

NO. 287637

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION NO. III

STEVEN M. HEEB

Appellants/Plaintiffs

vs.

COLUMBIA BASIN HEALTH ASSN.,

Respondent/Defendant

BRIEF OF RESPONDENT

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A. GENERAL NATURE OF CASE AND IDENTITY OF PARTIES

The appellant is Steven M. Heeb, the plaintiff below. He will be referred to as Mr. Heeb. The respondent, Columbia Basin Health Association, was the defendant below. It will be referred to as CBHA. Generally, this case arises from the manner in which CBHA billed Mr. Heeb for medical services provided to Mr. Heeb. Below, and currently, Mr. Heeb is proceeding pro se.

B. PROCEDURE BELOW

Mr. Heeb's pro se Complaint was filed May 12, 2009. (*CP 1*). On October 16, 2009, CBHA filed its Motion for Summary Judgment, noting the hearing for December 8, 2009 at 2:00 p.m. (*CP 66-67, 86-88*). The basis for the motion was, in short, that Mr. Heeb had failed to assert a cognizable claim for relief against CBHA, supported by an affidavit or declaration providing facts satisfying the elements of a prima facie case against CBHA. (*CP 68-74*).

Mr. Heeb did not file any response to CBHA's summary judgment motion, and he failed to appear at the December 8, 2009 hearing. Accordingly, on that date an order was entered granting CBHA's motion. (*CP 89-90*).

On December 18, 2009 Mr. Heeb filed a Motion to Reconsider the summary judgment order. (*CP 61-62*). This motion was not noted for

hearing, nor was it ever served on CBHA. Despite these procedural inadequacies, the trial court read and considered the motion and, on January 11, 2010, denied the same. (*CP 92*).

On January 19, 2010, Mr. Heeb filed his Notice of Appeal. (*CP 93-95*).

C. COUNTERSTATEMENT OF CASE

Mr. Heeb became a patient of CBHA on or about December 6, 2005. (*CP 76*). CBHA's policy was that all patients are and agree to be responsible for all charges and fees incurred, regardless of the arrangement the patient might have with a third party payor like an insurance company. (*CP 76*). This policy was reflected in the treatment/payment agreement signed by Mr. Heeb. (*CP 76, 82*).

CBHA sends a billing statement or invoice to patients each month, which sets forth, among other things, all new charges, service dates, amounts paid, and the balance due and owing. (*CP 76*).

In April of 2006 Mr. Heeb had a running account balance with CBHA. (*CP 76*). On April 11, 2006 he made a cash payment on his account in the amount of \$100. (*CP 76*). In May and June 2006, three insurance checks came in on Mr. Heeb's account, and his account was duly credited. (*CP 76*). At that point, Mr. Heeb's account balance was

\$199.90, and an account statement would have been sent to Mr. Heeb showing all charges, payments, and his balance. (CP 76).

As of June 20, 2006, Mr. Heeb's account balance of \$199.90 had not been paid. (CP 76). Accordingly, a representative of CBHA called Mr. Heeb, informed him of the \$199.90 balance, and that he needed to at least make a \$50 payment. (CP 76). CBHA did not receive any response to this request. (CP 76).

On July 28, 2006, a representative of CBHA sent a Promissory Note to Mr. Heeb that, if signed, would have obligated him to pay \$50 per month on his account until it was paid in full. (CP 77). A CBHA representative also called and left a message for Mr. Heeb, indicating that at least a \$50 payment was due on Mr. Heeb's outstanding balance by August 15, 2006. (CP 77). Again, Mr. Heeb did not respond to this request. (CP 77).

As of October 20, 2006, the outstanding balance on Mr. Heeb's account was still \$199.90. (CP 77).

On April 11, 2006 Mr. Heeb made a payment of \$100. (CP 77). This paid for services provided on December 7, 2005 and January 16, 2006. (CP 77). After this payment, Mr. Heeb had an account balance of \$199.90. (CP 77).

In August, September, October, November and December of 2006, Mr. Heeb would have been sent a monthly statement showing all account charges, payments, credits and his account balance. (CP 77).

As of January 18, 2007, Mr. Heeb's account balance was still \$199.90. (CP 78). On January 19, 2007, Mr. Heeb made a payment of \$110.00. (CP 78). However, this payment was for and applied to a Department of Transportation physical Mr. Heeb had undergone on January 18, 2007. (CP 78)

On January 18, 2007, a representative of CBHA mailed another payment agreement to Mr. Heeb which, if signed, would have required him to pay \$50 a month on his outstanding balance and the account was satisfied. (CP 78). Mr. Heeb was told that this payment was due on or before January 24, 2007. *Id.* Mr. Heeb did not respond to this letter. (CP 78)

Mr. Heeb would have been sent a statement in January, February and March of 2007 showing his outstanding account balance. (CP 78). CBHA received no payments from Mr. Heeb following his DOT physical on January 18, 2007. (CP 78)

Because Mr. Heeb did not respond to the mailed payment agreement, or make any payments to CBHA on his account after this letter

was mailed, on March 29, 2007 the account was assigned to a collection agency, Central Bonded Collectors. (CP 78).

At the time of assignment, Mr. Heeb's account balance was \$199.90. (CP 78).

In July 2007, Mr. Heeb contacted CBHA and told the account representative with whom he spoke that he was very upset that his account had been turned over to collection. (CP 78).

On July 25, 2007 Mr. Heeb called CBHA and spoke with account representative Marelia Rodriguez. (CP 78). She told Mr. Heeb that she had been trying to reach him several times to explain his account. (CP 78). Mr. Heeb responded that he had never received any phone call from CBHA. (CP 78). Ms. Rodriguez explained that Mr. Heeb's account was turned over to collection because of the outstanding balance on his account, and that, although his insurance company and he had made payments, there was still an outstanding balance because of Mr. Heeb's deductible. (CP 78-79). This representative also explained that statements had been sent, along with a payment agreement and numerous letters before the account was turned over to the collection agency. (CP 79). This representative also explained to Mr. Heeb that his insurance company would have sent an Explanation of Benefits (EOB) letter to him showing the amount of the charges, his insurance payments, and his deductible. (CP 79). Mr. Heeb

told this representative that if CBHA was going to "ruin his credit" he was going to ruin CBHA's credibility and take the company to small claims court. (CP 79). Mr. Heeb asked Ms. Falcon to give him a call when she returned from vacation on July 31, 2007 to see what else could be done. (CP 79)

On July 31, 2007, Ms. Falcon called and spoke with Mr. Heeb regarding the matter. (CP 79). She explained in detail why his account was turned over to collection. (CP 79). Mr. Heeb was still upset and stated he would take CBHA to small claims court. (CP 79)

D. ARGUMENT

1. Standard of review

The standard applied to review of a trial court's order granting summary judgment is de novo. *Wagg v. Estate of Dunham*, 146 Wn.2d 63, 67, 42 P.3d 968 (2002). That is, the appellate court engages in the same inquiry as the trial court, and will affirm summary judgment if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Wilson Court Ltd. Partnership v. Tony Maroni's Inc.*, 134 Wn.2d 692, 698, 952 P.2d 590 (1998). On review of an order granting a Motion for Summary Judgment, the appellate court will consider only evidence and issues called to the attention of the trial court. RAP 9.12; *Vant Leven v. Kretzler*, 56 Wn.App. 349, 783 P.2d 611 (1989).

A court reviewing a summary judgment order must consider the same record the trial court considered in rendering summary judgment. *Lebeuf v. Atkins*, 93 Wn.2d 34, 604 P.2d 1287 (1980).

2. **Burden on party responding to Motion for Summary Judgment**

After a party moving for summary judgment submits adequate affidavits or declarations, the non-moving party must respond with specific facts which sufficiently rebut the moving party's contentions and dispose the existence of a genuine issue of material fact. *Meyer v. University of Washington*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986). To establish the existence of a genuine issue of material fact, the non-moving party "may not rely on speculation, [or] argumentative assertions that unresolved factual issues remain." *Seven Gables Corp. v. MGM/UA Entertainment Company*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Bare allegations unsupported by an evidence are insufficient to raise a genuine issue of fact. *Meissner v. Simpson Timber Company*, 69 Wn.2d 949, 955-56, 421 P.2d 674 (1966). If a party responding to a Motion for Summary Judgment fails to make a showing sufficient to establish the existence of an element essential to the party's case, and in which the party will bear the burden of proof at trial, then the Court should grant the motion. *Wright-Price Recreation, LLC v. Connells Prairie Community Counsel*,

146 Wn.2d 370, 381-82, 46 P.3d 789 (2002); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

Here, Mr. Heeb did not respond in any way to CBHA's Motion for Summary Judgment. Accordingly, it was proper for the trial court to grant CBHA's motion.

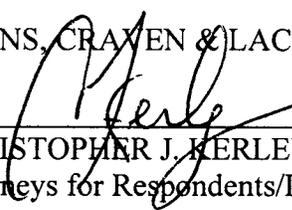
Mr. Heeb's brief consists, in large part, of sweeping allegations of bias and prejudice on the part of the trial court judge. But trial court judges are presumed to perform their functions regularly and properly without bias or prejudice. *Kay Corp. v. Anderson*, 72 Wn.2d 879, 885, 436 P.2d 459 (1967); *Jones v. Halverson-Berg*, 69 Wn.App. 117, 127, 847 P.2d 945 (1993). Thus, a party claiming otherwise must support the claim with evidence of the judge's actual or potential bias. *State v. Dominguez*, 81 Wn.App. 325, 328-29, 914 P.2d 141 (1996); *State v. Bilal*, 77 Wn.App. 720, 722, 893 P.2d 674 (1995).

E. CONCLUSION

Based on the foregoing argument and authorities, CBHA respectfully request that summary judgment in its favor be affirmed.

RESPECTFULLY SUBMITTED this 31 day of August, 2010.

EVANS, CRAVEN & LACKIE, P.S.

By 
CHRISTOPHER J. KERLEY, #16489
Attorneys for Respondents/Defendants

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 31st day of August, 2010, the foregoing was delivered to the following persons in the manner indicated:

Steven Heeb
778 S. Heeb Lane
Othello, WA 99344

VIA REGULAR MAIL
VIA CERTIFIED MAIL []
VIA FACSIMILE []
HAND DELIVERED []

Aug 31, 10 /Spokane, WA
(Date/Place)

