-contract claim by the district court and the parties, we now consider the consent form. This analysis will, as noted below, be important to this court's consideration of the assault and battery claim.

"Whether a contract exists generally is a question for the fact-finder." *Olson*, 756 N.W.2d at 918. When reviewing summary judgment in this context, the key question is whether there are any genuine disputes of material fact regarding whether the consent was a contract. *See Montemayor*, 898 N.W.2d at 628.

Generally, "[a] contract consists of a binding promise or set of promises." *Lyon Fin. Servs., Inc. v. Illinois Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). "The formation of a contract requires communication of a specific and definite offer, acceptance, and consideration." *Olson*, 756 N.W.2d at 918 (quotation omitted). Contract formation "is judged by the objective conduct of the parties rather than their subjective intent." *Id.*

In this context, there were numerous discussions prior to the surgery day that informed the parties' decision to move forward with the surgery, as authorized by the consent form. Abdelaziz wished to undergo a bariatric medical procedure. Baker promised to perform a certain medical procedure on her. Considering this matter in the most basic contract principles, the consent form for the sleeve procedure that Baker prepared and presented to Abdelaziz was an offer for Baker to perform the surgery. Abdelaziz accepted his offer by signing the form and going forward with the sleeve procedure. *See Welsh v.*

Barnes-Duluth Shipbuilding Co., 21 N.W.2d 43, 47 (Minn. 1945) (noting that in an executory contract, "performance, either partial or in full, supplies a sufficient consideration to support all its provisions"). The conduct of the parties, viewed objectively, is consistent with the written consent form and thereby meets the elements for a binding contract.

Caselaw supports this conclusion. "If the physician advises his patient to submit to a particular operation, and the patient weighs the dangers and risks incident to its performance, and finally consents, [she] thereby, in effect, *enters into a contract* authorizing [her] physician to operate to the extent of the consent given, but no further." *Mohr v. Williams*, 104 N.W. 12, 15 (Minn. 1905) (emphasis added). This demonstrates the supreme court has long recognized that a consent to medical treatment is a contract.

Thus, the district court did not err by concluding that the signed consent form constituted a binding contract. Though Abdelaziz challenges the contents and circumstances of the consent, as we address below, Abdelaziz does not offer any material facts that dispute the existence of the contract.

Contract Terms

Abdelaziz also contends that the district court erred by applying the parol-evidence rule to exclude extrinsic evidence of the parties' contract terms. "Absent ambiguity, the interpretation of a contract is a question of law." *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). We review the application of the parol-evidence rule *de novo*. *In re Foley Tr.*, 671 N.W.2d 206, 209 (Minn. App. 2003).

Pursuant to the parol-evidence rule, courts "exclude[] evidence outside a written document which varies or contradicts the plain terms of the document." *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. App. 1985). Said another way, "[t]he rule forbids to add by parol when the writing is silent, as well as to vary where it speaks." *Taylor v. More*, 263 N.W. 537, 539 (Minn. 1935) (quotation omitted).

Abdelaziz acknowledges that the terms of the written consent form are unambiguous. Baker agrees, as do we. Despite this lack of ambiguity, Abdelaziz seeks to admit evidence to vary or contradict which procedure was authorized by the consent—one of its terms. But she is unable to do so. Because the writing is unambiguous, parol evidence may not be considered to vary or contradict its terms. *See Johnson Bldg. Co.*, 374 N.W.2d at 193.

In an implicit acknowledgment of this, Abdelaziz argues instead that parol evidence should be admissible nonetheless to demonstrate that the consent was based on fraud.[7] An exception to the parol-evidence rule exists "when a contract is attacked on grounds of fraud." *See Johnson Bldg. Co.*, 374 N.W.2d at 193. The "rule is inapplicable to exclude evidence of fraudulent oral representations by one party which induce another to enter into a written contract." *Id.* Under this exception, "[e]vidence of fraudulent representations is not admitted to vary the terms of a contract but to establish that, because of such fraudulent representations, no enforceable contract was made." *Id.*

[7] Abdelaziz also accuses Baker and the other medical professionals involved of using "situational duress" and "ambush tactics" to induce her into agreeing to have this elective surgery. These accusations do not have support in the record.

This claim lacks merit for two reasons. First, fraud-based claims must be pleaded with particularity. *See* Minn. R. Civ. P. 9.02; *see also Stubblefield v. Gruenberg*, 426 N.W.2d 912, 914-15 (Minn. 1988) ("General allegations of fraud are insufficient to meet the requirements of Rule 9.02."). Abdelaziz's complaint does not assert that Baker engaged in fraud and therefore failed to meet this pleading requirement.

Second, Abdelaziz failed to describe how Baker's conduct satisfied the elements for fraudulent misrepresentation. *See Weise v. Red Owl Stores, Inc.*, 175 N.W.2d 184, 187 (Minn. 1970) ("(1) There must be a representation. (2) That representation must be false . . . ."). Specifically, she fails to present facts that show how or when Baker *intentionally falsely represented* to her that he would perform the band procedure instead of the sleeve procedure. Again, Abdelaziz cannot rely on general assertions but must offer specific facts to show there is a genuine issue of material fact to overcome summary judgment. *See Southcross*, 766 N.W.2d at 707 ("To defeat a summary-judgment motion, the nonmoving party cannot rely on denials or general averments, but must offer specific facts to show that there is a genuine issue of material fact for trial."). She fails to do so here with regard to her claim of fraud.[8]

In sum, Abdelaziz fails to show how the district court erred by granting Baker's summary-judgment motion to dismiss the breach-of-contract claim. Abdelaziz and Baker

[8] Abdelaziz also suggests that if this argument does not otherwise prevail, "Minnesota law should evolve to protect the vulnerable." As an error-correcting court, it is not within our authority to modify existing law. *See Lake George Park, L.L.C. v. IBM Mid-America Employees Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (stating that "[t]his court, as an error correcting court, is without authority to change the law"), *review denied* (Minn. June 17, 1998).

had no contract for Baker to perform the band procedure. Because there was no contract for the band procedure, there can be no breach. The parties *did* contract for Baker to perform the sleeve procedure, which he performed. Additionally, parol evidence was properly excluded to vary the terms of this unambiguous contract formed through consent. Abdelaziz is unable to point to material facts in the record that present a genuine dispute on her breach-of-contract claim and the district court did not err by granting summary judgment.

II. The district court did not err by granting summary judgment on the assault and battery claim.

Abdelaziz also contends that the district court erred by granting summary judgment on her assault and battery claim. However, she fails to explicitly argue this in her brief. While she maintained at oral argument that her appeal challenges this claim, we note that inadequately briefed issues are not properly before an appellate court. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Consequently, Abdelaziz forfeited this issue.

Even if we were to address the substance of the claim, summary judgment was not erroneous. Medical battery "consists of an unpermitted touching, in the form of a medical procedure or treatment. The touching is permitted if the patient consents to it." *Kohoutek v. Hafner*, 383 N.W.2d 295, 299 (Minn. 1986). For the reasons set forth in the previous section, Abdelaziz explicitly consented to this procedure. Her consent undoubtedly prevents her from prevailing on the merits of an alleged medical battery claim.

In what appears to be an effort to discredit Baker's reliance on her consent, Abdelaziz attempts to cast doubt on whether she actually signed or understood the written

consent. However, Baker supported the signed consent with additional witness declarations, a copy of the executed document, and contemporaneous medical records that demonstrate that she did. Abdelaziz fails to point to facts in the record that support her theory that she did not understand she was consenting to the sleeve procedure on the day of her surgery. This failure justifies summary judgment on this claim, and the district court did not err by granting summary judgment.

Affirmed.