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NO. COA10-657

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

CAROLINA ORTHOPAEDIC
SPECIALISTS, P.A.,
Plaintiff-appellant

v.

Catawba County
No. 08 CVD 4767

ALFRED E. SMITH, JR. &
CHANDRA SMITH,
Defendant-appellees

Appeal by plaintiff from order entered 1 March 2010 by Judge Burford A. Cherry in Catawba County District Court. Heard in the Court of Appeals 4 November 2010.

The Law Office of Reginald L. Yates, by Amanda K. Moore, for plaintiff-appellant.

No brief filed for defendant-appellees.

CALABRIA, Judge.

Carolina Orthopaedic Specialists, P.A. ("plaintiff") appeals the trial court's order dismissing its complaint because (1) the complaint was not verified and (2) the complaint failed to state a claim upon which relief could be granted. We reverse and remand.

I. Background

Plaintiff is a medical association of licensed physicians with its principal offices in Catawba County, North Carolina. Plaintiff furnished necessary medical services to Alfred E. Smith, Jr. and/or

Chandra Smith ("defendants"), based upon defendants' promise to pay for these services. The total value of medical services provided was \$3,215.88. At the time the medical services were provided, defendants were legally married to one another.

Defendants failed to pay plaintiff for its services. As a result, plaintiff initiated an action against defendants in Catawba County District Court on 15 December 2008. On 14 January 2009, defendants filed an answer and motion to dismiss for failure to state a claim upon which relief may be granted. On 1 March 2010, after a hearing on defendants' motion to dismiss, the trial court granted the motion, stating: "The complaint is not verified and fails to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Rules of Civil Procedure." Plaintiff appeals.

II. Standard of Review

The standard of review of an order granting a 12(b)(6) motion is whether the complaint states a claim for which relief can be granted under some legal theory when the complaint is liberally construed and all the allegations included therein are taken as true. On a motion to dismiss, the complaint's material factual allegations are taken as true.

Dismissal under Rule 12(b)(6) is proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.

Scheerer v. Fisher, ___ N.C. App. ___, ___, 688 S.E.2d 472, 474 (2010) (citations omitted). "A complaint should not be dismissed for failure to state a claim unless it appears to a certainty that

plaintiff is legally entitled to no relief under any construction of the facts asserted." *Powell v. Wold*, 88 N.C. App. 61, 63, 362 S.E.2d 796, 797 (1987). "The standard of review on an appeal of a grant of a motion to dismiss is *de novo*." *Scheerer*, ___ N.C. App. at ___, 688 S.E.2d at 474.

III. Verification

Plaintiff argues that the trial court erred by dismissing its complaint because the complaint was not verified. We agree.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. *Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.*

N.C. Gen. Stat. § 1A-1, Rule 11(a) (2009) (emphasis added). There is no statute or rule of civil procedure requiring plaintiff to verify its complaint in the instant case. See 1 G. Gray Wilson, *North Carolina Civil Procedure* § 11-5, at 11-18 (3d ed. 2007) (noting the civil actions and proceedings which require verification of pleadings under the North Carolina General Statutes and Rules of Civil Procedure). Since plaintiff's complaint did not require verification, the trial court erred in granting defendants' motion to dismiss on that basis.

IV. Breach of Contract and Unjust Enrichment

Plaintiff argues that the trial court erred by dismissing its complaint for failure to state a claim upon which relief could be granted pursuant to Rule 12(b)(6). We agree.

In its brief, plaintiff specifically contends that its complaint stated claims for breach of contract and unjust enrichment. "The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract." *Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000). To state a claim for unjust enrichment, the plaintiff's allegations must set forth that a benefit was conferred on the defendant, that the defendant accepted the benefit, and that the benefit was not gratuitous. *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556, *reh'g denied*, 323 N.C. 370, 373 S.E.2d 540 (1988).

In its complaint, plaintiff alleges that it "furnished medical services for the benefit of the defendants for which the defendants promised to pay" and that defendants failed to pay for these medical services. Additionally, plaintiff alleged that the medical services "were necessary for the health and well-being of the recipient thereof." These allegations, taken as true and broadly construed, would support claims for breach of contract and/or unjust enrichment.

According to the narrative of the transcript provided in the record on appeal, the trial court was concerned that plaintiff's complaint failed to identify which defendant received medical services from plaintiff. However, plaintiff was not required to identify which defendant received medical services because both defendants were liable for the payment of medical services, either

as the recipient of medical services or as a spouse of the recipient, under the necessities doctrine.

The necessities doctrine arose from the common law duty of the husband to provide for the necessary expenses of his wife. The doctrine is now applied equally, holding a wife liable for the necessary expenses of her husband. In order to establish a *prima facie* case against one spouse for the value of necessary medical services provided to the other spouse, the health-care provider must show that (1) medical services were provided to the receiving spouse, (2) the medical services were necessary for the health and well-being of the receiving spouse, (3) the person against whom the action is brought was married to the receiving spouse at the time the medical services were provided, and (4) payment for the necessities has not been made.

Forsyth Mem'l Hosp. v. Chisholm, 342 N.C. 616, 619, 467 S.E.2d 88, 89-90 (1996) (internal citations omitted). In addition to the portions of plaintiff's complaint quoted above, plaintiff also alleged that defendants were married at the time medical services were provided. Thus, plaintiff's complaint alleged all of the required elements to satisfy the necessities doctrine, making both spouses liable for the medical services provided, regardless of which spouse actually received the medical services.

While it is the better practice, when relying on the necessities doctrine, to specifically identify, within the complaint, the spouse receiving medical services, failure to do so does not constitute grounds for dismissal of such an action. So long as a complaint against a married couple for payment of medical services adequately alleges the elements of the necessities

doctrine, each spouse is liable, either directly or under the necessities doctrine, for the medical services provided.

Treating plaintiff's allegations as true, we hold that the complaint, when broadly construed, sufficiently supports a claim for breach of contract and/or unjust enrichment against both defendants. Thus, the trial court improperly dismissed plaintiff's claims pursuant to Rule 12(b)(6). We reverse the trial court's order dismissing plaintiff's complaint and remand the instant case for further proceedings.

V. Conclusion

Pursuant to N.C. Gen. Stat. § 1A-1, Rule 11(a), plaintiff was not required to verify its complaint. Treating the allegations in plaintiff's complaint as true, the complaint states valid claims for breach of contract and/or unjust enrichment against both defendants. Consequently, the trial court erred by dismissing plaintiff's complaint. Accordingly, we must reverse the trial court's order of dismissal and remand the instant case for further proceedings.

Reversed and remanded.

Judges GEER and THIGPEN concur.

Report per Rule 30(e).