FILED
United States Court of Appeals
Tenth Circuit

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ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

KRIS K. AGRAWAL, an individual, Plaintiff-Appellant, v. NORMAN REGIONAL HOSPITAL, a division of City of Norman; ASSOCIATED CREDIT SERVICES, INC., a Texas corporation, Defendants-Appellees.	No. 90-6150 (D.C. No. CIV-88-1188-T) (W.D. Oklahoma)

ORDER AND JUDGMENT*

Before **ANDERSON**, **TACHA** and **BRORBY**, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Kris K. Agrawal (Plaintiff) appeals the decision of the district court granting summary judgment in favor of defendant.

Plaintiff commenced this action against defendant hospital

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

asserting a violation of the Consumer Credit Protection Act, 15 U.S.C. § 1601 et. seq., by reporting false and/or erroneous information to a credit bureau in violation of § 1666(a).

Defendant filed a motion for summary judgment supported by an affidavit and other materials. The factual and legal thrust of this motion was that defendant never agreed to extend credit to plaintiff and therefore plaintiff had no claim under the Consumer Credit Protection Act.

Plaintiff filed a response which failed to address defendant's factual contention that plaintiff was not extended credit, and plaintiff further failed to controvert any of defendant's stated facts. The district court granted defendant's motion for summary judgment.

On appeal plaintiff states the issue simply as whether the trial court erred in granting summary judgment. Plaintiff argues that she is entitled to all favorable inferences and argues that there exists a genuine issue of material fact and asserts this fact is evidenced by a financial agreement, an argument plaintiff failed to raise before the district court.

A summary judgment is a procedural device whereby no trial is had if the material facts are not in dispute. The judge then decides the case as a matter of law. Fed. R. Civ. P. 56. When one party desires summary judgment, facts are submitted to the court. The other party then has the obligation of presenting facts to the court showing it is entitled to recover. This obligation may only be satisfied with facts. When we review a grant of summary judgment we review it de novo, exactly as did the district court. We examine the record to determine whether any genuine issue of material fact remains, and if not, whether the substantive law was correctly applied. Kaiser-Francis Oil Co. v. Producer's Gas Co., 870 F.2d 563, 565 (10th Cir. 1989).

In the instant case the defendant presented facts by an affidavit and other materials that clearly establish defendant did not extend any credit to plaintiff. Plaintiff failed to contest any of these facts; nor did plaintiff offer any additional material facts. We therefore find, as did the trial court, that there exists no genuine issue of material fact. These facts show that defendant provided medical services to plaintiff's minor daughter and immediately demanded payment in full. There is simply no evidence that would show defendant extended any credit or entered into any type of credit transaction with plaintiff.

Plaintiff now argues for the first time that a financial agreement, which was attached to plaintiff's deposition, evidences defendant's intention to an extension of credit. Generally, we do not address issues raised for the first time on appeal. Farmers Ins. Co. v. Hubbard, 869 F.2d 565, 570 (10th Cir. 1989); Denis v. Liberty Mut. Ins. Co., 791 F.2d 846, 849 (11th Cir. 1986). Nevertheless, were we to consider this issue we would clearly be compelled to look at the undisputed affidavit filed by defendant, which states this is merely a form that would allow a direct claim to a patient's health insurance carrier for immediate payment. This form clearly provides that amounts owed are due when billed.

The pivotal issue in this case is whether the hospital extended credit to plaintiff. If there was no extension of "consumer credit," the law at issue imposes no obligation upon the hospital. American Express Co. v. Koerner, 452 U.S. 233, 240 (1981). "Credit" is defined in § 1602(e) as a "right granted by a creditor to a debtor to defer payment." At the time of the summary judgment, defendant presented factual evidence showing that no credit had been given to plaintiff and plaintiff failed to respond. There are no factual issues present, and summary judgment for the defendant was appropriate.

The judgment of the district court is **AFFIRMED** for substantially the same reasons set forth in the district court's Order of March 16, 1990, a copy of which is attached.

Entered for the Court:

WADE BRORBY
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

KRIS K. AGRAWAL, an individual,

Plaintiff,

v.

NORMAN REGIONAL HOSPITAL, a division of the City of Norman, and CSC CREDIT SERVICES, INC.,

Defendants.

CIV-88-1188-T

ORDER

Defendant Norman Regional Hospital (NRH) has filed a Motion for Summary Judgment. Plaintiff has responded. Plaintiff incorrectly characterizes NRH's motion as contending that NRH is not a "creditor" as defined in 15 U.S.C. § 1602(f). In fact, NRH's motion contends that there was no extension of consumer credit as required by 15 U.S.C. § 1666(a).

Plaintiff brought this action against NRH, alleging a violation of the Consumer Credit Protection Act, 15 U.S.C. § 1601, et seq. Plaintiff contends that NRH failed to accurately report information regarding plaintiff to defendant CSC Credit Services, Inc. 15 U.S.C. § 1666a places restrictions on creditors' reporting to third parties. The restrictions apply after a creditor has received "notice from an obligor as provided in section 1666(a)." Section 1666(a) provides for written notice from an obligor to a creditor, when the creditor has transmitted a statement of the obligor's account "in connection with an extension of consumer

ATTACHMENT "A"

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credit." Section 1602(f) defines credit as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment."

NRH contends that it did not extend credit to plaintiff, because it did not agree to allow plaintiff to defer any payment. NRH contends that it sought immediate payment from plaintiff, and that any delay was due to plaintiff's unilateral refusal to pay. NRH's contention is supported by the following materials: (1) plaintiff's Complaint which states that NRH demanded immediate payment; (2) the affidavit of John Meharg, NRH's director of business, who states that NRH did not agree to allow plaintiff to defer payment for the services in question; (3) copies of statements of account which demand payment in full and show no periodic payment amount or percentage rate. Plaintiff's response merely states that plaintiff disputes NRH's contentions. The only affidavit or other material submitted in response to the Motion for Summary Judgment is plaintiff's affidavit, which does not address NRH's contention that plaintiff was not extended credit.

Local Rule 14(B) provides that a brief in opposition to a motion for summary judgment shall begin with a concise statement of material facts as to which the party contends a genuine issue exists. The brief is required to refer with particularity to those portions of the record upon which the party relies. All material facts in the movant's statement shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party. Plaintiff has not specifically controverted any of NRH's stated facts. Therefore, they are deemed admitted. Accordingly, the Court finds that there was no extension of credit from NRH to plaintiff, because no arrangement was made to allow plaintiff to defer payments.

Meharg's affidavit does state that plaintiff's wife executed a Financial Agreement in connection with charges of $1,087 referred to in paragraph 12 of plaintiff's Complaint. Plaintiff appears to contend that this amounts to an extension of credit. The Court disagrees. "Credit is extended when a consumer incurs a debt and the parties agree to a repayment schedule which allows for the repayment of the debt." Rogers Mortuary, Inc. v. White, 594 P.2d 351 (Ct. App. N.M. 1979). There is no evidence that the Financial Agreement was anything other than an agreement that NRH would submit a claim to plaintiff's insurance carrier. The Court finds that such an arrangement is not an extension of credit.

For the foregoing reasons, defendant NRH's Motion for Summary Judgment is granted.

IT IS SO ORDERED this 16th day of March, 1990.

UNITED STATES DISTRICT JUDGE

ENTERED IN JUDGEMENT DOCKET ON 3-16-90