7-28-2017

Medical Recovery Services v. Neumeier Appellant's Brief Dckt. 44836

IN THE SUPREME COURT OF THE STATE OF IDAHO

MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company,

Plaintiff/Appellant,

v.

Jared Neumeier

Defendants/Respondent

Supreme Court Docket No. 44836

APPELLANT'S BRIEF ON APPEAL

Appeal from the District Court of the Seventh Judicial District for Bonneville County.
Honorable Joel E. Tingey, District Judge, presiding.

Bryan N. Zollinger, Esq., residing at Idaho Falls, Idaho, for Plaintiff/Appellant,
Medical Recovery Services, LLC

Sean J. Coletti, Esq., residing at Idaho Falls, Idaho, for Defendant/Respondent,
Jared Neumeier

IN THE SUPREME COURT OF THE STATE OF IDAHO

MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company,

Plaintiff/Appellant,

v.

Jared Neumeier

Defendants/Respondent

Supreme Court Docket No. 44836

APPELLANT'S BRIEF ON APPEAL

Appeal from the District Court of the Seventh Judicial District for Bonneville County.
Honorable Joel E. Tingey, District Judge, presiding.

Bryan N. Zollinger, Esq., residing at Idaho Falls, Idaho, for Plaintiff/Appellant,
Medical Recovery Services, LLC

Sean J. Coletti, Esq., residing at Idaho Falls, Idaho, for Defendant/Respondent,
Jared Neumeier

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CASES: ***Pages***

STATUTES AND RULES:

STATEMENT OF THE CASE

Appellant, Medical Recovery Services, LLC. sued defendant, Jared Neumeier, for the payment of a medical bill that was nearly two years and six months past due. Jared Neumeier's defense was that he never got a copy of the bill and that he had insurance that would pay for the bill. The Magistrate Court agreed with this argument on summary judgment concluding that the fact Jared Neumeier had insurance and did not receive a bill before being sued meant that Jared Neumeier acted "objectively reasonably" in not paying the bill. Moreover, since the insurer paid 100% of the bill after the lawsuit was filed, Medical Recovery Services, LLC. did not recover an affirmative judgment thereby making Jared Neumeier the prevailing party entitled to costs and attorney's fees.

On appeal, the District Court went in a totally different direction than the Magistrate Court. The District Court held that a patient owes a medical provider nothing until the amount he owes becomes "determinable." The bill for a patient who has insurance becomes "determinable" only after the medical insurer pays all or part of the bill. Therefore, given that Jared Neumeier's medical insurer paid 100% of the amount sought in the lawsuit (albeit nearly three months after the lawsuit was filed), Jared Neumeier owed nothing to the medical provider at the time of summary judgment making summary judgment in favor of Neumeier proper. Moreover, since Medical Recovery Services, LLC. was not entitled to any affirmative judgment, it was not the prevailing party and could not recover any prejudgment interest. In fact, Jared Neumeier was the prevailing party entitled to an award of attorney's fees and costs.

STATEMENT OF FACTS

On November 30, 2012, the defendant, Jared Neumeier, ("Neumeier"), received medical services from Dr. Eric Baird at which time Neumeier provided Dr. Baird with "insurance information."[1] For some unknown reason, whether Neumeier's "insurance information" was incomplete, illegible, did not provide coverage, or whether Dr. Baird's billing staff made an error, Dr. Baird did not use Neumeier's "insurance information" that Neumeier provided on November 30, 2012.[2] Neumeier does not ever explain the nature of the "insurance information" he provided Dr. Baird; therefore, the record is undeveloped whether that was an insurance card, information on a sign in sheet, just the name "Blue Shield," or whether Neumeier even provided correct and legible policy and/or group numbers.[3]

Dr. Baird's office sent demand letters for payment to Neumeier at the wrong address[4] until April 4, 2014 when Dr. Baird stopped sending letters and turned the account to MRS for collections.[5] Medical Recovery Services, LLC., ("MRS"), sent collection letters to the wrong address for Neumeier until April 27, 2015, when MRS obtained the correct address and sent Neumeier a 10-day demand letter that he admits he received.[6] That collection letter told Neumeier he had a delinquent account and 10 days to respond.[7] Because Neumeier was on vacation, he did not open the letter until May 16, 2015, a Saturday.[8]

---

[1] R Vol. I, p. 19.
[2] R Vol. I, p. 19.
[3] R Vol. I, pp. 18-20 and 106-110.
[4] Neumeier's correct address was 3059 ***Skyview*** Drive, but the letters went to 3059 ***Skyline*** Drive.
[5] R Vol. I, pp. 19 and 71.
[6] R Vol. I, pp. 19 and 71.
[7] R Vol. I, p. 72.
[8] R Vol. I, pp. 107, 108 and 109.

On Monday May 18, 2015, instead of contacting MRS in response to the collection letter, Neumeier contacted Dr. Baird's office who told Neumeier his account had already gone to MRS for collections.[9] According to Neumeier, not until the next day on May 19, 2015 did Neumeier contact MRS who told him that it was "too late."[10] Unfortunately, Neumeier did not contact MRS on May 18, 2015 because MRS has a policy to put an "insurance hold" on an account if a person contacts MRS while awaiting insurance payments.[11] In other words, if Neumeier had contacted MRS on May 18, 2015 before the Complaint was filed at 4:01 p.m., MRS would not have filed suit but would have put the account on hold while awaiting his insurance payment.[12] Instead, having not received a response from Neumeier, MRS sent the account on May 14, 2015 to its attorneys who filed the Complaint in this matter on May 18, 2015 at 4:01 p.m.[13]

The Complaint sought the principle amount of $958.63 plus statutory prejudgment interest of $282.39, attorney's fees and costs.[14] After MRS served the Complaint on Neumeier, Neumeier disclosed that he had insurance to cover the bill.[15] Dr. Baird's office billed the insurance and received payment in full three months later on August 27, 2015.[16] The record and specifically the Affidavits of Neumeier contain no evidence that the nondescript "insurance

[9] R Vol. I, pp. 108 and 109.
[10] R Vol. I, pp. 108 and 109.
[11] R Vol. I, p. 72.
[12] R Vol. I, p. 72.
[13] R Vol. I, pp. 8, 35, 72, 108, and 109.
[14] R Vol. I, p. 9.
[15] R Vol. I, pp. 19 and 22.
[16] R Vol. I, pp. 19 and 35.

information" that lead to the payment on or about August 27, 2015 was the same "insurance information" Neumeier provided nearly three years earlier on November 30, 2012.[17]

COURSE OF PROCEEDINGS

On September 25, 2015, and after the principle amount was paid, Neumeier made a motion to dismiss,[18] and MRS objected to the motion.[19] The Magistrate Court ultimately converted the motion to dismiss and MRS' opposition to the motion to dismiss as cross motions for summary judgment in which both parties sought judgment in their favor.[20]

On November 23, 2015, the Magistrate Court granted summary judgment in favor of Neumeier finding that "[w]hether it is a zero dollar summary judgment in favor of the plaintiff or summary judgment in favor of Neumeier the net result is in favor of Neumeier."[21] The Magistrate Court also made the erroneous finding that the "defendant was prevented from paying the bill by operation of the provider's failures,"[22] meaning that the provider did not bill Neumeier's insurance properly or send billings to the proper address.[23] The Magistrate Court concluded that if Neumeier "had not had insurance the Court would have found that his failure to pay [for nearly three years] was not objectively reasonable; with insurance the Court can conclude that it was."[24]

---

[17] R Vol. I, pp. 18-20 and 106-110.
[18] R Vol. I, pp. 15-17.
[19] R Vol. I, pp. 17-33.
[20] R Vol. I, pp. 47-52.
[21] R Vol. I, p. 52.
[22] R Vol. I, p. 51.
[23] R Vol. I, p. 51.
[24] R Vol. I, p. 52.

On November 23, 2015, the Magistrate Court also entered judgment in favor of Neumeier,[25] and the Magistrate Court awarded Neumeier attorney's fees and costs.[26]

On December 9, 2015, MRS moved to Set Aside Judgment on the grounds that the Magistrate Court had not decided the issue of prejudgment interest.[27]

On December 29, 2015, the Magistrate Court set aside the judgment and allowed the parties to file supplemental briefing on the issue of statutory prejudgment interest pursuant to I.C. §18-22-104.[28]

On February 22, 2016, the Magistrate Court denied MRS' motion for prejudgment interest stating that "[i]nterest is calculated on a percentage of the amount owed and not the amount claimed in the complaint."[29] The Magistrate Court again awarded additional attorney's fees and costs to Neumeier.[30]

On March 3, 2016, the Magistrate Court entered judgment in favor of Neumeier awarding Neumeier costs and attorney's fees.[31]

On March 17, 2016, MRS filed a timely motion for reconsideration on the grounds that (1) the Magistrate Court had raised issues previously that MRS may not have had an assignment that allowed MRS to step in the shoes of the provider; and (2) Neumeier's failure to receive

---

[25] R Vol. I, p. 46.
[26] R Vol. I, pp. 46 and 52.
[27] R Vol. I, pp. 65-70.
[28] R Vol. I, p. 99.
[29] R Vol. I, pp. 127-131.
[30] R Vol. I, p. 130.
[31] R Vol. I, pp. 143-144.

billing statements was not a defense to the underlying obligation to pay for the services received.[32]

On April 29, 2016, the Magistrate Court denied the motion for reconsideration concluding that (1) MRS did have a proper assignment for the lawsuit; (2) Neumeier's receipt of billings is not the issue because Neumeier owed MRS nothing at the time of summary judgment; and (3) Neumeier acted reasonably under the circumstances.

On May 6, 2016, MRS filed a Notice of Appeal.[33]

On May 9, 2016, the Magistrate Court entered a First Amended Judgment awarding Neumeier additional attorney's fees totaling $6,958.00 and costs of $138.00.[34]

On May 11, 2016, MRS filed a timely Amended Notice of Appeal.[35]

On December 13, 2016, the District Court entered its Opinion and Order On Appeal affirming the Magistrate Court.[36] The District Court reasoned that a patient owes the medical provider nothing until the amount he owes becomes "determinable."[37] The bill for a patient who has insurance becomes "determinable" only after the medical insurer pays all or part of the bill.[38] Therefore, given that Neumeier's medical insurer paid 100% of the amount sought in this lawsuit (albeit nearly three months after MRS filed the lawsuit), Neumeier owed nothing to the medical provider at the time of summary judgment making summary judgment in favor of

[32] R Vol. I, pp. 151-158.
[33] R Vol. I, pp. 180-182.
[34] R Vol. I, pp. 183-184.
[35] R Vol. I, pp. 190-192.
[36] R Vol. I, pp. 75-81.
[37] R Vol. I, p. 79.
[38] R Vol. I, p. 79.

Neumeier proper.[39] Since MRS was not entitled to any judgment, MRS was not a prevailing party and could not recover any prejudgment interest.[40]

In essence, the District Court ruled that in all cases involving medical debt, a medical insurer's payment on or toward a medical charge is a condition precedent to the patient's duty to pay the medical provider.

On January 4, 2017, the District Court entered an Order awarding Neumeier $5,361.75 for attorney's fees on appeal.[41]

On January 20, 2017, MRS filed a timely Notice of Appeal.[42]

I.

ISSUES ON APPEAL

A. DID THE DISTRICT COURT COMMIT REVERSIBLE ERROR WHEN IT DETERMINED THAT NEUMEIER PREVAILED ON SUMMARY JUDGMENT?

B. DID THE DISTRICT COURT COMMITT REVERSIBLE ERROR IN AFFIRMING THE MAGISTRATE COURT'S FINDING THAT NEUMEIER WAS THE PREVAILING PARTY?

C. DID THE DISTRICT COURT COMMITT REVERSIBLE ERROR IN AFFIRMING THE MAGISTRATE COURT'S FINDING THAT MRS SHOULD BE AWARDED NO PREJUDGMENT INTEREST?

D. IS MRS ENTITLED TO AN AWARD OF COSTS AND ATTORNEY'S FEES UNDER I.C. 12-120(1), (3) AND (5) AND I.A.R. 40 AND 41?

[39] R Vol. I, p. 79.
[40] R Vol. I, pp. 79-81.
[41] R Vol. I, pp. 302-303.
[42] R Vol. I, pp. 305-307.

II.

STANDARD OF REVIEW

"When reviewing the decision of a district court sitting in its capacity as an appellate court:

> [t]he Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012) (quoting *Losser v. Bradstreet*, 145 Idaho 670, 672, 183 P.3d 758, 760 (2008))."

Portfolio Recovery Associates, LLC., v. MacDonald, Docket No. 43346, 2017 WL 2376426, at *1, *2 (Idaho June 1, 2019).

"Thus, this Court does not review the decision of the magistrate court." *Pelayo v. Pelayo*, 154 Idaho 855, 859 (2013). "Rather, we [this Court] are 'procedurally bound to affirm or reverse the decisions of the district court.'" *Id.* (quoting *State v. Korn*, 148 Idaho 413, 415 n.1 (2009)).

A. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR WHEN IT DETERMINED THAT NEUMEIER PREVAILED ON SUMMARY JUDGMENT.

"A condition precedent is an event not certain to occur, but which must occur, before performance under a contract becomes due." *Dengler v. Hazel Blessinger Family Trust*, 141 Idaho 123, 128 (2005). "A condition precedent may be expressed in the parties' agreement, implied in fact from the conduct of the parties, or implied in law (constructive) where the courts 'construct' a condition for the purpose of attaining a just result." *Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 528 (2011).

The District Court held that Neumeier prevailed on summary judgment because at the time of summary judgment Neumeier owed nothing on his bill ignoring the fact that Neumeier owed the provider at the time MRS filed the Complaint. The District Court reasoned that in the context of medical patients with insurance, a patient owes nothing on his bill until the insurer pays and the amount due and owing becomes determinable. In other words, according to the District Court, before Neumeier's performance under his contract with the medical provider became due, Neumeier's medical insurer first needed to pay on the medical claim. This is a condition precedent the District Court applied because it involves an event that must occur before performance under a contract becomes due. However, there is no evidence that the parties' agreement expressed such a condition precedent nor can such a condition precedent be implied in fact from the conduct of the parties or in law by the court for the purpose of attaining a just result.

1. No Evidence Exists That The Parties Intended The Condition Precedent The District Court Applied To The Contract Between The Parties.

Here, the record contains no written contract between the parties. Nor does the record contain any evidence of any oral contract between the parties. Therefore, the District Court could not have applied the condition precedent as an express term of a contract between the parties. And the only evidence on appeal of the conduct of the parties regarding contract formation is found in the Affidavit of Jared Neumeier that states, "On or about November 30, 2012, I went in to Dr. Eric Baird's office to get a colonoscopy. I provided my Blue Cross of Idaho insurance information, was seen by Dr. Baird, and then left his office."[43] Nothing in this

[43] R Vol. I, p. 19.

statement demonstrates conduct of the parties that gives rise to the condition precedent that the District Court applied in this case.

2. The District Court Wrongly Constructed An Implied In Law Condition Precedent Because The Condition Precedent Is Not Necessary To Attain A Just Result.

Although the District Court applied an implied in law condition that people with medical insurance owe nothing on their bill until their medical insurer pays, the District Court provided no explanation and no legal authority why implying such a condition is necessary to obtain a just result. To the contrary, the District Court's position yields a very unjust result in this case.

Neumeier saw Dr. Baird on November 30, 2012 for a colonoscopy—something most people (particularly men) do not forget that they underwent. The record shows that Neumeier received Explanation of Benefit ("EOB") forms from his medical insurer yet never received an EOB for his November 30, 2012 procedure until after MRS sued Neumeier.[44] This means that between November 30, 2012 and May 18, 2015—two and one half years—Neumeier did nothing to follow up with his provider or medical insurer to find out why he had never received a bill or an EOB for his procedure. Neumeier did schedule and take a two week Disney Panama Canal Cruise, but did nothing to find out why his doctor never billed him or why he never got an EOB from his medical insurer. At any time during this two and one half year period, Neumeier could have contacted the provider and asked why he had never gotten a bill or he could have called his medical insurer and asked why he had never gotten an EOB related to a procedure he never paid for or his medical insurer never paid for. Instead, he did neither and now asks the court to impose a condition as a matter of law for the purpose of giving him a "just" result.

[44] R Vol. I, p. 22.

Moreover, On April 27, 2015, MRS sent Neumeier a 10-day demand letter after obtaining Neumeier's correct address.[45] That collection letter told Neumeier he had a delinquent account and 10 days to respond.[46] Because Neumeier was on vacation he did not open the letter until May 16, 2015, a Saturday.[47] However, on Monday May 18, 2015, instead of contacting MRS in response to the collection letter MRS had sent him, Neumeier contacted Dr. Baird's office who told Neumeier his account had already gone to MRS for collections.[48] According to Neumeier, not until the next day on May 19, 2015 did Neumeier contact MRS who told him that it was "too late."[49] If Neumeier had contacted MRS on Monday May 18, 2015 before MRS filed the Complaint at 4:01 p.m. and told MRS he had insurance, MRS would not have filed suit but would have put the account on hold while awaiting his insurance payment.[50] MRS has a policy to put an insurance hold on an account if a person contacts MRS while awaiting insurance payments.[51] Thus, even assuming billing and/or mailing errors by the provider, if Neumeier would have responded to MRS when he had the opportunity, MRS would not have sued him.

3. The District Court's Analysis Is Based On A Faulty Characterization of the Facts.

The District Court stated the following in its Decision:

> In this case, no party disputes that once the procedure was performed, the charges were subject to at least two adjustments before any amount could be considered due and owing. First, where Neumeier had medical insurance, the charge

[45] R Vol. I, pp. 19 and 71.
[46] R Vol. I, p. 72.
[47] R Vol. I, pp. 107, 108 and 109.
[48] R Vol. I, pp. 108 and 109.
[49] R Vol. I, pp. 108 and 109.
[50] R Vol. I, p. 72.
[51] R Vol. I, p. 72.

was subject to a contractual adjustment for the benefit of Neumeier and his insurer. Second, the charge would be reduced by payments made by the insurer after the contractual adjustment.[52]

MRS disputes "that once the procedure was performed, the charges were subject to at least two adjustments before any amount could be considered due and owing." The charge was for $1,092.00. Pursuant to a contract between the medical insurer and the provider, this charge was "adjusted" down by $665.41.[53] This is known as a "contractual adjustment."[54] The balance after this contractual adjustment is the amount Neumeier was required to pay either himself or by his medical insurer if he had coverage for the procedure. But a third party's paying the balance is not an "adjustment," it is a payment made in behalf of the person owing the balance. And the amount Neumeier owed the provider was considered "due and owing" before the medical insurer made the payment. Neumeier actually owed the balance after he had the procedure, and the provider was willing to accept payment from Neumeier, his medical insurer, or anyone willing to pay it in his behalf. Neumeier's balance was not due and owing as the District Court claims only after a third party paid the balance for him. In other words, the District Court is wrong saying that the patient never owed any amounts the insurance company pays.

4. The District Court's Rule Is Contrary To Sound Reasoning And Sound Public Policy.

The District Court's rule has the potential of leaving health care providers without a remedy. For example, assume that a patient gets sued on a medical bill, and his defense is that

[52] R Vol. I, p. 79.
[53] R Vol. I, p. 22.
[54] R Vol. I, p. 22.

he has no obligation to pay because his medical insurer is supposed to pay the bill 100%. The medical insurer refuses to pay claiming the patient did not pay his premiums or the procedure is not covered under the insurance contract. Under the District Court's rule, the health care provider is without a remedy because (1) no amount is due and owing from the patient until the medical insurer pays; and (2) the health care provider cannot pursue the medical insurer because they are not in privity with each other. No remedy.

Similarly, assume in the scenario above that the patient sues the medical insurer for breach of the insurance contract. The provider would need to wait for the outcome of that lawsuit before it could seek to collect from the patient because until that lawsuit is resolved through the courts, the health care provider would not know whether the charges would be reduced by payments made by the medical insurer. However, the health care provider must still pay its overhead during the two or three years the case is in litigation. Assume further that the patient and the medical insurer settled their case for a compromised sum that is much less than the total medical charges. Litigation between the health care provider and the patient might be necessary just to determine how much the settlement reduces the charges, if any.

The District Court's rule further removes from the patient the responsibility for payment of medical services the patient receives. Generally speaking, patients have the responsibility of paying their medical bills pursuant to express or implied in fact contracts for medical services they have received. Patients can pay the medical bills themselves, buy medical insurance to pay them, or they can make arrangements with charitable third parties to pay the medical bills. But the purchase of medical insurance does not shift the contractual legal liability for payment

away from the patient to the insurer, the provider, or a black hole. However, the District Court's decision does just this causing the current system to stand on its head.

Moreover, as the party responsible for payment of medical services, patients with medical insurance have remedies available for first party bad faith against their medical insurers who do not pay when they ought to pay. On the other hand, health care providers do not have any bad faith remedies available against medical insurers who do not pay pursuant to insurance contracts with their insureds. Patients are incentivized to use these bad faith remedies against a medical insurer when the health care provider seeks payment through collection efforts from the patient. However, under the District Court's rule, patients have virtually no incentive to pressure medical insurers for payment because the patient has no responsibility for payment until the medical insurer pays. In reality, patients who know that their medical insurer will pay only part of a medical bill have a disincentive to pressure their medical insurer to pay their part because without any payment by a medical insurer a patient's liability for a portion of the bill never arises. Thus, the District Court's decision actually incentivizes patients in some instances to help their medical insurers avoid paying anything so that the patients will never know what is "due and owing."

The District Court's rule promotes fraud by mischievous patients. For example, if the District Court's decision is affirmed on appeal, when word of the decision gets out, a mischievous patient could easily provide "insurance information" for a policy he knows is cancelled. For months and months, the patient could tell the health care provider that he does not owe the health care provider anything because the insurance company has not yet reduced

the charge by its payment. The health care provider eventually could sue, but the primary issue in litigation would be whether the patient has insurance, not what the patient owes on his bill.

The District Court's decision raises all kinds of questions about the adequacy of "insurance information" the patient needs to provide to trigger the District Court's rule. For example, does "insurance information" mean a copy of an insurance card, and if so, is that front, back or both? If a patient provides the name of the insurance company, is that sufficient "insurance information"? Is providing the policy number sufficient, or does a patient need to provide the group number too? Is some combination required like the name of the insurance company, the policy number, but not the group number? Or is it the name of the insurance company, the group number, but not the policy number? Does the District Court's rule apply to third party administrators who are not medical insurers, but who pay patient bills often as a part of health insurance benefits for an employee? And, if so, does the District Court's ruling extend to charities that pay some or all a patient's medical bill because only after the charge is reduced by payments made by a charity could an amount due and owing be determined? All these questions are better left to the Idaho legislature rather than the Idaho courts.

5. The District Court Should Have Determined That MRS Prevailed On Summary Judgment.

Instead of determining who won on summary judgment by looking at what Neumeier owed MRS at the time of summary judgment, the District Court should have determined who won on summary judgment by looking at what Neumeier owed MRS at the time MRS filed the Complaint and recognized that Neumeier paid MRS after it filed suit but before summary judgment. At the time MRS filed the Complaint, Neumeier owed MRS the balance of the

charges after the contractual adjustment. If the Court does not determine who wins by looking at what Neumeier owed at the time MRS filed the Complaint but looks at what Neumeier owed at the time of summary judgment, the Court will be opening the door to an absurd litigation tactic.

Specifically, this Court should readily foresee a future situation where a defendant determines during litigation the amount he owes the plaintiff and strategically pays that amount. The defendant would then move for summary judgment saying that he owes the plaintiff nothing making summary judgment in his favor necessary. Worse yet, having won summary judgment, a prevailing defendant could ask the trial court to award the defendant his attorney's fees and costs. This litigation strategy would encourage potential defendants to wait until getting sued before paying the amounts they owe because as happened in this case it would turn the tables on a plaintiff who otherwise would be entitled to recover principle, interest, attorney's fees and costs. Instead, the plaintiff who was owed money when he filed the complaint would owe the defendant's attorney's fees and costs. This Court should not sanction such a rule that encourages gamesmanship with the litigation process.

B. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN AFFIRMING THE MAGISTRATE COURT'S FINDING THAT NEUMEIER WAS THE PREVAILING PARTY.

The District Court found that the Magistrate Court did not abuse its discretion in finding Neumeier to be the prevailing party for the reasons set forth by the District Court as to why Neumeier prevailed on summary judgment. In addition, the District Court stated that the Magistrate Court faced two options: "Rule in favor of Neumeier and dismiss MRS's action, or

rule in favor of MRS for $0.00."[55] Either way, the District Court found that Neumeier prevailed, and the Magistrate Court did not abuse its discretion.

Idaho Rule of Civil Procedure 54(d)(1)(B) states the following in pertinent part: "In determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective parties." The determination of the prevailing party is committed to the sound discretion of the trial court. *Odziemek v. Wesely*, 102 Idaho 582 (Idaho 1981). A party need not be awarded affirmative relief in order to be the "prevailing party." *Id*; *Crump v. Bromley*, 148 Idaho 172 (2009).

Here, MRS was the prevailing party because the result of the action was that MRS got paid $383.93 in principle after having sought $958.63. The difference is the result of a contractual adjustment owed to Neumeier that neither the health care provider nor MRS knew about at the time MRS filed suit. Neumeier had no counterclaims. Although a party need not be awarded affirmative relief to be the "prevailing party," MRS recovered 40% of the principle amount of the complaint.

Although plaintiff has been unable to locate any Idaho case law on this issue, at least one California case has held that a defendant cannot pay a plaintiff the amount at issue ***after*** filing the complaint to prevent the plaintiff from being a "prevailing party." In *Joseph Magnin Co. v. Schmidt*, 89 Cal. App. 3d Supp. 7, 152 Cal. Rptr. 523 (App. Dep't Super Ct. 1978), a creditor sued a debtor for money due on a retail installment contract. After filing the complaint, the debtor paid the bill. The sole issue was whether the creditor was entitled to attorney's fees and

---

55

costs as the "prevailing party" pursuant to statute. The trial court found that the creditor was not the "prevailing party" and rendered judgment in favor of the debtor.

The Court on appeal reversed holding that where the debtor paid the creditor the balance due on a retail installment contract after the creditor filed the complaint to recover the money due on the retail installment contract, the creditor was the "prevailing party" and thus entitled to an award of attorney's fees and costs from the debtor. *Joseph Magnin Co. v. Schmidt*, 89 Cal. App. 3d Supp. 7, 152 Cal. Rptr. 523 (App. Dep't Super Ct. 1978). Although the precise issue in *Joseph Magnin Co.* was framed a little differently than here, the appellate court's reasoning is spot on:

> That neither law, equity, fairness nor justice requires that a defendant debtor be entitled to delay payment of a debt in circumstances such as these until after a lawsuit has been filed and thus defeat a plaintiff-creditor's entitlement to attorney's fees and costs. What respondent seeks here is not merely a liberal interpretation of section 1811.1 but an emasculation of its purpose to reward defendants with good defenses who risk sums for attorney's fees and advance costs in behalf of those good defenses.

Joseph Magnin Co. at 12.

Similarly, the decision to reward a defendant who delays payment until after a complaint has been filed "emasculates" the purpose of Rule 54(d)(1)(B) that allows a creditor to file a complaint to recover what it is owed including prejudgment interest, costs and attorney's fees incurred to collect the debt. The District Court's decision, if allowed to stand, would frustrate the purpose of what it means to be a "prevailing party." The District Court's decision would also encourage unnecessary litigation because debtors would be incentivized not to pay until a complaint is filed—after all, if the creditor does not file a complaint, the debtor never has to pay, but if the creditor sues, the debtor pays the creditor what the debtor owed the

creditor anyway without attorney's fees, costs, or prejudgment interest. And a creditor would be punished for taking appropriate steps to collect what it is rightfully owed because the creditor would not recover attorney's fees, costs and prejudgment interest.

For all these reasons, the District Court committed reversible error in affirming the Magistrate Court's finding that Neumeier was the prevailing party because the Magistrate Court abused its discretion in finding that Neumeier was the prevailing party.

C. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN AFFIRMING THE MAGISTRATE COURT'S FINDING THAT MRS SHOULD BE AWARDED NO PREJUDGMENT INTEREST.

MRS should still be the prevailing party because the District Court should have awarded MRS an affirmative judgment that included prejudgment interest. The District Court agreed with the Magistrate Court that MRS was not entitled to prejudgment interest for two reasons: First, for all the reasons set forth by the District Court in its Decision on Appeal, "when it could finally be determined whether any charges were owing, there were none."[56] The Magistrate Court stated it this way: "[I]nterest is calculated on a percentage of the amount owed and not the amount claimed in the complaint. Any percentage of $0 is still $0."[57] Second, the District Court found that "[t]he amount charged went through a series of adjustments before it could be determined that there was an amount owed. As such, there was no liquidated amount owed which could be an award of pre-judgment interest."[58]

[56] R Vol. I, p. 80.
[57] R Vol. I, p. 130.
[58] R Vol. I, p. 81.

MRS disagrees with the District Court that "a prejudgment interest determination is reviewed under a discretionary standard, and the same three-prong test applies."[59] MRS contends that although a court has discretion to determine whether an amount claimed for prejudgment interest is capable of mathematical computation, whether to award prejudgment interest after this determination presents an issue of law for the court. *Ross v. Ross*, 145 Idaho 277 (Ct. App. 2007). The standard of review on questions of law is free review. *Ranson v. Topaz Mktg., L.P.*, 143 Idaho 641 (2006).

MRS sought prejudgment interest in paragraphs four and five of its Complaint pursuant to I.C. § 18-22-104, which states in pertinent part:

> (1) When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of twelve cents (12¢) on the hundred by the year on:
>
> 2. Money after the same becomes due.
>
> ***
>
> 6. Money due upon open accounts after (3) months from the date of the last item.

The law is clear that ***"interest should be allowed as a matter of law from the date the sum became due in cases where the amount claimed, even though not liquidated, is capable of mathematical computation."*** *Taylor v. Herbold*, 94 Idaho 133, 137 (1971)(Emphasis Added).

Here, the amount of prejudgment interest MRS is entitled to recover is capable of mathematical computation. Neumeier received services on November 30, 2012 and paid

[59] R Vol. I, p. 80.

$383.93 on August 27, 2015 to pay the debt in full.[60] This means that beginning February 28, 2013 (starting three months from the date of service) until August 27, 2015 (when Neumeier paid the debt in full), Neumeier's debt incurred $114.86 interest. The mathematical computation is simply the total number of days from February 28, 2013 to August 27, 2015, i.e., 910 days, multiplied by 12% on the amount of $383.93, i.e., .01262235 dollars per day for 910 days for a total of $114.86.

The District Court stated that "there was no liquidated amount owed which could be the basis of an award of pre-judgment interest" because "[t]he amount charged went through a series of adjustments before it could be determine that there was an amount owed."[61] First, the law is clear that even if the amount owed was not "liquidated," interest should be allowed as a matter of law from the date the sum became due in cases where the amount claimed is capable of mathematical computation. Second, the amount charged did not go through a series of adjustments. Instead, the amount charged was subject to just one contractual adjustment. But the contractual adjustment is treated just like a credit before suit is filed because it was owed all along. Therefore, the contractual adjustment is simply part of the mathematical computation to determine the amount claimed.

Although MRS has not been able to locate any Idaho case directly in point, the case of *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 116-18 (2006) is helpful. In *State Drywall, Inc.* the Nevada Supreme court explained why prejudgment interest should be

[60] R Vol. I, pp. 19 and 35.
[61] R Vol. I, p. 81.

awarded on amounts paid after a Complaint is filed but before judgment is entered. The Supreme Court of Nevada explained in relevant part:

> We now turn to whether State Drywall should have been awarded prejudgment interest on the two payments Rhodes made to State Drywall after State Drywall filed its complaint but before trial. Rhodes contends that the district court correctly denied prejudgment interest on those payments because they are not technically part of the judgment...When a statute's language is plain and unambiguous, and its meaning is clear and unmistakable, we may not look beyond the statute for a different meaning or construction. The plain language of NRS 99.040(1) states that for cases falling under its purview, interest must be allowed "upon all money from the time it becomes due." ***The statute in no way limits prejudgment interest only to amounts contained within the court's ultimate judgment.*** Rather, prejudgment interest should be calculated for "all money" owed under the contract from the date it becomes due until the date it is paid or an offer of judgment is made. Our prior case law and Nevada public policy also support this conclusion.
>
> In *First Interstate Bank v. Green,* we concluded that prejudgment interest under NRS 99.040(1) should be added to money paid before trial where defendant deliberately deprives the plaintiff of the money's use for some specified time. In that case, a suit to recover an overpayment was filed, but before trial, the plaintiff consented to Neumeier's offer of judgment for the amount overpaid, plus interest thereon and attorney fees. Defendant paid the amount due but did not pay interest or attorney fees. Although the district court had determined that interest was not recoverable, we reversed, holding that "[w]here a party is entitled to repayment on a certain date, and payment is not made, interest is recoverable from the date due." The rationale for our holding in *First Interstate Bank* was that defendant deprived the plaintiff of money to which the plaintiff was entitled. Therefore, in order to compensate the plaintiff adequately for the time it was deprived of its funds, defendant was required to pay interest.
>
> In addition to the adequate compensation rationale expressed in *First Interstate Bank,* ***our conclusion that prejudgment interest is owed on contract amounts paid during litigation also serves an important public policy goal. If interest were not recoverable on amounts owed to the plaintiff and paid by defendant after the complaint was filed but before trial, then a defendant worried about losing at trial could pay some or all of the money before trial and avoid paying interest on that amount. Such a result is fundamentally unfair. A defendant in a collection case could then avoid interest, yet still delay payment until just before trial. Permitting this tactic would circumvent the mandates of our prejudgment interest statutes.***

State Drywall, Inc. v. Rhodes Design & Dev., 122 Nev. 111, 116-18, 127 P.3d 1082, 1086-87 (2006)(Internal Citations Omitted)(Emphasis Added).

Allowing a debtor to pay a creditor the amount owed after the complaint is filed but not permit the creditor to recover all amounts of prejudment interest due and owing at the time of filing the complaint is bad public policy because it encourages needless litigation. Debtor defendants would be encouraged not to pay debts until sued because they might get lucky and never be sued. The Nevada Supreme Court explained it exactly right when it said, ***"A defendant in a collection case could then avoid interest, yet still delay payment until just before trial. Permitting this tactic would circumvent the mandates of our prejudgment interest statutes."*** *State Drywall, Inc. at 118 (Emphasis added).* Debtors should be encouraged to pay amounts owed before filing suit and not rewarded with a bonus of avoiding interest by waiting until paying only after a creditor files suit.

In summary, the District Court erred in determining that the amount of interest claimed was not capable of mathematical computation. The District Court also committed reversible error when it found that MRS could not recover any prejudgment interest based on the District Court's analysis that there never was any amount actually due and owing. Finally, the District Court committed reversible when it found that MRS was not entitled to be the "prevailing party" for having obtained an affirmative judgment with the inclusion of prejudgment interest.

III.

MRS IS ENTITLED TO RECOVER ITS COSTS AND FEES ON APPEAL

Rule 40 of the Idaho Appellate Rules permits the award of costs to the prevailing party

on appeal. Rule 40 states, "[c]osts shall be allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the Court." As the prevailing party on appeal, MRS is entitled to recover its costs pursuant to Rule 40. Similarly, Rule 41 provides for an award of attorney's fees. A prevailing party on appeal is entitled to attorney's fees on appeal if that prevailing party was entitled to attorney's fees before the lower court. *Action Collection Servs., Inc., v. Bigham*, 146 Idaho 286, 291, 192 P.3d 1110, 1115 (Ct. App. 2008).

In this case, MRS was entitled to attorney's fees pursuant to I.C. §12-120(1) & (3) before the Magistrate Court because this matter was filed as a civil action to recover on an open account, account stated, or contract relating to the purchase or sale of services within the meaning of Idaho Code § 12-120(3).[62] Moreover, the amount pleaded in the Complaint was also less than thirty-five thousand dollars and written demand for payment was made not less than ten days before commencement of the action.[63] Because MRS was entitled to fees pursuant to I.C. § 12-120(1) & (3) before the Magistrate Court, MRS is also entitled to its appellate attorney's fees pursuant to I.A.R. 41.

IV.

CONCLUSION

For all the reasons set forth in this Brief, MRS respectfully requests that this Court reverse the District Court's Opinion and Order on Appeal finding:

1. MRS prevailed on summary judgment;

2. MRS is the prevailing party;

---

[62] R Vol. I, p. 9.
[63] R Vol. I, pp. 108 and 109.

3. MRS is entitled to prejudgment interest; and

4. MRS is entitled fees and costs below and before this Court.

DATED this 25th day of July, 2017.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: _____
Bryan D. Smith
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2017, I caused a true and correct copy of the forgoing **APPELLANT'S BREIF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

Sean J. Colletti, Esq.
Hopkins, Roden, Crockett,
Hansen & Hoopes, PLLC
428 Park Avenue
Idaho Falls, ID 83402

(✓) Hand ( ) Mail ( ) Fax

Bryan D. Smith, Esq.