[Cite as *Shiepis Clinic of Chiropractic, Inc. v. Lombardi*, 2004-Ohio-2084.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SHIEPIS CLINIC OF CHIROPRACTIC, INC.	:	JUDGES:
	:	W. Scott Gwin, P.J.
Plaintiff-Appellee	:	William B. Hoffman, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2003CA00208
LARRY LOMBARDI, et al.	:	
	:	
Defendants-Appellants	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal From Canton Municipal Court Case 2002CVF8090
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	April 19, 2004

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant Kristine Beard
MARIO GAITANOS 437 Market Ave., S. Canton, OH 44702	WAYNE E. GRAHAM, JR. 4571 Stephen Circle N.W. Canton, OH 44718

Edwards, J.

{¶1} Defendant-appellant Kristine Beard appeals from the May 29, 2003, Judgment Entry of the Canton Municipal Court granting plaintiff-appellee Shiepis Clinic

of Chiropractic, Inc. judgment against defendant-appellant in the amount of $1,800.00 plus interest.

STATEMENT OF THE FACTS AND CASE

{¶2} After sustaining injuries as a result of a fall from a wheelchair in March of 2000, Larry Lombardi (hereinafter "Lombardi") retained appellant Kristine Beard, an attorney, to represent him in on a contingency fee basis in his personal injury lawsuit against a third party.

{¶3} In April of 2001, Lombardi began receiving treatment at appellee Clinic for the injuries sustained as a result of the wheelchair accident. Appellee Clinic diagnosed Lombardi with a thoracic sprain strain. On April 23, 2001, Lombardi signed a release of information and doctor's lien stating, in relevant part, as follows:

{¶4} "I hereby authorize and direct you, my attorney, to pay directly to said doctors such sum as may be due and owing them for professional services rendered me both by reason of this accident and by reason of any other bills that are due their office and to withhold such sums from any settlement, judgment or verdict as may be necessary adequately to protect said doctor. I hereby further give a lien on my case to said doctors against any and all proceeds of any settlement, judgment or verdict which may be paid to you, my attorney, or myself as the result of the injuries for which I have been treated or injuries in connection therewith.

{¶5} "I fully understand that I am directly and fully responsible to said doctors for all professional bills submitted by them for service rendered me and that this agreement is made solely for said doctor's additional protection and in consideration of their awaiting payment. And I further understand that such payment is not contingent

on any settlement, judgment or verdict by which I may eventually recover said fee. This lien shall be irrevocable until such time that all of the doctors have been paid in full."

{¶6} On April 24, 2001, appellant signed the same document. The following paragraph appears above appellant's signature:

{¶7} "The undersigned being attorney of record for the above patient does hereby agree to observe all the terms of the above and agrees to withhold such sums from any settlement, judgment or verdict as may be necessary adequately to protect the said doctors named above."

{¶8} Lombardi was seen and treated at appellee Clinic from April 9, 2001, through August 10, 2001, resulting in a bill of $2,450.

{¶9} As a result of court-ordered mediation, appellant settled Lombardi's personal injury case for $2,500. As shown by the April 8, 2002, settlement statement, of the $2,500, $25 was paid to appellee as reimbursement for medical records and $1,800.00 was paid to Lombardi after monies were disbursed as reimbursement for medical records, for photocopying and secretarial expenses and $200 for a compromised Medicaid subrogation claim[1] from the Department of Job and Family Services. Appellant waived her contingency fee.

{¶10} Thereafter, on or about May 7, 2002, appellee sent appellant a letter stating, in relevant part, as follows:

{¶11} "On April 22nd 2001, you signed a lien in which stated you agreed to observe all the terms listed and agreed to withhold the sum, from any settlement,

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[1] Medicaid had received an $800 bill for two days that appellant spent in the hospital shortly after the wheelchair accident. Such bill was compromised in the amount of $200.

judgment or verdict, to protect Dr. George Shiepis and Dr. Keric Shiepis for their services.

{¶12} “Technically and ethically you are responsible for $2450.00, which is the balance due for Larry Lombardi’s personal injury case. We would like to see this resolved no later than May 31st 2002. If this is not resolved the matter will have to be pursued further.”

{¶13} After its bill was not paid, appellee, on November 13, 2002, filed a complaint for breach of contract against both appellant and Lombardi in the Canton Municipal Court. Appellant, on December 10, 2002, filed an answer and a cross-claim against Lombardi. After Lombardi failed to file an answer to appellee’s complaint, appellee was granted a default judgment against Lombardi in the amount of $2, 450 plus interest.

{¶14} Thereafter, on May 9, 2003, a bench trial was held. As memorialized in a Judgment Entry filed on May 29, 2003, the trial court granted appellee judgment against appellant in the amount of $1,800, the amount remaining after all other expenses and claims had been paid, plus interest at the rate of 10% per annum. The trial court, in its entry, further ordered that appellant be granted judgment against Lombardi on her cross-claim for the same amount.

{¶15} It is from the trial court’s May 29, 2003, Judgment Entry that appellant now appeals, raising the following assignment of error:

{¶16} “THE TRIAL COURT ERRED IN GRANTING JUDGMENT FOR THE APPELLEE AND AGAINST THE APPELLANT FOR THE REIMBURSEMENT OF SERVICES RENDERED TO LARRY LOMBARDI AS A MEDICAID PATIENT.”

I

{¶17} Appellant, in her sole assignment of error, argues that the trial court erred in granting judgment in favor of appellee and against appellant. Appellant specifically contends that since appellee had accepted Lombardi as a Medicaid patient, appellee was prohibited from requesting any payment from Lombardi and thus also appellant under the Medicaid Program.

{¶18} The United States Sixth Circuit Court of Appeals, in the case of *Barney v. Holzer Clinic, Ltd.* (1997), 110 F.3d 1207, 1210-1211, held as follows:

{¶19} "Ohio has chosen to participate in the Medicaid program…In Ohio, …all Medicaid payments flow from the state directly to the medical provider; a provider is absolutely barred from requesting any payment from patients for treatment provided under the program. See Ohio Admin.Code § 5101:3-1-131(A) ('The department's payment constitutes payment-in-full for any covered service. The provider may not bill the recipient for any difference between that payment and the provider's charge. The provider may not charge the recipient any copayment, cost-sharing, or similar charge. The provider may not charge the recipient a down payment, refundable or otherwise.'); Id. § 5101:3-1-60(A); *Sparks v. Sawaya*, 9 Ohio App.3d 275, 459 N.E.2d 901, 903 (1983) ('Additional payments cannot be accepted from the recipient or her family after the patient is accepted as a medicaid patient, and the patient cannot be billed for additional amounts in excess to that received from medicaid.... The patient may not file for medicaid benefits. Only the provider can do that.'). Medical providers may not bill patients for treatment under the program unless they have explicitly agreed prior to treatment that the patient will personally be liable, even if the providers themselves

cannot get reimbursement from the state. Ohio Admin.Code. § 5101:3-1-131(C), (D). Cf. *In re Helman*, 61 Ohio Misc.2d 382, 579 N.E.2d 542, 544 (Ct.Cl.1989) (applying exception to law)."

{¶20} In the case sub judice, the trial court, in its entry, found that "the evidence that the plaintiff submitted its bill to Medicaid is inconclusive at best, and that there is no evidence that the plaintiff ever received any payment from Medicaid." In reviewing a trial court's decision which is said to be against the manifest weight of the evidence, a judgment supported by competent, credible evidence will not be reversed by a reviewing court. *G.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 576 N.E.2d 578.

{¶21} As is stated above, Lombardi was treated by appellee between April 9, 2001, and August 10, 2001. The evidence reveals that on or about August 15, 2001, appellant, Lombardi's attorney, was billed for the full amount of $2,450.

{¶22} At the bench trial, Dr. Keric Shiepis testified that Lombardi came into his office as a personal injury patient and that Medicaid was not billed for the chiropractic services until after appellant's personal injury claim was settled.

{¶23} Dr. Keric Shiepis further testified at the bench trial as follows:

{¶24} "Q. Refer to Exhibit 'D', Dr. Keric Shiepis, the billing to Medicaid, did you receive any payment from Medicaid?

{¶25} "A. None.

{¶26} "Q. Okay. To this day have you received anything?

{¶27} "A. None.

{¶28} "Q. Did an indication that you made of billing to Medicaid or your office did in October of 2001, is that correct?

{¶29} "A. That's correct.

{¶30} "Q. But prior of that billing isn't it true, there's an indication that you billed the attorney, Kristine Beard?

{¶31} "A. Yes.

{¶32} "Q. So, your initial billing regarding the treatments that were rendered from April 2001 through August of 2001, were initially billed to Kristine Beard regarding this personal injury case involving Larry Lombardi?

{¶33} "A. Correct.

{¶34} "Q. Did you ever get payment from Kristine Beard, we've established that, but nothing's been paid.

{¶35} "A. Nothing's been paid." Transcript at 26.

{¶36} Thus, we find that there was competent, credible evidence from which the trial court could have concluded that Lombardi had not been accepted as a Medicaid patient at the time the chiropractic services were rendered and that appellee only pursued payment through Medicaid after appellant failed to pay for Lombardi's treatment.

{¶37} Furthermore, as is stated above, medical providers such as appellee may not bill patients for treatment under the Medicaid program unless they have explicitly agreed prior to treatment that the patient will personally be liable, even if the providers themselves cannot get reimbursement from the state. Ohio Admin.Code. § 5101:3-1-131(C). See, also, *Layton Physical Therapy Co., Inc. v. Palozzi*, 149 Ohio App.3d 332,

2002-Ohio-4703, 777 N.E.2d 306. Both Lombardi and appellant signed the doctor's lien. As is stated above, the language contained in the lien document which appellant signed states as follows:

{¶38} "The undersigned being attorney of record for the above patient does hereby agree to observe all the terms of the above and agree to withhold such sums from any settlement, judgment or verdict as may be necessary adequately to protect the said doctors named above."

{¶39} This Court, in *Shiepis Clinic of Chiropractic, Inc. v. Stevenson* (June 8, 1996), Stark App. No. 1995CA00343, held that the exact same language in a doctor's lien was sufficient to personally bind the attorney for payment of his client's medical services. In so holding, this Court noted that the doctor's lien expressly stated, as herein, that the attorney agreed to withhold funds from any settlement to reimburse the physician for treatment. In the Opinion, this Court further held, in relevant part, as follows: "Appellant Ake [the attorney] signed the lien and agreed to protect the doctor's interest so he could receive payment for the medical services rendered to appellant's clients. Even if we were to determine the language is insufficient to personally bind appellant, any doubtful language in a surety contract must be construed strongly against the surety, and in favor of indemnity, which the creditor has reasonable ground to expect. See Carter v. Bernard (1971), 27 Ohio Misc. 165, 168."

{¶40} Appellant's sole assignment of error is, therefore, overruled.

{¶41} Accordingly, the judgment of the Canton Municipal Court is affirmed.

Judgment affirmed.

Gwin, P.J., and Hoffman, J., concur

JUDGES

JAE/0304

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IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

SHIEPIS CLINIC OF CHROPRACTIC, INC.	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
LARRY LOMBARDI, ET AL.	:	
Defendants-Appellants	:	CASE NO. 2003CA00208

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Canton Municipal Court is affirmed. Costs assessed to appellant Kristine Beard.

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JUDGES