

**NOTICE**

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**FILED**

June 2, 2017

Carla Bender

4<sup>th</sup> District Appellate Court, IL

2017 IL App (4th) 160651-U

NO. 4-16-0651

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ST. CLARA’S MANOR, an Illinois Not-For-Profit Corporation,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Logan County
ROBERT L. MAYO,	)	No. 16LM20
Defendant-Appellant.	)	Honorable
	)	Thomas W. Funk,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Presiding Justice Turner and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment in plaintiff’s favor for breach of contract rests on a misinterpretation of the contractual documents.

¶ 2 In a bench trial, the trial court found that defendant, Robert L. Mayo, had breached a contract with plaintiff, St. Clara’s Manor, and the court awarded damages and contractual attorney fees against defendant and in plaintiff’s favor. We reverse the trial court’s judgment because we conclude that the finding of a breach of contract rests on a misinterpretation of the contractual documents.

¶ 3 I. BACKGROUND

¶ 4 On October 10, 2012, Jessica Mayo signed a durable power of attorney, in which she appointed defendant, her son, as her attorney-in-fact.

¶ 5 On November 5, 2012, defendant applied on her behalf to the Illinois Department of Human Services (Department) for long-term care benefits under the Aid to the Aged, Blind, and Disabled program (305 ILCS 5/3-1 *et seq.* (West 2012)).

¶ 6 On November 30, 2012, while the application to the Department was pending, defendant entered into a contract with plaintiff, in which plaintiff agreed, for a basic daily rate, to allow Jessica Mayo to reside in its skilled nursing facility, St. Clara's Manor (nursing home), and to provide her nursing care. Although the contract is entitled "Contract Between Resident and St. Clara's Manor," Jessica Mayo herself never signed it. Instead, defendant signed it as the "Responsible Party."

¶ 7 The contract defines the "Responsible Party" as follows, and by agreeing to this contractual definition, defendant made some promises to plaintiff:

"C. RESPONSIBLE PARTY. Responsible Party is an individual who has control and/or access to the Resident's funds and/or assets. The Responsible Party who executes this contract agrees to act on the Resident's behalf, and agrees to cause payment of fees and charges incurred by or on Resident's behalf from Resident's funds, assets[,] or estate. The Responsible Party agrees to provide an accounting of the Resident's funds, assets[,] and estate upon request[,] including providing documentation to verify accounts. A Responsible Party who uses due care in executing his/her duties will not be held personally liable for the payment of Resident's rates and charges. Failure to cause payment of fees and charges incurred by or on the Resident's behalf from the Resident's funds, assets[,] or estate shall constitute a failure to exercise due care and will subject the Responsible Party to personal liability for the charges incurred by the Resident.

The Responsible Party also agrees to act promptly and expeditiously to establish and maintain eligibility for Medicaid assistance, including but not limited to taking any and all necessary action to ensure that the Resident's assets are appropriately used and to maintain such assets within allowable limits for maintaining the Resident's eligibility."

¶ 8 In a paragraph bearing the heading "FEES FOR COLLECTING OUTSTANDING BILLS," "[t]he parties" further "agree[d] that [plaintiff was] entitled to all costs of collection of unpaid charges[,] including court costs and reasonable attorneys' fees."

¶ 9 At the same time defendant signed the "Contract Between Resident and St. Clara's Manor," he also signed, on the line labeled "Signature of Responsible Party," a separate document entitled "Medicaid & Medicaid Pending Residents/Responsible Parties [A]pplying for Medicaid (Public Aid Assistance)." This document provided, in part, as follows:

"As the responsible party, it has been explained to me that it is my responsibility to apply for Public Aid (Medicaid) on behalf of the resident. This should be done immediately upon admission or several months prior to exhausting private pay funds. \*\*\*

\*\*\*

I have been informed that if the resident is denied Medicaid benefits for any reason, the charges will be due to the facility based on private pay rates. Furthermore, if the denial is due to the lack of information submitted by myself, or improper asset transfer, it will also be considered a breach of Contract between Resident and Facility."

¶ 10 Jessica Mayo resided in plaintiff's nursing home from November 30, 2012, until her death, on July 13, 2014.

¶ 11 During Jessica Mayo's residency in the nursing home, the Department made a decision on her application for long-term care benefits (which defendant filed on her behalf before entering into the contract with plaintiff and before she moved into the nursing home). In reviewing Jessica Mayo's assets to determine if she qualified for long-term care benefits, the Department discovered she had made transfers to her other son, Gregory Mayo, and his wife for personal-care services they performed from approximately July 2011 to January 2012. The Department decided this was a nonallowable transfer of assets. Also, the Department found that Jessica Mayo had countable income and assets, as shown in a computation sheet for October 2012. Specifically, she had \$1,525 per month from the "RAILROAD," cash on hand in the amount of \$6,894.51, and other assets worth \$3,379.15.

¶ 12 Consequently, on March 26, 2014, the Department approved the application for long-term care benefits, but the approval was subject to a spend-down in the amount of \$8,842 and a penalty period of October 1, 2012, to June 28, 2013. The spend-down was based on Jessica Mayo's available nonexempt assets and countable monthly income. The penalty period was based on her nonallowable transfers, for less than market value, totaling \$44,736.

¶ 13 On May 21, 2014, defendant filed an administrative appeal with the Department.

¶ 14 On July 20, 2014, while the administrative appeal was pending, defendant applied for a hardship waiver.

¶ 15 On October 1, 2014, the Department denied the application for a hardship waiver.

¶ 16 On March 18, 2015, in the administrative hearing, defendant amended the appeal so as to include the denial of the hardship waiver.

¶ 17 Defendant testified in the administrative hearing. The Department summarized his testimony as follows (we quote from the Department’s final administrative decision, which the trial court admitted in the bench trial as plaintiff’s exhibit No. 6):

“[Defendant] testified that [Jessica Mayo] lived alone prior to entering into a long[-]term care facility. He testified that, in July 2011, [she] began paying her son and daughter-in-law for personal care services which she required to live in her home safely. These services discontinued in January 2012. [Defendant] testified he could only assume the transfers made by [Jessica Mayo] in April, June[,] and October 2012 were for living expenses. [Defendant] testified the April and June transfers were cash withdrawals because [Jessica Mayo] could no longer write checks. The October 2012 transfer was made to an individual who was helping [Jessica Mayo] with personal business and running errands.”

¶ 18 The Department’s attorney testified, in the administrative hearing, that the Department had denied the application for a hardship waiver because Jessica Mayo, being deceased, no longer met the criteria for a hardship waiver (we continue to reference plaintiff’s exhibit No. 6). To have granted her a hardship waiver, the Department’s attorney explained, the Department would have had to find that denying a hardship waiver would have endangered her health or life by depriving her of medical care, food, clothing, shelter, or other necessities. Because of those criteria, Jessica Mayo would have had to be alive at the time a hardship waiver was granted. But defendant applied for the hardship waiver a week after Jessica Mayo died.

¶ 19 On March 26, 2014, after the administrative hearing, the Department issued a final administrative decision, in which it upheld (1) the award of long-term care benefits, subject

to a spend-down of \$8,842; (2) the penalty period of October 29, 2012, to June 28, 2013, for the payment of long-term care services; and (3) the denial of a hardship waiver.

¶ 20 As a result of this decision by the Department, plaintiff never received all the Medicaid payments it expected in return for the nursing-home services it had provided to Jessica Mayo. To be precise, Jessica Mayo owed plaintiff \$26,414.31.

¶ 21 On January 26, 2016, plaintiff filed a complaint against defendant for the \$26,414.31 plus attorney fees, costs, and interest. Plaintiff alleged:

“6. Under the Contract, [defendant], as a responsible party and party to the contract, agreed to cause payment of the fees and charges incurred by or on the resident’s behalf to be made from the resident’s funds, assets[,] or estate.

7. Under the Contract, failure of the responsible party to cause payment of fees and charges incurred by or on the resident’s behalf from the resident’s funds, assets[,] or estate shall constitute a failure to exercise due care and will subject the responsible party to personal liability for the charges incurred by the resident.

8. [Defendant] breached said Contract in that he failed to exercise due care by not paying the fees and charges incurred by or on the decedent’s behalf from the decedent’s funds, assets[,] or estate or, to the extent the Resident does not possess sufficient funds, assets[,] or estate to satisfy the obligation, then the defendant/responsible party is contractually committed to pursue Public Aid; and, therefore, is personally liable for the charges incurred by the decedent pursuant to the Contract.”

¶ 22 On June 2, 2016, after denying defendant’s motion for summary judgment, the trial court held a bench trial. The court heard testimony and received exhibits in evidence,

including plaintiff's exhibit No. 6 and the contractual documents we have described. The trial took two days. The first day of the trial is transcribed. The second day, July 14, 2016, is summarized in a bystander's report certified by the court. According to the bystander's report, one of the topics on which defendant testified was the money he and Gregory Mayo had received from Jessica Mayo before he, defendant, entered into the contract with plaintiff:

“28. Defendant testified that [the Department] disallowed asset transfers totaling \$44,736.00. He testified most of the disallowed transfers occurred at least a year before he signed the [power-of-attorney] contract [sic] and St. Clara's contract. He didn't know where some of that money went, but according to the Department's statement[,] most of it was transferred before November 1, 2011, and should have been allowed with the hardship waiver. He stated he received some money from [Jessica Mayo] prior to November 1, 2011, but his brother Greg received a lot more because he and his wife were caring for her. She asked him to have their downstairs remodeled to make it handicap accessible.”

¶ 23 On August 16, 2016, the trial court issued a memorandum of decision, in which the court entered a judgment in plaintiff's favor and against defendant in the amount of \$26,414.31 for Jessica Mayo's unpaid nursing-home bill plus \$6,644.10 in attorney fees.

¶ 24 In its decision, the trial court reasoned as follows.

¶ 25 Because of the spend-down and the penalty period, plaintiff “did [not] receive funds from [the Department] for the full amount of the charges it [had] imposed on [Jessica] Mayo.” Initially, plaintiff “looked to [her] estate to pay unpaid charges[,] but apparently the estate was insolvent.” Defendant “testified that he had applied all of [Jessica] Mayo's personal

assets to the charges and had appealed the findings of [the Department] to the highest administrative level.”

¶ 26 To the trial court, “[t]he real crux of the case [was] whether [defendant] was required by the contract to do something more than pursue the application for benefits.” As for pursuing the application for long-term care benefits, the court found that defendant had diligently performed his contractual duty. The court wrote:

“It appears that he diligently pursued the application to the furthest extent short of filing a complaint for administrative review with the [c]ircuit [c]ourt. Given that the evidence was not that he was an attorney licensed to practice, it appears that his administrative pursuit of the benefit from [the Department] was sufficient to meet his standard of due care as provided in [p]aragraph 1(C) of the [c]ontract.”

¶ 27 Defendant had a contractual duty, however, not only to pursue an application for long-term care benefits but also to pay the nursing-home bills out of any property that Jessica Mayo owned. Plaintiff disputed that defendant had applied all of Jessica Mayo’s available income and assets to the nursing-home bills. After all, the Department had found nonallowable transfers of assets in the amount of \$44,736, and consequently, it had imposed the penalty period. Also, the Department had found nonexempt monthly income, and consequently, it had required a spend-down of \$8,842.

¶ 28 In his testimony at the bench trial, defendant insisted he had applied all of Jessica Mayo’s income “to the charges or to exempt, allowable expenses such as life insurance and health insurance.” He disputed the accuracy of the Department’s findings.

¶ 29 The trial court observed, however, that “there was little specific evidence offered to contradict what was stated in the [Department’s] decision regarding [Jessica] Mayo’s income



or her asset transfers.” The complicating fact was that these asset transfers, to which the Department referred in its final administrative decision, predated the contract between plaintiff and defendant. The court wrote:

“The asset transfers that were the basis for the imposition of the penalty period by [the Department] occurred prior to the date that [d]efendant signed the [c]ontract with [p]laintiff. Thus[,] the issue regarding his liability can be phrased as whether he is responsible for retrieving the assets previously transferred during the ‘look back’ period once he became the Responsible Party under the [c]ontract. The [c]ontract itself is silent on this issue. However, on the same date as the contract, [defendant], [Jessica] Mayo[,] and a representative of [plaintiff] signed a document entitled ‘Medicaid and Medicaid Pending Residents/Responsible Parties Applying for Medicaid (Public Aid Assistance).’

The document, in pertinent part, indicates that:

‘I have been informed that if the resident is denied for Medicaid benefits for any reason, the charges will be due to the facility based on private pay rates. Furthermore, if the denial is due to the lack of information submitted by myself, *or improper asset transfer, it will also be considered a breach of contract between the Resident and Facility.*’  
(emphasis mine)

The [c]ourt believes this language was added to the agreement between the parties to insure that the resident and their Responsible Party knew that Medicaid rules related to asset transfer would apply to their contractual

relationship and that the determination of what an asset of the resident was would be determined by Medicaid rules.

The [c]ourt thus finds that the [c]ontract defined the duties of the Responsible Party to include the retrieval of assets from third parties when Medicaid rules would consider them to still be the assets of the resident. Defendant's failure to do this breached the contract and made him personally responsible for the charges.

\*\*\* Defendant is not liable for these charges because he agreed to be personally liable if [Jessica] Mayo didn't pay. He is liable because of his failure to retrieve the assets that were transferred in violation of the Medicaid rules. There is nothing in the record to suggest he made any effort to do that." (Emphasis in original.)

¶ 30

## II. ANALYSIS

¶ 31

The trial court concluded that defendant was liable to plaintiff under the following provision of the document entitled "Medicaid & Medicaid Pending Residents/Responsible Parties [A]pplying for Medicaid (Public Aid Assistance)," a document that defendant signed, as the "Responsible Party," at the same time he signed the "Contract Between Resident and St. Clara's Manor":

"I have been informed that if the resident is denied Medicaid benefits for any reason, the charges will be due to the facility based on private pay rates. Furthermore, if the denial is due to the lack of information submitted by myself, or improper asset transfer, it will also be considered a breach of Contract between Resident and Facility."

The court interpreted that provision as making defendant “responsible for retrieving assets previously transferred,” that is, transferred before defendant entered into a contractual relationship with plaintiff. Under the court’s interpretation, “the contract defined the duties of the Responsible Party to include the retrieval of assets from third parties when Medicaid rules would consider them to still be the assets of the resident.” Because “there was nothing in the record to suggest [that defendant had] made any effort to” retrieve the assets that Jessica Mayo transferred before the inception of defendant’s contractual relationship with plaintiff, the court found defendant to be liable to plaintiff for breach of contract.

¶ 32 That finding rests on a misinterpretation of the contractual documents. We interpret contracts *de novo*. See *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007); *Ruffalo v. Jordan*, 2015 IL App (1st) 140969, ¶ 10 (“Any issue concerning the construction, interpretation, or legal effect of a contract is a question of law.”). “The starting point of any contract analysis is the language of the contract itself.” *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 129 (2005). “Contracts should be read and understood according to the natural and most obvious import of the language, without resorting to [a] subtle an[d] forced construction for the purpose of either limiting or extending their operation.” *Pennsylvania R.R. Co. v. Chicago, Rock Island & Pacific R.R. Co.*, 12 Ill. 2d 574, 579 (1958). Nowhere in any of the contractual documents does defendant promise to recover assets that Jessica Mayo transferred before the inception of defendant’s contractual relationship with plaintiff.

¶ 33 In the “Contract Between Resident and St. Clara’s Manor,” defendant promises to “cause payment of fees and charges incurred by or on Resident’s behalf *from Resident’s funds, assets[,] or estate.*” (Emphasis added.) If, before defendant entered into this contract with plaintiff, Jessica Mayo transferred cash to defendant, Gregory Mayo, his wife, or some other

caregiver, that cash, upon its transfer to them, ceased to be part of Jessica Mayo's estate and became part of their estate (see 53A Am. Jur. 2d *Money* § 17, at 743 (2006))—at which point it no longer was possible for defendant to apply that cash toward Jessica Mayo's medical bills. “Since United States currency is normally considered to be a bearer instrument, possession of such property is prima facie evidence of ownership. The burden of producing evidence regarding ownership rests upon the person disputing ownership.” *Id.* If the cash no longer was in the possession or control of Jessica Mayo, it presumably was owned by someone else and no longer could be paid out of Jessica Mayo's estate. See *id.*

¶ 34 The trial court stated that “Medicaid rules would consider [the currency] to still be the assets of the resident,” but the court did not cite any statute or regulation to that effect. Rather, a Medicaid rule, specifically, section 120.388(a) of title 89 of the Illinois Administrative Code, provides: “A *transfer* of assets for less than fair market value made on or after January 1, 2007, by an institutionalized person or the spouse of that person within 60 months before the later of applying for medical assistance or *transferring* an asset shall result in a period of ineligibility for long term care services for that person.” (Emphases added.) 89 Ill. Adm. Code 120.388(a) (2012). A “transfer” is “a conveyance of right, title, or interest in real or personal property from one person to another.” Merriam-Webster's Collegiate Dictionary 1249 (10th ed. 2000). Subsection (e) provides: “A *transfer* of assets occurs when an institutionalized person or an institutionalized person's spouse buys, sells[,] or *gives away* real or *personal property* or changes (e.g., a change from joint tenancy to tenancy in common) the way property is held.” (Emphases added.) 89 Ill. Adm. Code 120.388(e) (2012). Subsection (f)(3) provides:

“A transfer to a friend, family member or relative for care provided for free in the past is a transfer of assets for less than FMV [(fair market value)]. The

Department presumes that services, care[,] or accommodations rendered to a person by a friend or family member are gratuitous and without expectation of compensation. This presumption may be rebutted by credible documentary evidence that preexists the delivery of the care, services[,] or accommodations showing the type and terms of compensation and contemporaneous receipts, logs[,] or other credible documentation showing actual delivery of the care or services claimed. Compensation paid in excess of prevailing rates for similar care, services or accommodations in the community shall be treated as a transfer for less than FMV.” 89 Ill. Adm. Code 120.388(f)(3) (2012).

Thus, if within 60 months before applying for medical assistance, the institutionalized person paid a family member, say, in cash, for care the family member had provided, the Department will presume that the institutionalized person actually transferred this cash to the family member as a gift, and consequently, it will impose a penalty period. See 89 Ill. Adm. Code 120.388(a), (f)(3) (2012). If, in fact, the asset, the cash, remained in the institutionalized person’s estate, it could not be said that the institutionalized person had transferred it or given it away to the family member, and hence there would be no penalty period. It follows the trial court was incorrect that “Medicaid rules would consider [the moneys] to still be the assets of the resident.” Instead, the penalty period necessarily *presupposes* that the cash (or whatever the asset is) no longer belongs to the resident, because the resident has transferred it or given it away.

¶ 35           The document entitled “Medicaid & Medicaid Pending Residents/Responsible Parties [A]pplying for Medicaid (Public Aid Assistance)” reads: “[I]f the denial [of Medicaid benefits] is due to the lack of information submitted by myself, *or improper asset transfer*, it will also be considered a breach of Contract between *Resident* and Facility.” (Emphases added.) The

document speaks of the “Resident” and the “Responsible Party” as two different persons. Defendant was not the “Resident”; he was the “Responsible Party.” In the event of an “improper asset transfer,” it would be the “Resident,” not the “Responsible Party,” who would be considered to have breached the contract.

¶ 36 Besides, the asset transfers were precontractual. Holding defendant liable for asset transfers that Jessica Mayo made before defendant entered into a contract with plaintiff would go against a fundamental principle of contract law. Something that a contractual party did or failed to do before the contract existed cannot be a *breach* of the contract (in its complaint, plaintiff does not allege fraud or a mistake of fact). “[T]he law of contracts is confined to *promises*. It is therefore concerned with exchanges that relate to the *future* because a ‘promise’ is a commitment by a person as to future behavior. \*\*\* No question for the law of contracts arises unless the dispute is one over a promise—a commitment as to future behavior.” (Emphases in original.) E. Allan Farnsworth, *Contracts* § 1.1, at 4-5 (2d ed. 1990). It is impossible to promise to do something, or to refrain from doing something, in the past. Therefore, the contractual phrase “improper asset transfer” refers to a transfer occurring in the *future*, after the execution of the contract, not one that already happened. See *id.* The “Resident,” through her agent, the “Responsible Party,” promises to refrain from any “improper asset transfer” after the execution of the contract. Any “improper asset transfer” that occurred before the execution of the contract is irrelevant to the Resident’s agreed-upon contractual performance. See *id.*

¶ 37

### III. CONCLUSION

¶ 38 For the foregoing reasons, we reverse the trial court’s judgment.

¶ 39 Reversed.