

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-12  
NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2013

DUKE UNIVERSITY HEALTH SYSTEM,  
INC.,  
Plaintiff,

v.

Durham County  
No. 10 CVS 002732

JOHN D. SPARROW, SR.,  
Defendant.

Appeal by defendant from order entered 17 September 2012 by Judge Orlando F. Hudson, Jr., in Durham County Superior Court. Heard in the Court of Appeals 22 April 2013.

*Moore & Van Allen, PLLC, by Drew K. Kifner and Edward L. Embree III, for plaintiff-appellee.*

*Patrick M. Anders for defendant-appellant.*

Bryant, Judge.

Where there exists no genuine issue as to any material fact, we affirm the order of the trial court granting plaintiff's motion for summary judgment allowing for the recovery of \$63,446.88 from defendant for medical services and goods rendered.

On 23 March 2010, plaintiff Duke University Health System, Inc., filed a complaint against defendant John D. Sparrow, Sr., seeking compensation for medical services and goods rendered in the amount of \$63,446.88.

In his answer, defendant argued that "[t]he medical expenses for which Plaintiff complains were generated, in substantial part, by unclean and unsanitary conditions in Plaintiff's hospital, in that Defendant . . . acquired a severe and deadly hospital based infection . . . ." Defendant further asserted that "[t]o the extent that the Court finds that Plaintiff's charges were unreasonable or caused by Plaintiff's own conduct . . . those claims should be denied."

On 31 August 2012, plaintiff filed a motion for summary judgment. In its motion, plaintiff asserted that defendant was admitted to Duke University Health System "because of an intracerebral hemorrhage from uncontrolled hypertension." And, "[u]pon [defendant's] admission, his son, John Sparrow, Jr., acting on [defendant's] behalf, signed a financial statement of responsibility . . . ." Defendant "sustained an aspiration pneumonia and then developed Clostridium difficile colitis" which plaintiff asserted was common for defendant's condition and for those following his course of treatment. "[Defendant] was correctly charged for the goods and services provided by Duke and all proper credits, deductions and additions to the

account were made . . . . The amount now due on the account is \$63,446.88." In support of its motion, plaintiff filed affidavits by Dr. Joel Morgenlander, Interim Chief of the Division of Neurology at Duke University Health System, Inc., Stuart Smith, Assistant Vice President of Corporate Finance at Duke University Health System, Inc., and Troy Spring, Director of Customer Service and Self Pay of Duke University Health System, Inc.

On 11 September 2011, defendant filed an affidavit by John Sparrow, Jr., defendant's son, in which the affiant states that "[d]uring my father's care [at Duke,] I was informed by physicians at Duke that my father developed a colon infection known as Clostridium Difficile, or 'C-Diff[,]'. . . . a contagious infection which frequently spreads among older hospital patients." "On several occasions prior to my father's diagnosis with 'C-Diff', [sic] however, I observed nurses entering the room without changing gloves or scrubs. Some of these nurses were also treating the patient in the adjoining room, who had already been diagnosed with 'C-Diff.'"

His condition took a noticeable turn for the worse and his health declined after his infection with Clostridium Difficile. I believe that some portion or all of the charges which Duke seeks in this action are the result of Duke employees['] [failure] to observe hygiene during my father's treatment, leading to a preventable hospital acquired infection.

After a hearing on 11 September 2012, the trial court entered an order in which it concluded that there were no genuine issues as to any material fact, and that plaintiff was entitled to judgment as a matter of law. The trial court granted plaintiff's motion for summary judgment, and ordered that plaintiff was entitled to recover judgment against defendant for \$63,446.88 plus interest, and attorney's fees in the amount of \$9,517.03, plus costs. Defendant appeals.

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On appeal, defendant questions whether the trial court erred in granting plaintiff's motion for summary judgment. Defendant contends that there exists a genuine issue of material fact as to whether the charges plaintiff sought to recover were reasonable or necessary if they resulted from a preventable, hospital acquired infection.

Pursuant to Rule 56 of our Rules of Civil Procedure, "[summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2011).

[S]ummary judgment may be granted for a party with the burden of proof on the basis

of his own affidavits (1) when there are only latent doubts as to the affiant's credibility; (2) when the opposing party has failed to introduce any materials supporting his opposition, failed to point to specific areas of impeachment and contradiction, and failed to utilize Rule 56(f); and (3) when summary judgment is otherwise appropriate.

*Charlotte-Mecklenburg Hosp. Auth. v. Talford*, 366 N.C. 43, 48, 727 S.E.2d 866, 869 (citation omitted), *reh'g denied*, 728 S.E.2d 354 (2012). On appeal, this Court reviews a grant of summary judgment de novo. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008).

Plaintiff's complaint alleges that "Defendant owes [] \$63,446.88 for medical goods and services rendered at Duke . . . ." "Upon admission to Duke, the Defendant signed a Statement of Financial Responsibility . . . ." Along with its complaint, plaintiff provided exhibits, including the Statement of Financial Responsibility signed by defendant's son upon the admission of defendant to the hospital. Plaintiff's claim against defendant is for breach of contract.

Defendant does not contest the services or value of these services plaintiff provided defendant nor does defendant contest the trial court's award of plaintiff's attorney fees. Documentation reflecting the services provided and amounts charged for those services has been made a part of the record as attachments to affidavits by the Duke University Health System,

Inc., Director of Customer Service and Self Pay, Troy Spring, and Assistant Vice President of Corporate Finance, Stuart Smith, asserting that the services rendered by plaintiff to defendant were delivered as charged and were reasonable. The imposition of attorney fees has been asserted to be pursuant to a contractual provision included in the Statement of Financial Responsibility signed by defendant's son upon defendant's admission to the hospital.

Defendant's contention is that plaintiff's actions caused the medical condition which required plaintiff's services to be rendered to defendant, and therefore, defendant is not liable for the costs and expenses incurred in treating the hospital acquired infection.

Along with its motion for summary judgment, plaintiff provided an affidavit from Dr. Joel Morgenlander, Interim Chief of the Division of Neurology at Duke University Health System, Inc. In his affidavit, Dr. Morgenlander stated the following:

The treatment reflected in the medical record was reasonable and medically necessary for the health and well-being of [defendant]. [Defendant] was admitted to Duke because of an intracerebral hemorrhage from uncontrolled hypertension. Due to neurological deterioration and development of hydrocephalus, he had to be intubated and placed on a ventilator for support. He sustained an aspiration pneumonia during his intensive care unit stay which is a common complication of severely impaired mental status and inability to protect airways. For

treatment of this severe infection, he received the needed antibiotics. A common complication in debilitated patients needing antibiotics is *Clostridium difficile* colitis which he developed. . . . Thus, Duke's treatment to [defendant] related to those conditions was normal, reasonable, and medically necessary.

"Like plaintiff's sworn statements, defendant's affidavit must comply with Rule 56. In other words, the affidavit 'shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.'" *Charlotte-Mecklenburg Hosp. Auth.*, 366 N.C. at 51, 727 S.E.2d at 871 (quoting N.C.G.S. § 1A-1, Rule 56(e) (2011)).

In response to plaintiff's summary judgment motion, defendant submitted the affidavit of John Sparrow, Jr. In it, the affiant states that he was present during defendant's treatment at Duke Hospital on a daily basis, and that he observed nurses entering defendant's room without changing gloves or scrubs. "Some of these nurses were also treating the patient in the adjoining room, who had already been diagnosed with 'C-Diff.' I believe [defendant's] infection with 'C-Diff' was caused by failure of Duke's nurses to observe hygiene, such as changing gloves and scrubs . . . ."

The affiant's *belief* that defendant's infection with *Clostridium difficile* colitis was contracted as a result of

plaintiff's nurses' failure to change gloves and scrubs does not amount to personal knowledge within the meaning of Rule 56. See *Hylton v. Koontz*, 138 N.C. App. 629, 634, 532 S.E.2d 252, 256 (2000) ("Although a Rule 56 affidavit need not state specifically it is based on 'personal knowledge,' its content and context must show its material parts are founded on the affiant's personal knowledge. Our courts have held affirmations based on 'personal[] aware[ness],' 'information and belief,' and what the affiant 'think[s],' do not comply with the 'personal knowledge' requirement of Rule 56(e).") (citations omitted); *Moore v. Coachmen Indus., Inc.*, 129 N.C. App. 389, 394, 499 S.E.2d 772, 776 (1998) ("[A] trial court may not consider that portion(s) of an affidavit which is not based on an affiant's personal knowledge." (citation omitted)); *Fuller v. Southland Corp.*, 57 N.C. App. 1, 6, 290 S.E.2d 754, 757 (1982) ("What an affiant thinks are facts, unless it is a situation proper for opinion evidence, is not information made on personal knowledge proper for consideration on a summary judgment motion." (citation omitted)). Therefore, defendant has failed to show that there exists a genuine issue of material fact. The materials introduced by defendant in support of his opposition to plaintiff's motion for summary judgment "failed to point to specific areas of impeachment and contradiction[.]" *Charlotte-*

*Mecklenburg Hosp. Auth.*, 366 N.C. at 48, 727 S.E.2d at 869 (citation omitted).

Because we determine that the complaint, affidavits and attachments made a part of the record show no genuine issue of material fact, plaintiff is entitled to judgment as a matter of law. See N.C. R. Civ. P. 56(c). Accordingly, we affirm the order of the trial court.

Affirmed.

Chief Judge MARTIN and Judge DAVIS concur.

Report per Rule 30(e).