REL: May 3, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170934

Kathryn Naman

v.

Chiropractic Life Center, Inc.

Appeal from Mobile Circuit Court
(CV-16-900688)

MITCHELL, Justice.

Chiropractic Life Center, Inc. ("CLC"), sued Kathryn Naman in the Mobile District Court alleging that Naman failed to pay for chiropractic care she had received at CLC. The district court entered a judgment in favor of Naman, which CLC

did not appeal. Naman thereafter sued CLC and its owner, Dr. Christy Agren, in the Mobile Circuit Court, alleging that they had wrongfully brought the collection action against Naman. The circuit court dismissed the claim against Dr. Agren and ultimately entered a summary judgment in favor of CLC. Naman appeals. We affirm the judgment of the circuit court.

Facts and Procedural History

In mid-2006, Naman and her former husband, Elias Naman ("Alec"), began receiving chiropractic care from Dr. Agren at CLC's facility in Mobile.[1] Naman became a patient of CLC first, but she asserts that, once Alec also became a CLC patient, they enrolled in a "family plan" that entitled Alec to receive two treatments a month and her to receive one treatment a month for a monthly fee of $72, which was automatically debited from Alec's checking account. Naman states that her insurer, Blue Cross and Blue Shield of Alabama ("BCBS"), also paid CLC up to $600 per year for her

[1]Naman and Alec were married from approximately 1993 to 1999 and had one child together. During the trial in the collection action, Alec testified that Naman was covered by his insurance at all relevant times in accordance with the terms of their divorce agreement. It is not clear from the record, however, if Naman and Alec were covered by the same policy, or if there were separate policies and Naman was merely part of a group insurance plan through Alec's business.

chiropractic care. CLC denies that Naman and Alec were enrolled in a family plan with those terms, and no document has been produced outlining their enrollment in such a plan. Nevertheless, Naman and Alec regularly visited CLC for five years, and Naman states that they were happy with the chiropractic care they received. Naman states that neither she nor Alec ever received notice during this time that they owed CLC money or that there was any problem with their payments.

On October 20, 2011, Naman was injured in an automobile accident. She thereafter received chiropractic care at CLC's facility for her injuries. Naman acknowledges that she was told that the treatment she received for injuries related to the automobile accident would be billed separately from her regularly scheduled visits. It also appears that the companies providing automobile insurance for both Naman and the other driver involved in the accident, as well as BCBS, were involved in the billing and payment process for the treatment of Naman's injuries. Naman executed agreements with CLC authorizing it to seek payment directly from those insurance companies, and she signed an agreement acknowledging

that she was ultimately responsible for paying the bills associated with the treatment for her injuries.

Naman last received chiropractic care at CLC's facility on June 27, 2012.[2] Naman received a statement from CLC dated November 14, 2012, indicating that she had an outstanding balance of $4,923 on her account. That statement itemized charges for visits approximately every week from January 2012 through June 2012, but the largest charge -- $4,521 -- was dated June 1, 2012, and was described on the statement only as "balance forward." Naman states that both she and Alec sought clarification from CLC over the next few months regarding the balance-forward charge, but that they never received it. On February 21, 2013, Naman made what she calls a "good faith" payment of $2,000 to CLC, even though she still did not understand how CLC had calculated the balance it said she owed.

On March 7, 2013, Bayside Recovery Service, Inc., sent Naman notice that it was seeking to collect a debt of $4,726

[2]CLC moved its office from Mobile to Fairhope around this time, and the new location was not convenient for Naman.

on behalf of CLC.[3] An attorney associated with Bayside Recovery Service subsequently sent Naman a similar notice requesting payment of both the $4,726 debt and attorney fees of $709. Naman responded to both notices by stating that she disputed the amount of the debt and wanted an itemization of the charges. In June 2013, Naman tendered a check for $573.40 to CLC, which she asserted, by noting on the check, was a full and final payment for her debt. CLC refused the offered payment and, on August 2, 2013, initiated the collection action in the district court.

During the ensuing nonjury trial, the district court heard testimony from Naman, Alec, and Dr. Agren. That testimony, a transcript of which is included in the record, indicates that CLC was unable to explain the debt Naman allegedly owed. Dr. Agren attributed her difficulty explaining the balance on Naman's account to the complications associated with dealing with multiple insurance companies and the fact that CLC had changed the software system it used for billing. Naman and Alec, however, asserted that Dr. Agren was unable to explain the balance because CLC was trying to

[3]We recognize these amounts are not consistent. The exact amounts, however, are not relevant to this appeal.

defraud them and/or the insurance companies. At any rate, on April 8, 2014, the district court entered a judgment in favor of Naman, explaining that CLC "failed in its burden of proof" and that the court was not "reasonably satisfied of the merits of [CLC's] claim." CLC did not appeal that judgment.

Almost two years later, on April 5, 2016, Naman sued Dr. Agren and CLC for bringing the collection action against her.[4] The exact cause of action asserted is not clear on the face of the complaint. Naman generally alleged, however, that Dr. Agren and CLC had filed the collection action "without probable cause to believe that the monies being claimed were owed by [Naman]" and "with malice, and in a fraudulent effort to obtain monies that the [defendants were] not entitled to receive."

Dr. Agren and CLC thereafter moved the circuit court either to dismiss Naman's action or to enter a summary judgment in their favor because, they argued, Naman had failed to properly assert an abuse-of-process or malicious-prosecution claim. In her response, Naman clarified that she

[4]Naman initially also named Bayside Recovery Service as a defendant. The claim against Bayside Recovery Service was later dismissed, and Naman has not appealed that dismissal.

intended to assert a malicious-prosecution claim and argued that it was premature to dismiss or to enter a summary judgment on that claim before any discovery was conducted.

On January 3, 2017, the circuit court ruled on Dr. Agren and CLC's motion asking the court to dismiss Naman's claims or, in the alternative, to enter a summary judgment in their favor. To the extent Naman's complaint asserted an abuse-of-process claim, the circuit court held, that claim was due to be dismissed. The circuit court also concluded that Naman had failed to allege facts that would support a malicious-prosecution claim against Dr. Agren, and it accordingly dismissed that claim. The circuit court held, however, that summary judgment would be premature on the malicious-prosecution claim Naman had asserted against CLC, and the court allowed discovery on that claim to proceed.

On April 26, 2018, following discovery, CLC filed a new motion asking the circuit court to enter a summary judgment on Naman's malicious-prosecution claim. Naman opposed the motion. On May 25, 2018, the circuit court granted CLC's motion and entered a summary judgment in favor of CLC. On June 29, 2018, Naman filed a notice of appeal to this Court.

Nature of the Appeal

Before we determine what standard of review applies, we must determine what judgment Naman is appealing. The notice of appeal filed by Naman identified the appellee as "Chiropractic Life Center, Inc., et al." and the date of the judgment being appealed as "May 25, 2018." On July 10, 2018, this Court entered an order on its own initiative striking the term "et al." from Naman's notice of appeal in accordance with Rule 3(c), Ala. R. App. P. Rule 3(c) was amended effective January 1, 2017, to provide that "[a]n appellant may not use the terms 'et al.' or 'etc.' to designate multiple appellants or appellees in lieu of naming each appellant or appellee."[5] Our July 10, 2018, order further stated that Naman's appeal would be docketed "only as to those parties specifically identified in the Notice of Appeal" and that "[a]ny person or entity not specifically identified will not be a party to this appeal."

[5]The Committee Comments accompanying the amendment to Rule 3(c) explain that "[t]he amendment requires that the notice of appeal specify by name ... all appellees who are parties to the appeal and is designed to eliminate any confusion as to the actual participants to the appeal."

Naman did not respond to our July 10, 2018, order. In her brief filed August 31, 2018, she argued that the circuit court erred not only by entering a summary judgment in favor of CLC, but also by dismissing the malicious-prosecution claim against Dr. Agren.

Dr. Agren and CLC subsequently moved this Court to dismiss Naman's appeal to the extent Naman purported to appeal the judgment entered in favor of Dr. Agren, arguing that the notice of appeal identified neither Dr. Agren as an appellee nor the circuit court's order dismissing the claims against Dr. Agren as a judgment being appealed. In support of that motion, Dr. Agren and CLC cited Rule 3(c), Sperau v. Ford Motor Co., 674 So. 2d 24, 40 (Ala. 1995) (overruled on other grounds) ("It is settled law that notice of appeal from a judgment in favor of two or more parties must specifically name each party whose judgment the appellant wishes to overturn."), and Threadgill v. Birmingham Board of Education, 407 So. 2d 129, 132 (Ala. 1981) (explaining that the appellant must indicate the judgment that is being appealed).

Naman argues in her reply brief that, when she filed her notice of appeal, she simultaneously filed a docketing statement identifying the issues on appeal as follows:

> "Whether [Naman] produced substantial evidence of each element of a claim for malicious prosecution of a civil lawsuit, making it error for the trial judge to grant summary judgment as a matter of law against [Naman]; and whether it was error for the trial court to dismiss a claim for abuse of process by [Dr. Agren], as a matter of law given her status with [CLC] and the verified allegations of [Naman's] complaint."

(Emphasis in original.) According to Naman, this statement of the issues was sufficient to appeal the dismissal of her claims against Dr. Agren. Naman does not cite any authority in support of her argument. Rather, she declares summarily that Rule 3(c) is not applicable.

Crucially, Naman fails to address the effect of our July 10, 2018, order providing that any person not specifically identified in the notice of appeal "will not be a party to this appeal." Naman did not seek reconsideration of this order. The issue of which individuals or entities are appellees in this case was therefore settled at that time, and Naman cannot now claim that Dr. Agren is an appellee. Based on the orders and filings described above, the only proper

appellee is CLC, and the only order being reviewed on appeal is the May 25, 2018, summary judgment entered by the circuit court in CLC's favor on Naman's malicious-prosecution claim.

Standard of Review

We have explained the standard of review for a summary judgment as follows:

> "This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

This Court has previously held that a party asserting a malicious-prosecution claim must establish the following

elements: (1) that a previous judicial proceeding was instituted by the present defendant, (2) that in the previous proceeding the present defendant acted without probable cause and with malice, (3) that the previous proceeding ended in favor of the present plaintiff, and (4) that the present plaintiff was damaged as a result of the previous proceeding. Delchamps, Inc. v. Bryant, 738 So. 2d 824, 831-32 (Ala. 1999). Only the second element is at issue in this appeal -- whether CLC acted without probable cause and with malice. In Eidson v. Olin Corp., 527 So. 2d 1283, 1285-86 (Ala. 1988), this Court explained:

> "The test that this Court must apply when reviewing the lack-of-probable-cause element in a malicious prosecution case in which summary judgment has been granted to a defendant is as follows: Can one or more undisputed facts be found in the record below establishing that the defendant acted in good faith on the appearance of things as they existed when suit was filed, based upon direct evidence, or upon circumstantial evidence and inferences that can reasonably be drawn therefrom? If so, then summary judgment in favor of the defendant on plaintiff's malicious prosecution count would be appropriate."

Accordingly, we must determine whether there are any undisputed facts in the record that would establish that CLC was acting in good faith when it initiated the collection action in the district court.

There clearly are such undisputed facts. The premise of the collection action was that Naman owed CLC money for chiropractic care provided by Dr. Agren. It is undisputed that Naman did, in fact, receive chiropractic care from Dr. Agren. The issue therefore became whether Naman owed any money for that care. Naman now represents to this Court that she never owed CLC any money and that CLC was trying to defraud both her and the various insurance companies that were billed for her care. But the evidence indicates that Naman previously acknowledged that she did owe CLC money -- she merely disputed the amount of money CLC claimed was owed, and she wanted an itemization explaining the amount.

Naman has stated that CLC first told her in November 2012 that she had a balance of $4,923 on her account. Alec testified during the collection action that he had conversations with Dr. Agren in January 2013 trying to resolve Naman's outstanding balance and that there was some discussion of his entering into a payment plan in which he would pay $100 a month for 48 months to pay off that balance. Alec testified that he could "justify" that payment plan because "I can see that's about how much their bill should be." Alec stated that

he never entered into the payment plan because he never received the additional documentation he had requested from CLC. Nevertheless, Alec's willingness to discuss a payment plan demonstrated to CLC that Alec understood that a valid debt existed. The $2,000 payment that Naman states she made to CLC in February 2013 as a show of good faith would have had a similar effect because that partial payment indicated to CLC that Naman agreed she owed some amount, even if there was no agreement about the exact amount owed.

Finally, in a June 5, 2013, letter that Naman sent to Bayside Recovery Service's attorney, Naman wrote:

> "While I believe that there are many discrepancies that cannot be justified in the billing; based upon my careful examination of the charges that were billed to me for the time period from between October 21, 2011, and June 27, 2012, and after 'crediting' us with the payments that have been made, I have decided that, as a final payment for all services heretofore rendered by [Dr.] Agren and [CLC], I will offer the sum of $573.40 as a full and final payment."

Naman subsequently mailed CLC a check for $573.40. CLC returned that check to Naman, presumably because the check indicated on its face that it was payment in full for any debt that was owed. But by offering this payment, Naman conceded that, even according to her calculations, she owed CLC

$573.40. This offer indicated to CLC that Naman acknowledged the validity of the debt even though she disputed the amount owed.

The essential facts concerning those partial payments and CLC's interactions with Naman and Alec are undisputed. Together, they were sufficient to justify CLC's belief that Naman owed it money and to serve as a good-faith basis for CLC to initiate the collection action. Accordingly, the circuit court did not err in entering a summary judgment in favor of CLC on Naman's malicious-prosecution claim.

Conclusion

After CLC unsuccessfully sued Naman seeking to collect a debt it alleged Naman owed for chiropractic care, Naman instituted a malicious-prosecution action against CLC, alleging that CLC had no basis for bringing the collection action. There are undisputed facts in the record, however, supporting CLC's argument that it had a good-faith basis for believing that Naman owed it money. Accordingly, Naman cannot establish that CLC acted without probable cause in initiating the collection action, and the summary judgment entered by the

circuit court on Naman's malicious-prosecution claim against CLC is due to be affirmed.

AFFIRMED.

Parker, C.J., and Shaw, Wise, Sellers, and Stewart, JJ., concur.

Bolin, Bryan, and Mendheim, JJ., concur in the result.