8-23-2017

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

IN THE SUPREME COURT OF THE STATE OF IDAHO

MEDICAL RECOVERY SERVICES, LLC,

Plaintiff-Appellant,

vs.

JARED NEUMEIER,

Defendant-Respondent.

Docket No. 44836

RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville

HONORABLE JOEL E. TINGEY, District Judge

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II. STATEMENT OF THE CASE

A. Nature of the Case.

This is a medical collection matter. Defendant Jared Neumeier was sued for payment of a medical bill that was never submitted to his insurance, and which he first learned about only two days before suit was filed. But by that time, according to his doctor, Eric Baird, MD, and Plaintiff Medical Recovery Services ("MRS"), it was too late. Even though Dr. Baird later recognized the error, submitted the bill to Neumeier's insurance and waived the remaining balance, MRS refused to dismiss the case. Judgment was entered in Neumeier's favor below by Hon. Stephen J. Clark, Magistrate Judge and affirmed on appeal by Hon. Joel E. Tingey, District Judge.

B. Statement of the Facts.

On November 30, 2012, Neumeier visited Dr. Baird for a colonoscopy. He provided his Blue Cross insurance information, was seen by Dr. Baird, and then left his office. (R., p. 19).

Neumeier did not hear anything more about the colonoscopy until well over two years later. On Saturday, May 16, 2015, upon returning from a two week-long Panama Canal cruise, Neumeier opened his mailbox and discovered a letter, dated April 27, 2015, containing MRS's Complaint in this matter with an attached Notice Under Federal Fair Debt Collection Practices Act. The Complaint asserted that "[d]espite the plaintiff's requests and demands, and without offering any reason or objection to the bill, the defendant has failed to pay the indebtedness in full." (R., p. 9). Neumeier's first

thought was that it must be some kind of fraud or phishing scam, since he had never received any notice from either Dr. Baird or MRS stating that any amount was owing on any account. (R., p. 98-99).

On Monday, May 18, 2015, Neumeier left work early and visited Dr. Baird's office to let them know that someone was using their name in a scam. The office looked up the account on their system, told Neumeier it was not a scam, and stated that it was "too late" as it had "already gone to collections." Baird's office also noticed that they had never billed Neumeier's insurance. (R., p. 99).

Unbeknownst to Neumeier, MRS filed the Complaint that same day, on May 18, 2015.

Neumeier called MRS the next morning on May 19, 2015 and tried to explain that he had never received any notice and that his insurance was never billed, but was told that it was "too late for them to do anything about it," because it had "already gone to the attorney." Neumeier then called MRS's attorney's office, who told him that he now owed $1,800. (R., p. 99-100).

As Neumeier dug deeper, he learned that Dr. Baird had sent demand letters for payment, but to the wrong address. Contrary to the assertion in the Complaint, Neumeier never received a single request or demand for payment until he opened his mailbox on Saturday, May 16, 2015. Not only did both Dr. Baird's office and MRS continue to use the wrong address over time (sending mail to "Skyline" instead of Neumeier's address on "Skyview"), they never even attempted to contact Neumeier by

telephone. (R., p. 19).

After hiring an attorney, and two months into the lawsuit, Dr. Baird finally submitted the bill for the colonoscopy to Neumeier's insurance, which reduced the total amount of the bill to only $42.66, after network savings and insurance payments. (R., pp. 19, 22).

On August 20, 2015, Neumeier received a message from Dr. Baird's office letting him know that they were waiving the balance. (R., p. 20).

With no balance owing, Neumeier then presented to MRS the Explanation of Benefits and the fact that Dr. Baird had waived the remaining balance, in an effort to get the lawsuit dismissed without resorting to summary judgment, but MRS refused. (R., p. 20).

Neumeier subsequently filed a Motion to Dismiss on September 25, 2015. MRS countered with an Opposition to Motion to Dismiss on October 27, 2015, in which it requested that the court "deny Defendants' Motion to Dismiss and grant summary judgment in favor of the plaintiff for the amount of $0." (R., pp. 15, 33). MRS's briefing made no mention of any claim for prejudgment interest.

The Magistrate Court treated both parties' motions as motions for summary judgment, and issued an Order on Motion for Summary Judgment on November 23, 2015 in favor of Neumeier. (R., p. 47). The Order stated that "the parties agree that the provider is not owed anything at this point and that the provider was primarily responsible for the non-payment of the bill by failing to submit the claim to insurance

and/or by improperly identifying where to send the billing." (R., p. 51). "If there is no legal obligation to pay the debt; then the plaintiff's case fails." (Id.). The Court also awarded Neumeier attorney fees pursuant to Idaho Code § 12-120(1), stating that "whether it is a zero summary judgment in favor of the plaintiff or summary judgment in favor of the defendant the net result is in favor of the defendant." (R., p. 52). The Court also entered judgment in favor of Neumeier, stating that "Defendant's motion for summary judgment is GRANTED" and "Plaintiff's motion for summary judgment in the amount of $0 is DENIED." (R., p. 46).

MRS subsequently filed a Motion to Set Aside Judgment on December 9, 2015, arguing that it was entitled to prejudgment interest. (R., p. 65). Neumeier responded with a Brief in Opposition to Motion to Set Aside Judgment on December 14, 2015. (R., p. 85). At the hearing on MRS's motion, MRS presented no case authority on the matter, but simply requested that the judgment be set aside so MRS could further argue the issue. (See R., p. 249). Neumeier's counsel argued that MRS could not receive prejudgment interest when it was not entitled to a judgment in its favor in the first place, and further argued that MRS's counsel should have presented legal authorities at the motion to set aside hearing. (See id.). Over Neumeier's counsel's objection, the Court ultimately set aside the judgment solely to allow MRS's counsel to brief the issue of prejudgment interest. (R., p. 89 - 90, 249 - 50).

Both parties subsequently presented briefing on the issue of prejudgment interest.[1] The Court issued an Order on Motion for Summary Judgment Reconsideration on February 22, 2016, reinstating and affirming its prior order in favor of Neumeier. (R., p. 118). In its decision, the Court recognized that MRS was taking a "position inconsistent with that previously taken in this case" as it had not previously argued for prejudgment interest at summary judgment when it requested a $0 judgment. (R., p. 120). It further found that (a) the "collection agency cannot have greater rights than that of the assignor[,]" (b) "[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[,]" (c) "[f]rom a practical perspective, the Court struggles with awarding prejudgment interest on amounts which are not even owed[,]" and (d) "Mr. Neumeier did not breach his contract to pay and is basically an innocent party in this scenario." (R., pp. 120–21). Judgment for Neumeier's attorney fees and costs was entered on March 3, 2016. (R., p. 134).

The Court reaffirmed its judgment in favor of Neumeier in an April 29, 2016 Order on Motion for Summary Judgment Reconsideration Second.[2] (R., p. 155). The Court further issued a First Amended Judgment on May 9, 2016, awarding Neumeier $6,958.00 in attorney fees and costs. (R., p. 174).

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[1] Plaintiff submitted a Supplemental Brief in Support of Summary Judgment (Jan. 13, 2016), and Defendant submitted a Defendant's Brief Following Order Setting Aside Judgment (Jan. 22, 2016) (See R. pp. 91, 109).
[2] This opinion was issued in response to Plaintiff's second effort at a Motion for Reconsideration (Mar. 17, 2016) and Defendant's Objection to Motion for Reconsideration (Apr. 21, 2016).

MRS filed an appeal to the District Court on May 6, 2016.[3] On December 13, 2016, the Court, Hon. Joel E. Tingey, entered an Opinion and Order on Appeal, affirming the Magistrate Court's decision in favor of Neumeier and granting Neumeier attorney fees and costs on appeal. (R., p. 284).

The District Court first ruled against MRS's claim that the Magistrate Court erred in granting Neumeier summary judgment. The Court found that MRS "failed to list or argue the issue" in its first brief on appeal. (R., p. 281). Nevertheless, the Court found no error in granting summary judgment to Neumeier as there was "no amount . . . due and owing" by Neumeier following commonplace insurance adjustments and payments, and the doctor's write-off of the balance. (R., p. 282).

Second, the District Court also disagreed with MRS's claim that the Magistrate erred in determining that Neumeier was the prevailing party. The Court found no abuse of discretion in finding that Neumeier prevailed, because when faced with the options of ruling in favor of Neumeier by dismissing MRS's action, or ruling in favor of MRS for its requested $0.00, either way "Neumeier owed nothing to MRS." (R., p. 283).

Finally, the District Court disagreed with MRS's claim that the Magistrate Court erred in denying MRS prejudgment interest. The Court found that MRS was not entitled to prejudgment interest because the Magistrate Court did not award MRS a

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[3] Plaintiff subsequently filed an Appellant's Brief on Appeal on October 11, 2016, Defendant Neumeier responded with a Respondent's Brief on November 7, 2016. (See R., pp. 217, 240).

judgment. It further found that there was no liquidated amount owed which could be the basis of an award of prejudgment interest. (R., pp. 283-84).

Plaintiff filed a Notice of Appeal to the Idaho Supreme Court on January 20, 2017. (R., p. 305).

III. ARGUMENT

A. 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. Thus, this Court does not review the decision of the magistrate court. Rather, we are procedurally bound to affirm or reverse the decisions of the district court.

Portfolio Recovery Assocs., LLC. v. MacDonald, 162 Idaho 228, 395 P.3d 1261, 1264 (2017) (internal citation omitted).

B. This Court should affirm the district court's decision as a matter of procedure, because the district court merely affirmed the magistrate court's conclusions of law which followed from supported findings of fact.

In its opening brief on appeal to the district court, MRS did not challenge the magistrate court's decision to grant summary judgment to Neumeier. (See R., p. 220). At that point, MRS waived any challenge to the magistrate court's decision on summary judgment. KEB Enterprises, L.P. v. Smedley, 140 Idaho 746, 752, 101 P.3d

690 (2004) ("This Court's longstanding rule is that it will not consider issues raised for the first time on appeal.").

Nevertheless, summary judgment for Neumeier was proper. Neumeier did not owe or pay the amount claimed in the Complaint. (R., p. 9). He owed nothing, due to an insurance payment and a write-off. Importantly, MRS recognized that when it requested summary judgment for $0. (R., p. 33). The magistrate court correctly determined that "If there is no legal obligation to pay the debt; then the plaintiff's case fails." (R., p. 51). There was "no genuine issue" as to the only material fact—that Neumeier owed nothing—and was entitled to judgment as a matter of law. I.R.C.P. 56(c).

Therefore, the trial court record contains substantial and competent evidence to support the magistrate's findings of facts concerning the lack of a genuine issue of material fact on summary judgment—that Neumeier owed nothing. The magistrate's conclusions of law follow from those findings, and the District Court properly affirmed the magistrate. Accordingly, this Court should affirm the District Court as a matter of procedure.

1. The District Court's holding that insurance must be billed before an amount could be considered due and owing was sound.

The District Court's written decision never found a "condition precedent" or "implied in law condition," as the Appellant suggests. What it did find was that there was no dispute between the parties that, "once the procedure was performed, the charges

were subject to at least two adjustments before any amount could be considered due and owing." (R., p. 282). The Court explained:

> First, where Neumeier had medical insurance, the charge 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. Only then, could an amount due and owing by Neumeier be determined.
>
> As it turned out, once the provider finally billed the procedure, the charges were adjusted, the provider received payment from the insurer, and the balance was deemed so insignificant that the provider waived the balance.

(Id.)

The District Court's decision was based on common knowledge and common sense. Insurance companies contract with medical providers to determine an agreed-upon price for specific services. Individuals contract with insurance companies to get access to adjusted prices for services and then to have the insurance company pay a certain portion of that adjusted price. Even the most sophisticated individual often has no way of knowing what the actual amount of a copayment will be until the medical provider's charges are submitted to and processed by the patient's insurance for contractual adjustments and payments, and an adjusted bill is issued to the patient. Just like any patient, Neumeier expected this process to occur when he gave his insurance information to his doctor.

But due to a series of errors on the part of Dr. Baird and MRS, this process never occurred until *after* suit was filed. By that time, there was nothing actually due and

owing. The magistrate court found no breach on the part of Neumeier to pay the provider (R., p. 120), and the District Court correctly affirmed. (R., p. 282).

Because the magistrate court found the actual adjustments and payments by insurance and Dr. Baird led to an amount owing of zero, the District Court determined the magistrate had correctly granted summary judgment to Neumeier. MRS has failed to show why the District Court was in error in this regard.

2. The result in this case is a just result, because it rectifies mistakes by Dr. Baird and MRS.

The result in favor of Neumeier was not "unjust," as suggested by MRS. Neumeier did nothing to bring MRS's litigation upon him.

MRS argues, essentially, that it was Neumeier's responsibility to review his Explanation of Benefits to ensure that his insurance was billed, and also Neumeier's responsibility to ensure that he received a bill. MRS's argument is not consistent with reality. Neumeier provided his insurance information to Dr. Baird's office for that very purpose—so that his insurance could be billed and he would receive a bill for the balance. How was Neumeier to know that there was a bill for his November 2012 colonoscopy if he never received one? It was more reasonable for Neumeier to expect his insurance had paid the entire balance.

Furthermore, MRS argues that if Neumeier had contacted MRS only one day earlier he would not have been sued. This is nothing but a deflection of responsibility. Neumeier's response after receiving MRS's letter—the first

correspondence concerning his colonoscopy that happened two and a half years earlier—was entirely reasonable. He had never heard of MRS and thought it was a scam, so he contacted his doctor.

It is important to note here that MRS sent its initial demand letter on April 4, 2014, but to the wrong address. (R., p. 269). Over one year later on April 27, 2015, MRS finally sent one, solitary demand and draft complaint to the correct address, which Neumeier received only two days before suit was filed.

Nothing was unjust in the magistrate court granting summary judgment to Neumeier.

3. The District Court's decision is consistent with sound reasoning and sound public policy.

MRS's multiple hypotheticals regarding public policy only serve to gloss over the particular facts in this case. Neumeier never tried to avoid a bill, and did not "strategically" wait until after suit was filed to pay any amount or discover the insurance and address errors of Dr. Baird and MRS. He simply never knew about any bill. When he finally became aware of a bill he acted promptly to rectify the problem, but it was already too late. (R., p. 99).

Furthermore, as a matter of public policy, it is better for medical service providers to be held accountable for responsible billing practices. Individuals contract with health insurance companies specifically to adjust and pay portions of medical expenses. Medical billing is a complex field full of codes, adjustments, and varying

insurance contracts. Patients expect medical providers to competently bill valid insurance for their services if insurance is provided. They also properly expect medical providers and collection companies to send insurance-adjusted bills to the proper address, with adequate notice. None of this is unreasonable.

When medical providers fail to file insurance claims, send bills to the wrong address, and then the collection company compounds the problem by sending only one notice to the right address less than thirty (30) days before suing, the patient simply should not bear the burden of their mistakes. It is much better public policy to protect innocent consumers from the billing mistakes of other parties.

C. The magistrate court's decision that Neumeier was the prevailing party is supported by substantial and competent evidence, as Neumeier owed nothing to MRS.

The magistrate court determined that Neumeier was the prevailing party:

> Deciding who is the prevailing party is committed to the discretion of the court. Pursuant to Eighteen Mile Ranch v. Nord Excavating, 141 Idaho 716, 117 P.3d 130 (2005), the court is to consider the final judgment or result of the action in relation to the relief sought. In this case the defendant has prevailed. Whether it is a zero summary judgment in favor of the plaintiff or summary judgment in favor of the defendant the net result is in favor of the defendant.

(R., p. 52). As stated by the magistrate court, the determination of who is a prevailing party is committed to the sound discretion of the trial court. Houpt v. Wells Fargo Bank, Nat'l Assn., 160 Idaho 181, 193, 370 P.3d 384 (2016). The magistrate court recognized and perceived that the issue of prevailing party was one of discretion, and it acted within

that discretion by an exercise of reason. The record shows substantial and competent evidence for the magistrate court's decision, which the District Court affirmed. (R., p. 284).

Joseph Magnin Co. v. Schmidt is distinguishable. Not only is Joseph Magnin based on California statute that is non-existent in Idaho law, but, most importantly, the facts are completely different. In Joseph Magnin, the debtor incurred a retail installment debt, and was not kept in the dark for over two years as to the existence of a debt. In sharp contrast to the present case, no insurance was involved to pay her debt upon being incurred. Furthermore, the debtor apparently had every opportunity to pay the debt prior to suit being filed, but waited until afterward, when she personally tendered payment. 89 Cal.App.3d Supp. 7, 152 Cal.Rptr. 523 (Sup. Ct. 1978).

Here, the facts could not be more different. Neumeier had no clue about the debt, and therefore had no opportunity to correct any error, until he opened his mailbox on a Saturday. Suit was filed two days later on a Monday. Once Neumeier figured out what had happened and called MRS, it was too late. What's more, in sharp contrast to Joseph Magnin, Neumeier has not paid MRS or Dr. Baird a dime as a result of this suit.

It was fully within the magistrate court's discretion to decide that Neumeier—who paid nothing under the Complaint—was the prevailing party. Appellant's hypotheticals ignore a myriad of factual, important distinctions to the present case. The judiciary is well-equipped to determine relevant matters of law as well as ferret

out bad faith actions of debtors. Based upon substantial and competent evidence, this Court should affirm the District Court on the issue of prevailing party.

D. The magistrate's decision to deny prejudgment interest is supported by the record because MRS received no judgment and there was no liquidated amount upon which to base an award of prejudgment interest.

Preliminarily, MRS is incorrect regarding the standard on the award or denial of prejudgment interest under Idaho Code § 28-22-104, which is reviewed "for an abuse of discretion," and not "free review," as suggested by MRS. Taylor v. Maile, 146 Idaho 705, 712, 201 P.3d 1282 (2009). See also Ross v. Ross, 145 Idaho 274, 277, 178 P.3d 639 (2007) ("Our inquiry in this case, therefore, is whether the district court abused its discretion in finding that Rick's damages were not liquidated or ascertainable by mathematical process."); Dillon v. Montgomery, 138 Idaho 614, 617, 67 P.3d 93 (2003) ("The standard of review for an award of prejudgment interest concerns an abuse of discretion."). There was no abuse of discretion when the magistrate court refused to award prejudgment interest to MRS after granting summary judgment to Neumeier.

1. Prejudgment interest is not available where there is no judgment.

First, prejudgment interest presupposes that a party has been awarded a judgment on the principal claim. A court cannot award prejudgment interest to a losing party. The District Court recognized this when it found that "[t]he magistrate did not err in concluding that since MRS received no judgment, it was not entitled to pre-judgment interest." (R., p. 283). This common-sense decision is supported by case law across the country. See Great West Cas. Co. v. Barnick, 542 N.W.2d 400, 402 (Minn. App. 1996)

(stating that, where there was no judgment in favor of the requesting party, there could not be any prejudgment interest awarded under the statute); see also Warrick v. Graffiti, Inc., 550 N.W.2d 303, 310 (Minn. App. 1996) (same); Frontier Pipeline, LLC v. Metropolitan Council, 2012 WL 2203016, at *3 (Minn. App. 2012) (same); Griffin v. Cutler, 339 P.3d 100, 107 (Utah App. 2014) (stating that "because we affirm the trial court's denial of those fees, Griffin has no judgment to accrue [prejudgment] interest in any event."); Iron Head Const. Inc. v. Gurney, 207 P.3d 1231, 1235 (Utah 2009) (stating that "we doubt whether a judicial award of prejudgment interest would ever be appropriate on a settlement amount stipulated to by the parties."); Winters v. Allen, 595 S.E.2d 813 (N.C. App. 2004) (finding that there was no judgment entered upon which prejudgment interest could attach).

As stated in Hollingshead v. Stanley Works Long Term Disability Plan, "Plaintiff has not provided any legal authority, and the Court has found no authority, that would support an award of prejudgment interest in the absence of a judgment. Because there is no judgment upon which a prejudgment interest award could be based, Plaintiff's request for prejudgment interest is denied." 2012 WL 6151994, *3 (D. Colo. 2012); see also Kane v. U-Haul Intern. Inc., 218 F. App'x 163, 169 (3rd Cir. 2007) ("As there was no judgment in this case, Appellant Kane cannot recover prejudgment interest."); Brien v. Equitable Assur. Soc. of the U.S., 2000 WL 329186, *3 (5th Cir. 2000) ("Finally, Brien complains that the district court failed to consider her claim for prejudgment interest. Because there was no judgment entered for Brien, the district court did not abuse its

discretion in failing to award Brien interest on a zero judgment."). MRS still has not shown that the District Court's decision in this regard was incorrect.

2. Prejudgment interest is also not appropriate where the amount of liability is $0, or is a moving target.

Second, Neumeier paid nothing on MRS's claim. This is consistent with MRS's request for judgment of $0, the magistrate court's statement that "any percentage of $0 is still $0" (R., p. 121), and the District Court's decision that "there was no liquidated amount owed which could be the basis of an award of pre-judgment interest." (R., p. 284). This is just as well, since if Dr. Baird had billed insurance and Dr. Baird and MRS had sent notice to the correct address, this lawsuit likely would never have happened.

MRS's attempt to conjure a number for prejudgment interest continues to assume that MRS could be awarded prejudgment interest without a judgment, that it should have been awarded prejudgment interest based upon an ever-changing and unliquidated medical bill amount not yet submitted to insurance for adjustments or payments, or that it could have been awarded pre-judgment interest on a judgment of $0. MRS has provided no competent authority or facts to support any of these positions. To add to the confusion on MRS's claim, the prejudgment interest it claims it is entitled to in its Appellant's Brief on Appeal ($114.86) is different than the amount it claimed on

appeal to the District Court ($315.16) (see R. p. 225), or even the amount it requested on summary judgment, which was nothing.[4] (R. p. 33).

The facts were clear to the magistrate court and District Court—that the amount owed by Neumeier was not known until the bill was processed by Neumeier's insurance, and by that time Dr. Baird had waived the copayment. Nothing was owed, and nothing was paid by Neumeier. It is regrettable that it took until after suit for this process to finally occur, but this was not Neumeier's fault.

3. *State Drywall* does not stand for MRS's argument that prejudgment interest can be awarded without a judgment on the merits.

MRS cites to a Nevada court case, State Drywall, Inc. v. Rhodes Design & Development, 127 P.3d 1082 (Nev. 2006), and claims that it supports MRS's failed argument that prejudgment interest should be awarded even if the Plaintiff does not receive a judgment on the merits. It does not.

The context of the case tells the whole story. In State Drywall, the subcontractor was not paid for part of the work on a housing development, and sued the general contractor. While the litigation was pending, the general contractor made two separate payments on the contract. The general contractor then made an offer of

[4] Incidentally, the magistrate court found that MRS was judicially estopped from requesting prejudgment interest because it argued for $0 on summary judgment. (R., p. 120).

judgment on the remaining amount due and owing, which offer was rejected by the subcontractor.

Following trial, the court found the general contractor had breached its contract with the subcontractor, and awarded the subcontractor judgment in its favor for the outstanding amount owing. The court also awarded prejudgment interest on the judgment, which did not include prejudgment interest on the two payments made by the general contractor to the subcontractor during the litigation.

On appeal, the Supreme Court of Nevada reversed the trial court and concluded that the subcontractor was also entitled to prejudgment interest on the amounts that were paid during litigation, stating that "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." State Drywall, 127 P.3d at 117.

State Drywall simply does not support a claim for prejudgment interest without a supporting judgment on the principal obligation. In State Drywall, the subcontractor received a judgment on the merits in its favor. In this case, MRS did not receive a judgment on the principal obligation in its favor. In State Drywall, the defendant deliberately deprived the plaintiff of its funds, which was a basis for awarding prejudgment interest. No such action occurred here.

MRS cannot point to a single case which supports its claim that it is entitled to prejudgment interest absent a judgment in its favor on the principal obligation.

The magistrate court's and District Court's decisions on prejudgment interest were based on substantial and competent evidence, and should be affirmed.

E. It is good policy to allow debtors such as Neumeier to escape the errors of his doctor and collection company without harm.

Finally, more than once MRS raises unsupported policy concerns about debtors paying after suit and being found to be the prevailing party or avoiding prejudgment interest. It should be noted that MRS has cited to nothing to support any contention that the magistrate court had to consider public policy when making its decision. The facts were clear—Neumeier owed nothing and paid nothing, and was the prevailing party.

The magistrate court's decision was made based upon the unique facts in the Neumeier case. As recognized by the magistrate court, a series of errors by Dr. Baird and MRS led up to the filing of suit. Neumeier's plight is the exact opposite of the debtor who refuses to pay a known debt until after suit. As such, MRS's policy concerns are ill-founded.

Furthermore, the real policy concern in this case should be the protection of individuals such as Neumeier from the errors that occurred here, which continue to cost him attorney fees and costs. No one should have had to go through what Neumeier has had to go through and continues to go through in this case.

This issue is best illustrated by the provisions of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C.A. § 1692 et seq.), which was specifically passed to

protect consumers from the issues seen in this case. Section 1692g(a) requires debt collectors to give a debtor a written notice and a thirty (30) day period "after receipt of the notice" to respond after an initial communication. The plain language of the Act requires the debt collector send the written notice to a valid and proper address where the consumer may actually receive it. Ponce v. BCA Fin. Servs., 467 F. Appx. 806, 807–08 (11th Cir. 2012).

Contrary to the misstatement in the Complaint, there were no plural "requests and demands" for payment. (R., p. 9). There was no opportunity to "offer[] any reason or objection to the bill." (Id.). The demand letter dated April 27 was the first communication MRS ever sent to a valid address. The FDCPA notice contained in the April 27 letter from MRS, received on May 16, told Neumeier that "[u]nless you dispute the validity of the above-described debt, or a portion thereof, within 30 days of your receipt of this letter, we will assume that the debt is valid." (R., p. 11). Only two days later, and well before the statutory thirty days had expired, MRS had already filed suit.

Public policy should never hold a medical patient responsible for his doctor's or a debt collector's errors. The District Court's decision on appeal should be affirmed.

F. Neumeier is entitled to an award of attorney fees and costs on appeal.

Idaho Code § 12-120(1) provides for an award of attorney fees to the prevailing party where the amount in controversy was less than $35,000.00. Section 12-120(3) provides for an award of attorney fees to the prevailing party in "any civil

action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and any commercial transaction[.]"

Neumeier is entitled to recover its attorney fees and costs on this appeal, pursuant to both of these statutes and Rules 40 and 41 of the Idaho Appellate Rules. The amount at issue was clearly less than $35,000.00, and concerned payment on a contract for services.

In the alternative, Neumeier is entitled to recover his fees and costs pursuant to Idaho Code § 12-121. Attorney fees are awarded on appeal under Idaho Code § 12-121 "if the appeal was brought or defended frivolously, unreasonably, or without foundation" or if the appeal merely asks the appellate court to "second guess" the lower court opinion. Frantz v. Hawley Troxell Ennis & Hawley, LLP, 161 Idaho 60, 66, 383 P.3d 1230 (2016).

MRS's first appeal asked the District Court to second-guess the sound, discretionary decision of the magistrate court. The District Court found no abuse of discretion. This appeal is no different. MRS is asking the Court to second-guess both the magistrate and District Court. Neumeier is therefore also entitled to his attorney fees on appeal under Idaho Code § 12-121.

IV. CONCLUSION

Dr. Baird's office should have submitted the bill for the colonoscopy to Neumeier's insurance company back in 2012. It also should have sent invoices to

Neumeier's correct address over the course of two years following the procedure. Furthermore, it should have, at the very least, called Neumeier to see if its invoices were being received.

Once MRS realized that the address was incorrect, it should have done more than rely upon a single demand to the correct address before filing suit.

Neumeier is the victim of these errors. Once he learned for the very first time that Dr. Baird's office and MRS had made these mistakes, he acted quickly. Insurance was billed. The balance was waived.

Neumeier owed nothing to MRS, and paid nothing to MRS. The magistrate court did not err by granting Neumeier summary judgment. Furthermore, it did not abuse its discretion by determining that Neumeier was the prevailing party, or by denying MRS any prejudgment interest. The District Court's decision affirms the magistrate court, and therefore this Court should affirm the District Court's decision as a matter of procedure.

For the reasons stated herein, this Court should affirm the Opinion and Order on Appeal, and grant Neumeier his attorney fees and costs incurred in this appeal.

Respectfully submitted this 23rd day of August, 2017.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By: /s/ Sean J. Coletti
Sean J. Coletti
Attorneys for Respondent

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery, or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 23rd day of August, 2017.

/s/ Sean J. Coletti
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