

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Beachwood Pointe Care Center,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-1171
Calvin Bealer,	:	(C.P.C. No. 09CVH-01-1209)
Defendant-Appellee,	:	(REGULAR CALENDAR)
(Chantay Flowers,	:	
Defendant-Appellant).	:	

D E C I S I O N

Rendered on October 19, 2010

Weltman, Weinberg & Reis Co., L.P.A., and Amanda Rasbach Yurechko, for plaintiff.

Chantay Flowers, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Defendant-appellant, Chantay Flowers, appeals from a judgment of the Franklin County Court of Common Pleas granting the summary judgment motion of plaintiff-appellee, Beachwood Pointe Care Center. Because the trial court improperly granted summary judgment in the absence of Civ.R. 56(C) material, we reverse.

I. Facts and Procedural History

{¶2} On January 27, 2009, plaintiff filed a complaint against Calvin Bealer and Chantay Flowers. The first count of the complaint alleged plaintiff provided various medical services "to the Defendant, Marie Hatcher," an obvious error. The complaint nonetheless asserted Bealer owed a principal balance of \$22,122.83 to plaintiff for medical services it provided to him. According to the complaint, plaintiff demanded that Bealer liquidate the balance owing to plaintiff, but Bealer failed to do so. The second count of the complaint alleged Flowers "assumed the responsibilities of participating on behalf of Calvin Bealer and the financial obligations of Calvin Bealer to the Plaintiff." (Complaint, ¶5.) Accordingly, plaintiff sought judgment against defendants jointly and severally in the amount of \$32,510.74 with interest at the rate of 18 percent per annum from August 23, 2007, as well as costs.

{¶3} Flowers filed an answer to plaintiff's complaint denying she ever agreed to pay Bealer's debt, denying she agreed to accept responsibility for any of Bealer's debts or bills, and denying she owed anything to plaintiff. On August 14, 2009 plaintiff filed a notice to take Flowers' deposition; by letter dated September 14, 2009, she requested the deposition be rescheduled due to illness in the family.

{¶4} On October 7, 2009, plaintiff filed a motion for summary judgment against both defendants, contending both that Bealer received support, supplies, and medical services from plaintiff for which he did not compensate plaintiff and that Flowers assumed Bealer's financial obligations to plaintiff. Attached to plaintiff's summary judgment motion is an "Agreement of Resident and Responsible Person," a Financial Obligations Form and a document reflecting an unpaid balance of \$31,696.56.

{¶5} Flowers responded to plaintiff's summary judgment motion, stating plaintiff wrongfully assumed Flowers was present at the signing, the documents reflect her signature, and she signed admission documents. She attached an affidavit to her response. The affidavit avers Flowers' pieces of identification all reflect the name Chantay Flowers and not Teantay Bealer, the name Flowers apparently believed was on the documents attached to plaintiff's summary judgment motion.

{¶6} On November 16, 2009, the trial court issued an entry granting plaintiff's summary judgment motion and entering judgment for plaintiff in the amount of \$27,836. The court added interest in the amount of \$10,406.49 through September 22, 2009, plus interest at the rate of 18 percent per annum from that date forward.

II. Assignments of Error

{¶7} Flowers appeals, assigning the following errors:

1. The original complaint stated that Beachwood Pointe Care Center provided various medical services to the Defendant, Marie Hatcher.
2. The defendant's Motion for Summary Judgment indicates that the patient was admitted into the facility on July 1, 2007 and was discharged on August 23, 2007.
3. The trial court ignored my arguments and affidavits contained in my response to the request for summary judgment.
4. I DID NOT SIGN THE NURSING HOME AGREEMENT.
5. The Nursing Home Reform Law prohibits a nursing home from requiring a third party guarantor to be financially responsible for another's debts, 42 U.S.C. 1395(i)-3@5(A)(ii), 42 c.F.R. 483.1 (d)d (12).
6. The signature of this person did not provide proof of identity or relationship to this patient as noted on the

agreement or that Calvin Bealer gave permission for anyone other than himself to sign this agreement. I AM MY FATHER'S POA AND I DID NOT SIGN THIS DOCUMENT.

7. The financial obligations form is insufficient, unfair, and incomplete.

(Sic passim.) Taken together, Flowers' assignments of error assert the trial court improperly granted summary judgment to plaintiff because issues of fact remain.

{¶8} An appellate court's review of summary judgment is conducted under a de novo standard. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41; *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588. Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 1997-Ohio-221.

{¶9} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The moving party, however, cannot discharge its initial burden under this rule with a conclusory assertion that the non-moving party has no evidence to prove its case; the moving party must specifically point to evidence of a type listed in Civ.R. 56(C), affirmatively demonstrating that the non-moving party has no evidence to support the non-moving party's claims. *Id.*; *Vahila v. Hall*, 77 Ohio St.3d 421,

1997-Ohio-259. Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E). See also *Castrataro v. Urban* (Mar. 7, 2000), 10th Dist. No. 99AP-219.

{¶10} Civ.R. 56(C) delineates the types of evidence a party may use to support a summary judgment motion. Plaintiff's summary judgment motion presented none of the types of evidence allowed under Civ.R. 56(C). While an affidavit attached to the documents plaintiff submitted may have brought them under the requirements of Civ.R. 56(C), no such affidavit is in the record. See, e.g., *Scott v. Hertz Corp.*, 10th Dist. No. 05AP-1180, 2006-Ohio-4982 (concluding a report neither notarized nor incorporated by reference in an affidavit is not Civ.R. 56(C) material). Accordingly, plaintiff failed to present evidence under Civ.R. 56(C) supporting the contentions of its summary judgment motion, and the burden to respond never shifted to plaintiff. Cf. *Adams v. Kurz*, 10th Dist. No. 09AP-1081, 2010-Ohio-2776 (noting that because defendants presented evidence under Civ.R. 56(C) supporting their contentions, plaintiff was required to respond with Civ.R. 56(C) material demonstrating genuine issue of material fact for trial). Although Flowers complied with Civ.R. 56 in filing an affidavit to support a portion of the contentions set forth in her memorandum opposing plaintiff's summary judgment motion, the remaining documents addressed to the primary issues in the case and attached to her motion also are not Civ.R. 56(C) documents.

{¶11} Accordingly, the trial court was presented with a summary judgment motion and a response to that motion, neither of which complied with the requirements of Civ.R.

56(C). Because plaintiff failed to carry its burden of presenting Civ.R. 56(C) evidence to demonstrate it is entitled to judgment, and thus shift the burden to Flowers, it is not entitled to summary judgment.

{¶12} We note neither party objected to the other's failure to comply with Civ.R. 56(C) and thus arguably waived any defects in the materials submitted in connection with plaintiff's summary judgment motion. See, e.g., *Robinson v. Gansheimer*, 11th Dist. No. 2007-A-0035, 2007-Ohio-3845, ¶12 (noting that even in the absence of the required affidavit a court may consider such non-complying evidence if the opposing party does not object). Even if the trial court properly could consider both parties' non-Civ.R. 56(C) materials because neither party objected to the nonconforming evidence, plaintiff's motion with accompanying documents and Flowers' response to it indicate contested issues of fact regarding whether Flowers assumed responsibility for Bealer's debt by signing the documents attached to plaintiff's complaint. Summary judgment thus remains inappropriate.

{¶13} In the end, whether we analyze the case under Civ.R. 56(C) or a failure to object to nonconforming evidence, the trial court wrongly granted summary judgment to plaintiff. Accordingly, we sustain Flowers' seven assignments of error to the extent indicated and remand this matter to the trial court for further proceedings consistent with this decision.

*Judgment reversed
and case remanded.*

TYACK, P.J., and CONNOR, J., concur.
