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2011 IL App (3d) 100760-U

Order filed August 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

ADVANCED PHYSICIANS, S.C.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois
	)	
v.	)	Appeal No. 3--10--0760
	)	Circuit No. 09--AR--36
MARJORIE CLIFTON,	)	
	)	Honorable Raymond A. Bolden,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying plaintiff's request for attorney fees pursuant to the contract between plaintiff and defendant.

¶ 2 Plaintiff, Advanced Physicians, S.C., brought this breach of contract action against

defendant, Marjorie Clifton, seeking to recover $12,593.38 for medical services it provided defendant, as well as reasonable attorney fees and court costs. The circuit court of Will County entered judgment in plaintiff's favor totaling $8,315, but denied plaintiff's request for attorney fees. Plaintiff appeals, claiming the trial court erred in not awarding it attorney fees associated with bringing this action.

¶ 3 FACTS

¶ 4 Defendant sought treatment with plaintiff for injuries allegedly sustained while at work. On January 8, 2007, defendant signed a document titled "Application for Treatment" that stated, in part, "If I refuse to pay any balance owed or if Advanced Physicians, S.C. has to use an attorney or collection agency to pursue any collections, I will be responsible for any fees."

¶ 5 Bills attached to the complaint indicate that from January 8, 2007, until June 25, 2007, plaintiff issued medical bills to the defendant totaling $26,345.00. The record further indicates that plaintiff received $12,633.21 in payment for those services from defendant's workers' compensation carrier, leaving a balance of $13,711.79.

¶ 6 From that remaining balance, plaintiff (through it's attorney) informed defendant by letter dated September 9, 2008, that it believed the "total amount owed" by defendant to be the outstanding $13,711.79. Nevertheless, plaintiff indicated in this letter that it would accept a lesser amount totaling $11,580.84. Plaintiff noted that it arrived at the $11,580.84 figure by taking "reductions on [its] bill pursuant to the Workers' Compensation Fee Schedule ***."

¶ 7 The September 9, 2008, letter further stated that plaintiff would accept $10,147.56 in full

payment of defendant's account even though plaintiff believed defendant owed more. Finally, the letter indicated that should defendant refuse to pay the full $10,147.56, plaintiff would initiate litigation. Litigation ensued.

¶ 8 Defendant argued below that the most plaintiff could charge for its unpaid services, pursuant to the workers' compensation fee schedule, was $8,315. Noting that he secured a workers' compensation award for defendant, defense counsel claimed to be entitled to 20% of the outstanding amount pursuant to the common fund doctrine. As such, defendant argued to the trial court that plaintiff should only collect $6,591.31 for charges associated with Ms. Clifton's outstanding balance. Defendant further noted that it tendered that amount to plaintiff "no later than August 2008."

¶ 9 Following a bench trial, the circuit court found that "Plaintiff is entitled to $8,315.00 pursuant to the Physician's Fee Schedule, the common fund doctrine does not apply, and plaintiff is entitled to filing fees & service fees incurred." Plaintiff filed a timely notice of appeal from this order indicating its intent to challenge only the trial court's refusal to grant its request for attorney fees.

¶ 10 ANALYSIS

¶ 11 Again, the contract signed by Ms. Clifton reads, "If I refuse to pay any balance owed or if Advanced Physicians, S.C. has to use an attorney or collection agency to pursue any collections, I will be responsible for any fees." A court may only award attorney fees if it is expressly authorized by statute or by agreement of the parties. *Estate of Downs v. Webster,* 307 Ill. App.

3d 65 (1999). Contractual provisions providing for attorney fees must be strictly construed. *Negro Nest, LLC v. Mid-Northern Management, Inc.*, 362 Ill. App. 3d 640 (2005).

¶ 12 Before turning to the merits of this appeal, we must first decide the proper standard of review. Citing to *Negro Nest, LLC v. Mid-Northern Management, Inc.*, 362 Ill. App. 3d 640 (2005), in its opening brief, plaintiff argued our standard of review is *de novo* as this matter involves the interpretation of its contract with defendant. Citing to *Hanover Insurance Co. v. Smith*, 182 Ill. App. 3d 793 (1989), defendant disagreed claiming it is "well-settled in Illinois that a trial court's award of attorney fees is a matter committed to its sound discretion and that such an award will not be disturbed 'absent an abuse of that discretion.' " In its reply brief, plaintiff seemingly acquiesced to defendant's assertion that we review this matter under the abuse of discretion standard. We are not convinced that is the proper standard to review the trial court's denial of plaintiff's request for fees in this matter.

¶ 13 In *Hanover*, the court was called upon to interpret an indemnity agreement contained within a bond that stated defendant agreed to reimburse plaintiff for "all loss, costs, attorney's fees and other expenses which said Company may incur or sustain in consequence of the execution of the bond." *Id.* at 796. The *Hanover* court noted that such agreements are contracts and, like any other contract, its primary focus when construing the agreement must be to give effect to the intentions of the parties. *Id.* at 796. Nevertheless, the *Hanover* court noted it would not disturb the trial court's ruling on attorney fees absent an abuse of discretion. *Id.* at 797.

¶ 14 The *Hanover* court cited to *In re Marriage of McFarlane*, 160 Ill. App. 3d 721 (1987), to

support its contention that courts of review should not disturb contractual awards of attorney fees absent an abuse of discretion. *Id.* at 797. In *McFarlane,* the respondent sought attorney fees pursuant to contract (the marital settlement agreement) and section 508 of the Illinois Marriage and Dissolution of Marriage Act (the Act). Ill. Rev. Stat. 1985, ch. 40, ¶508. The *McFarlane* court specifically found the respondent not to be entitled to fees pursuant to the marital settlement agreement. *Id*. at 728-29. However, the *McFarlane* court noted fees were properly awarded under section 508 of the Act and that they could not "say that this was an abuse of discretion." *Id.* at 729. The analysis used by the *McFarlane* court to come to that decision focused on the reasonableness of the amount of the fees and the relative economic positions of the parties. *Id.* at 729. In such an instance, we agree that the a trial court has broad discretion when deciding whether to award fees and in what amount.

¶ 15 However, we do not believe that a trial court has discretion to decide whether or not to enforce the terms of a valid contract. Plaintiff is correct that the "construction of a contract presents a question of law" and, as such, we review a trial court's interpretation of a contract *de novo*. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007). The primary goal of contract interpretation is to give effect to the intent of the parties. *Virginia Surety Co., v. Northern Insurance Co. of New York*, 224 Ill. 2d 550 (2007). If the language of a contract is clear and unambiguous, the intent of the parties must be determined solely from the language of the contract itself, which should be given its plain and ordinary meaning, and the contract enforced as written. *Id.* at 556. As noted above, contractual provisions providing for attorney fees must

be strictly construed. *Negro Nest*, 362 Ill. App. 3d 640.

¶ 16 The trial court in this matter specifically found the contractual "provision seeking attorney's fees was okay." The court's language signifies to us a belief that the fee provision of the contract was valid, enforceable and evinced an intent of the parties to shift the burden of attorney fees from plaintiff to Ms. Clifton in the event she refused to pay any balance owed or plaintiff had to initiate collection activities. We agree with this interpretation of the contract. Again, the plain language of the contract clearly states, "If I refuse to pay any balance owed or if Advanced Physicians, S.C. has to use an attorney or collection agency to pursue any collections, I will be responsible for any fees." However, the fact that the trial court correctly found the "provision seeking attorney's fees was okay" does not, *ipso facto*, mean it erred in refusing to award plaintiff its attorney fees.

¶ 17 We note the clause under which plaintiff attempts to collect its fees contains language analogous to a condition precedent. That is, prior to enforcement a court must find that Ms. Clifton either refused to pay the balance owed or that plaintiff "had" to use an attorney or agency to purse collections. As this court stated in *Peoria Harbor Marina v. McGlasson*, 105 Ill. App. 3d 723 (1982), "A condition precedent is one which must be performed before a contract becomes effective or which is to be performed by the one party to an existing contract before the other party is obligated." *Id.* at 729; see also *Regency Commercial Associates, LLC v. Lopax, Inc.,* 373 Ill. App. 3d 270, 282 (2007); *MXL Industries, Inc. v. Mulder*, 252 Ill. App. 3d 18 (1993). Whether or not a party satisfied a contractual condition, thereby triggering the other

party's obligation under the contract, clearly involves a finding of fact. *Illinois Founders Insurance Co. v. Barnett*, 304 Ill. App. 3d 602, 607 (1999) (The issue of whether an insurer received notice of a law suit, thereby triggering its duty to defend the suit, is a question of fact.). Where a "trial court heard witness testimony and made a factual determination ***, its decision will not be reversed unless it is against the manifest weight of the evidence." *Id.* at 607. A factual finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006).

¶ 18 The record on appeal indicates that plaintiff was less than consistent with the amount it alleged defendant actually owed. Plaintiff's September 9, 2008, letter alone identifies four different amounts that it claimed defendant owed. The letter references: "a balance of $13,711.79"; "balance due of $11,580.84"; "the total fee owed to Advanced Physicians is $11,580.84"; "a total due of $10,462.43"; and "my client has indicated he would be willing to accept $10,147.56." In January of 2009, approximately four months after plaintiff's counsel wrote that letter, plaintiff filed this suit claiming "a balance of $12,593.38" even though it is undisputed that defendant incurred no additional treatment in that time. In documents filed approximately six months later, on July 23, 2009, plaintiff indicated that the "amount unpaid" totaled $10,622.31. Defendant has steadfastly maintained that the amount owed was significantly less than the aforementioned amounts demanded by plaintiff. Defendant acknowledges that at the beginning of this dispute, she offered to pay a sum approximately 20%

below the $8,315 amount, as her counsel argued the common fund doctrine allowed defense counsel retain that 20% as fees associated with obtaining the workers' compensation award.

¶ 19 Ultimately, the trial court determined that plaintiff was entitled to $8,315. Neither party has argued that the trial court improperly calculated the amount plaintiff was entitled to collect for services rendered to defendant. That issue is not before this court. Unable to entertain arguments to the contrary, we must assume that the trial court correctly found plaintiff was entitled to collect no more than the $8,315 awarded.

¶ 20 As such, we cannot say the findings implicit in the trial court's ruling, that Ms. Clifton never refused to pay a balance owed or that this collection matter did not "have" to be initiated by plaintiff, are against the manifest weight of the evidence. The opposite conclusions are not clearly evident to us. The trial court simply resolved a financial dispute between the parties and in doing so found the "sum [plaintiff was] seeking of $10,000 or more forced this lawsuit." The trial court found that the lawsuit was necessitated by plaintiff's attempts at overreaching, not defendant's refusal to pay that which was owed.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.