

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

Northern Ohio Medical Specialists, LLC

Court of Appeals No. E-09-13

Appellee

Trial Court No. CVF 07 01697

v.

Barbara J. Huston, et al.

Appellants

v.

Dr. Gary Kresge

**DECISION AND JUDGMENT**

Appellee

Decided: November 6, 2009

\* \* \* \* \*

Eric Wasserman and Carolyn Delon, for appellee Northern Ohio  
Medical Specialists, LLC.

Loretta A. Riddle, for appellants.

Erik A. Breunig, for appellee Dr. Gary Kresge.

\* \* \* \* \*

SINGER, J.

{¶ 1} Appellants appeal judgments on the pleadings entered against them in a suit on account in the Sandusky Municipal Court. For the reasons that follow, we affirm, in part, and reverse, in part.

{¶ 2} On July 5, 2007, appellee Northern Ohio Medical Specialists, LLC ("NOMS") sued appellants, Barbara J. and Theodore Huston, to recover \$5,133 in payment for medical services rendered to Barbara Huston in 2003. Service on both defendants was returned unclaimed, but later effected by ordinary mail pursuant to Civ.R. 4.6(D). On August 31, 2007, the court received a letter from Theodore Huston, denying liability. The court deemed appellant Theodore Huston's letter as an answer and set the matter for pretrial.

{¶ 3} Following several continuances, counsel for appellants entered an appearance and sought leave to plead. On July 8, 2008, the court granted appellants leave to plead and continued the pretrial.

{¶ 4} On August 7, 2008, appellants filed an answer and counter/"cross" claim denying that Theodore Huston ever received any medical treatment and asserting that Barbara Huston was insured and that money had not been paid because of the "fiduciary" breach of appellee NOMS or the negligence of third party defendant, appellee Dr. Gary Kresge, in processing the insurance claim.

{¶ 5} Concurrently, appellant Theodore Huston moved for a judgment on the pleadings, arguing that the claim against him should be dismissed because all of the money claimed due was for services rendered to Barbara Huston, not for him. Appellees responded that Theodore Huston, as spouse of Barbara Huston, is statutorily liable for her medical necessities, pursuant to R.C. 3103.03.

{¶ 6} Third party defendant, appellee Dr. Kresge, denied any negligence or fiduciary duty to appellants and moved to dismiss the third party complaint for failure to state a cause upon which relief may be granted, pursuant to Civ.R. 12(B)(6). Appellee NOMS responded with its own motion for judgment on the pleadings, denying any duty, fiduciary or otherwise, for a physician to obtain insurance benefits for a patient. The trial court granted both of appellee NOMS and appellee Kresge's motions, entering judgment for appellee NOMS in the amount of \$5,133.

{¶ 7} From this judgment, appellants now bring this appeal, setting forth the following two assignments of error:

{¶ 8} "Assignment of Error No. 1.

{¶ 9} "The trial court errs and abuses its discretion by granting a judgment on the pleadings when the third party plaintiff pleaded sufficient, operative facts to support recovery under his claims that a doctor, or medical care providers have a fiduciary duty to submit claims to an insurance company when he promises to do so.

{¶ 10} "Assignment of Error No. 2.

{¶ 11} "The trial court erred by finding defendant Theodore Huston liable for medical costs of defendant Barbara Huston when the moving party has not established a relationship between the respective defendants."

{¶ 12} "A motion to dismiss for failure to state a cause upon which relief may be granted, pursuant to Civ.R. 12(B)(6), and a motion for judgment on the pleadings,

pursuant to Civ.R. 12(C), are premised on the same standard. The principal difference between the two is timing and the material which may be considered. A Civ.R. 12(B)(6) motion is ordinarily filed prior to the answer and consideration of the motion is limited solely to the complaint. A Civ.R. 12(C) motion, however, is premature if advanced prior to the close of pleadings. Civ.R. 12(C) permits the court to consider both the complaint and the answer.

{¶ 13} "For either motion, the court must accept the factual allegations in the complaint as true and make all reasonable inferences in favor of the nonmoving party. If, on review, the allegations in the complaint are such that the plaintiff can prove no set of facts which would entitle him or her to relief, the moving party is entitled to judgment as a matter of law." (Citations omitted.) *Clark v. Clark*, 6th Dist. No. H-05-006, 2005-Ohio-5252, ¶ 10-11.

{¶ 14} In their first assignment of error, appellants complain that the trial court should not have granted appellee Dr. Kresge's motion to dismiss because the doctor had a "fiduciary" duty to get insurance benefits for Barbara Huston and negligently failed to do so.

{¶ 15} A "fiduciary duty" is, "[a] duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person." Black's Law Dictionary (6 Ed.1990), 625. A "fiduciary" is "[a] person having duty created by his undertaking, to act primarily for another's benefit in matters connected with such

undertaking." Id.; *Strock v. Pressnell* (1988), 38 Ohio St.3d 207, 216. A claim of a breach of a fiduciary duty is basically a claim of negligence with a higher standard of care. In any claim for negligence, the claimant must show the existence of a duty. Id.

{¶ 16} A physician undisputedly owes a fiduciary duty to his or her patient with respect to diagnosing and treating diseases and injuries. *Tracy v. Merrell Dow Pharmaceuticals* (1991), 58 Ohio St.3d 147, 150. Appellants, however, direct us to no authority that such a duty extends beyond the medical relationship. Consequently, appellants' claim premised on a fiduciary duty fails as a matter of law.

{¶ 17} Appellants also claimed in their counterclaim/ third party complaint that they relied on appellees' "statement that [appellees] would take care of all the insurance matters" and were damaged as the result of that reliance. This allegation appears to attempt to state a claim in detrimental reliance. Detrimental reliance is founded in the contract doctrine of promissory estoppel. As adopted in Ohio, detrimental reliance supplies the element of consideration if there is "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance \* \* \* if injustice can be avoided only by enforcement of the promise." *McCroskey v. State* (1983), 8 Ohio St.3d 29, 30.

{¶ 18} Presuming, as we must, that the allegation in the complaint is true, it does not, as appellants suggest, constitute a guarantee to obtain insurance benefits for appellants. At best, the statement implies that appellees will submit an insurance claim,

which, as the statement attached to NOMS's complaint shows, occurred. Moreover, appellants never allege that either appellee failed to take care "of all the insurance matters."

{¶ 19} Accordingly, appellants' first assignment of error is not well-taken.

{¶ 20} In their second assignment of error, appellants insist that there was no basis in the pleadings for the court to find liability on this account for Theodore Huston. Appellants assert that the only allegation that the Hustons were husband and wife occurred in documents outside what may properly be considered pleadings.

{¶ 21} Civ.R. 7(A) provides, "There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. *No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.* (Emphasis added.)

{¶ 22} Neither NOMS nor Dr. Kresge allege, in any document denominated a "pleading" in Civ.R. 7(A), that appellants are husband and wife. No attempt was ever initiated to amend the complaint. The allegation appears only in a "Plaintiff's Response to Defendants' Motion for Judgment on the Pleadings," and in NOMS's own "Motion for Judgment on the Pleadings."

{¶ 23} Absent a proper allegation in the pleadings that appellants were married, it was improper to enter a judgment on the pleadings against appellant Theodore Huston. Accordingly, appellants' second assignment of error is well-taken.

{¶ 24} On consideration whereof, the judgment of the Sandusky Municipal Court is affirmed, in part, and reversed, in part. This matter is remanded to said court for further proceedings consistent with this decision. It is ordered that the parties share equally the court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED, IN PART  
AND REVERSED, IN PART.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.