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NOV 14 2016

SC Court of Appeals

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

NHC HealthCare/Mauldin, LLC,)

Plaintiffs,)

vs.)

Wade Thompson and Shelia Thompson,)

Defendants.)

A TRUE COPY

OCT 14 2016

FILED-CLERK'S OFFICE
ANDERSON SC

CLERK OF COURT

11:10 AM

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ORDER

2014-CP-04-00373

This matter came before the Court for non-jury trial on September 7, 2016. Present at trial were representatives for Plaintiff with its counsel, the Defendant Shelia Thompson with her counsel, and the *guardian ad litem* for Wade Thompson with counsel. Plaintiff brought suit setting forth claims against the Defendants based on breach of contract and account debt, and *quantum meruit*, and claims against Shelia Thompson based on fraudulent misrepresentation and negligent misrepresentation. The Defendant, Wade Thompson, through his *guardian ad litem*, filed an Answer denying liability on the contract and account debt. The Defendant, Shelia Thompson, filed an Answer denying liability and asserting various Counterclaims. Upon hearing and considering the testimony, the evidence presented, and arguments of counsel, I make the findings of fact and conclusions of law set forth hereinbelow.

Wade Thompson was admitted to Plaintiff's skilled nursing facility on January 26, 2011. He was transferred directly from AnMed hospital to Plaintiff's facility pursuant to the direction and request of Shelia Thompson, his daughter. At or before the time of his admission, Shelia Thompson met with Plaintiff's admission director and signed the admission documents. Execution of these documents was required by Plaintiff in order to admit Wade Thompson to the

RSS

facility, and Shelia Thompson executed the documents in order that Wade Thompson would be admitted into Plaintiff's skilled nursing facility.

As was explained by Plaintiff at trial, Medicare will pay for skilled nursing care for 100 benefit days if preceded by a three-night hospital stay. However, once the 100 benefit days have been exhausted, the patient must remain out of a hospital or skilled nursing facility for at least 60 consecutive days in order to qualify for a new 100-day benefit period. (See 42 U.S.C. §§1395x(h), 1395x(i); see also 42 C.F.R. §§ 409.61(b), 409.60(a) and (b) (2011)). The normal procedure of the Plaintiff was to obtain information from the family at the time of admission about where the patient had been in the 60 days prior to his last hospital stay, and to obtain verification by telephone from Medicare regarding possible available coverage. Plaintiff followed its normal procedures here. The telephone verification indicated that Mr. Thompson had a full 100 benefit days available. Additionally, the information obtained by Plaintiff from Shelia Thompson at the time of admission indicated that he had not been anywhere within the 60 days prior to admission, other than his last (qualifying) hospital stay. Therefore, Plaintiff reasonably believed that the care would be covered and paid by Medicare at the time of admission. It is further undisputed that, at the time of admission, Plaintiff had no actual knowledge of how many benefit days were available to Mr. Thompson. In addition, Plaintiff's normal practice is to request its home office to also send a computer-generated request to Medicare for verification. A response to that request was received by Plaintiff the day following the admission of Mr. Thompson. That response indicated that there were zero benefit days remaining, however the last bill date stated on the response was more than 60 days from Wade Thompson's last (qualifying) hospital visit. Occasionally inconsistent information between the telephone response and the computer-generated response would be obtained by Plaintiff from

Medicare, and in those previous instances the telephone verification had always been correct and more up to date. In addition, Plaintiff had inquired of Shelia Thompson at the time of admission where he had been within the last 60 days from the most recent hospital stay, and was not informed of any other inpatient services. Therefore, Plaintiff was not concerned with the computerized response and reasonably believed Wade Thompson's care would be covered by Medicare.

Accordingly, Plaintiff billed Medicare for the care received by Wade Thompson. On March 7, 2011, Plaintiff received notice that Medicare had denied payment for Wade Thompson's care for the reason that he had already exhausted his benefit days. The following day, Plaintiff contacted Shelia Thompson to advise her of the information they had received from Medicare regarding non-payment, and to once again ask where Mr. Thompson had been since he left Plaintiff's facility (from a previous stay) in July 2010. Again, Shelia Thompson provided Plaintiff with no information which would indicate that he had not started a new 100-day benefit period in January 2011. Then began several weeks of investigation by Plaintiff's business office manager to determine if Medicare had made a mistake or, if in fact, Wade Thompson had exhausted his available benefit days and had not had the requisite 60-day break to begin a new benefit period. Initially Shelia Thompson indicated to the business office manager that Wade Thompson had not been anywhere else other than the hospital (AnMed), and that she could get no further information from Medicare, and did not know why he would not have a new benefit period. Shortly after being informed by Plaintiff that Medicare would not pay for Mr. Thompson's care, Shelia Thompson informed Plaintiff that she was going to pick up Mr. Thompson up and bring him home.

Eventually, through follow-up calls with Shelia Thompson and ultimately with Medicare, the business office manager was able to determine the hospital and skilled nursing care Mr. Thompson had received since leaving Plaintiff's facility in July 2010. The information gathered through this investigation showed that Wade Thompson in fact had not had the requisite 60-day break from hospital and skilled nursing care between July 2010 and January 26, 2011. Accordingly, no new benefit period was available to him. This information was then verified to Plaintiff's business office manager by Shelia Thompson. At that time, now several weeks after Mr. Thompson had been taken home from the facility, Plaintiff advised Shelia Thompson that Mr. Thompson would have to pay the bill for Plaintiff's care. Plaintiff's testimony regarding its efforts at trying to determine what could have possibly caused the lack of a 60-day break was supported by e-mail correspondence being sent from Plaintiff's business office manager to Plaintiff's Medicare specialist at the home office during these several weeks of investigation.

Wade Thompson remained in Plaintiff's care at the facility from January 26, 2011 until March 10, 2011, when he was discharged pursuant to the request of Shelia Thompson. After the denial of payment by Medicare, Plaintiff continued its efforts to assist the Defendants in getting at least portions of Wade Thompson's care paid through other Parts of Medicare and through Wade Thompson's supplemental insurance coverage. Plaintiff was able to get Wade Thompson's therapy paid by Medicare Part B and the supplemental insurance, and was able to get medications paid in part through the Medicare Part D drug plan, so that only the co-pays were billed to Mr. Thompson. However, after applying all credits to the account, there remains a balance due and owing to Plaintiff for Wade Thompson's care in the sum of \$8,869.32.

Defendants' principal dispute is essentially that Plaintiff somehow guaranteed that Wade Thompson's care would be covered and paid by Medicare. It is undisputed that Wade

Thompson did not have any benefit days remaining at the time that he was admitted into Plaintiff's facility. Defendants claim that when Plaintiff received that second response from Medicare the day after admission indicating zero benefit days remaining, that they had a duty to notify the Defendant. I find no such duty existed. First, the computer response also indicated a last payment date that reflected a 60-day break from Wade Thompson's most recent (qualifying) hospital stay and no contrary information was given to Plaintiff by Shelia Thompson at the time of admission or thereafter. More importantly, the plain terms of the admission documents do not make the Plaintiff a guarantor of Medicare coverage. The agreement, signed by Shelia Thompson on behalf of Wade Thompson, plainly states:

When the Center has determined that the Patient is eligible for insurance benefits, including but not limited to Medicare it will submit a claim for payment. Pre-certification of Insurance, if required, is the responsibility of the Patient.

The fact that the Center submits a claim for payment does not relive [sic] the Patient from liability for the cost of care for any days determined by the Program Administrators as non covered, or for the Patient's portion of the liability as determined by the appropriate program administrators.

Clearly the Medicare program administrators determined that Mr. Thompson's care would not be covered because he had exhausted his benefit days. The fact that Plaintiff initially believed Wade Thompson's care would be covered and paid by Medicare was not a guarantee of that payment, and Mr. Thompson would be responsible for any amounts not covered or paid by Medicare. The signed agreement further acknowledges that the patient has a responsibility to "[P]romptly pay all charges in accordance with this agreement" and that "this agreement is applicable and in full force and effect until the discharge of the Patient, regardless of payment source changes." In addition, the testimony and evidence reveals that the Defendants were receiving from Medicare, at least quarterly, statements regarding the status of Mr. Thompson's benefits. Therefore, they

had in their possession the information from which his lack of available benefit days could have been determined at admission.

Defendants claim that Wade Thompson was incompetent at the time of his admission and during his stay and care at Plaintiff's facility. Defendants' claim of Mr. Thompson's incompetence at the time of admission was based principally upon diagnoses of Alzheimer's and dementia which is mentioned several times in the medical records. However, it was admitted, both in Plaintiff's direct testimony and through cross-examination of Shelia Thompson, that the existence of a diagnosis of Alzheimer's or dementia does not necessarily mean that the patient is incompetent. To the contrary, Plaintiff submitted evidence of competency, including a doctor's assessment from his medical file shortly after admission and several standardized tests given during his care which reflected that Mr. Thompson had sufficient cognitive ability.

It is undisputed that Wade Thompson was a patient at Plaintiff's skilled nursing care facility from January 26, 2011 until his discharge on March 10, 2011. During his stay, he received skilled nursing care from Plaintiff, including physical and occupational therapy and around-the-clock nursing care. I find that Wade Thompson did in fact receive skilled nursing care from Plaintiff during his stay, and that the reasonable value of these services, remaining unpaid, is \$8,869.32. Those services were not provided gratuitously, but with the expectation that payment for the services would be made. (Shelia Thompson even testified that she thought Medicare would pay for the services, because they had always done so in the past.) Accordingly, I find that Wade Thompson is liable to Plaintiff for the sum of \$8,869.32, the reasonable value of the services provided to him and remaining unpaid, on the basis of *quantum meruit*.

I further find that Plaintiff is not entitled to judgment against Shelia Thompson. Shelia Thompson signed the admission documents and admitted Wade Thompson to Plaintiff's facility on his behalf. Shelia Thompson did not hold a Power of Attorney for Wade Thompson, nor had she been appointed by any Court as a conservator or guardian for him. There is no showing of any judicial determination of incompetence or appointment of a conservator at the time of admission. Shelia Thompson testified that she checked him into Plaintiff's facility because she was his daughter. Under the Adult Health Care Consent Act, Shelia Thompson would not be liable for Plaintiff's bill simply by virtue of her acting to admit Wade Thompson into Plaintiff's facility. At the same time, Wade Thompson cannot escape liability for the bill if Shelia Thompson acted properly in admitting him into Plaintiff's facility. To hold otherwise would result in the absurd outcome that no one is responsible for the bill. Since this Court finds that Wade Thompson is liable to Plaintiff for payment of the services provided to him, I find that Plaintiff has not proven a claim for liability against Shelia Thompson and is entitled to no judgment against her.

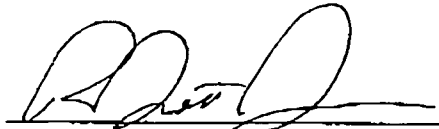
Shelia Thompson's Counterclaims against Plaintiff are likewise dismissed with prejudice. There was no evidence or other testimony introduced that reflected any requirement for Plaintiff to issue an Advanced Beneficiary Notice (ABN) either at Mr. Thompson's admission, or upon discovering or determining that he had no benefit days remaining. As explained by Plaintiff, an ABN would be required only for denials of coverage by Medicare for medical reasons, and a technical denial such as an exhaustion of benefit days would not require an ABN. Furthermore, I find that Shelia Thompson has failed to meet her burden of proof on her claims for fraud and negligent misrepresentation regarding the reason for Wade Thompson's discharge. The medical records and Plaintiff's testimony support my finding that Shelia

Thompson withdrew Wade Thompson from Plaintiff's facility shortly after finding out that Medicare would not cover Plaintiff's charges. I further find that Shelia Thompson's claim for promissory estoppel to be without merit inasmuch as she testified that there was no mention to her of Medicare coverage at the time of Wade Thompson's admission, and that she simply assumed that his care would be covered by Medicare because it always had been in the past. I further find that all of Shelia Thompson's Counterclaims have not been established by a preponderance of the evidence.


NOW THEREFORE, IT IS ORDERED that Plaintiff is granted judgment against the Defendant, Wade Thompson, for the sum of Eight Thousand Eight Hundred Sixty-Nine and 32/100 (\$8,869.32) Dollars.

IT IS FURTHER ORDERED that the Counterclaims of the Defendant, Shelia Thompson, are dismissed with prejudice.

IT IS SO ORDERED.



R. Scott Sprouse, Circuit Judge


Anderson, South Carolina

October 12, 2016

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

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CASE NO. 2014-CP-04-00378 NOV 14 2016

SC Court of Appeals

NHC HealthCare/Mauldin, LLC
PLAINTIFF(S)

Wade Thompson and Shelia Thompson
DEFENDANT(S)

Submitted by: Craig H. Allen

Attorney for: Plaintiff Defendant

Self-Represented Plaintiff

A TRUE COPY

OCT 14 2016

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NHC HealthCare/Mauldin, LLC	Wade Thompson	\$ 8,869.32
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2752
Judge Code

10-12-16
Date

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COMMON PLEAS AND
GENERAL SESSIONS

