

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 110427-U

Filed 12/6/11

NO. 4-11-0427

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

H&R ACCOUNTS, INC., as Assignee of)	Appeal from
Carle Clinic Association,)	Circuit Court of
Plaintiff-Appellee,)	McLean County
v.)	No. 09AR658
CHARLES McKINNEY,)	
Defendant-Appellant.)	Honorable
)	Lee Ann S. Hill,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the assignment of account between the medical-services provider and the collection agency met the requirements of the Collection Agency Act, plaintiff had standing to pursue the claim.
- ¶ 2 Where the evidence showed defendant entered into a contract for medical services but failed to pay his bill *in toto*, plaintiff established a breach of contract.
- ¶ 3 Where the agreement for medical services was fully performed, the Frauds Act did not apply.
- ¶ 4 In October 2009, plaintiff, H&R Accounts, Inc., as assignee of Carle Clinic Association (Carle Clinic), filed an arbitration case complaint against defendant, Charles McKinney, for the collection of monies due for the performance of medical services. After the arbitrators found for plaintiff, defendant requested a trial. In May 2011, the trial court found for plaintiff and ordered defendant to pay \$23,666.44 plus costs.

¶ 5 On appeal, defendant argues (1) plaintiff lacked standing to bring the action on assignment, (2) plaintiff failed to present *prima facie* evidence of a breach-of-contract claim, and (3) the claim is barred by the statute of frauds. We affirm.

¶ 6 I. BACKGROUND

¶ 7 In October 2009, plaintiff brought an arbitration case complaint against defendant. Plaintiff alleged it was the assignee of Carle Clinic and was filing suit in Carle Clinic's stead. The complaint alleged Carle Clinic provided certain medical, surgical, and hospital services to defendant and demanded payment but no monies had been received. Plaintiff sought a judgment against defendant for \$23,666.44 plus court costs.

¶ 8 Plaintiff attached to the complaint an "assignment of account and authorization to refer to attorney for action." Referring to defendant's account, the assignment stated as follows:

"Carle Clinic Association hereby assigns the following accounts to H&R Accounts, Inc. for collection. Carle Clinic Association hereby agrees to pay H&R Accounts, Inc. as consideration the previously negotiated percentage (32%) of the net amount collected. Carle Clinic Association further authorizes H&R Accounts, Inc. to refer this account(s) to an attorney for legal action if H&R Accounts Inc. deems such referral necessary for collection."

The assignment was signed by Jodi Gaskin, a collection auditor. The effective date of the assignment was August 28, 2009.

¶ 9 In December 2009, defendant filed an answer. He also set forth the affirmative

defenses of equitable estoppel and an invalid assignment of the claim to plaintiff. On the invalid-assignment claim, defendant alleged plaintiff lacked standing because Gaskin had no authority to execute an authorization of behalf of Carle Clinic.

¶ 10 In March 2011, the arbitrators found in favor of plaintiff in the amount of \$23,666.64. Thereafter, defendant rejected the arbitrators' award and requested a trial.

¶ 11 In May 2011, plaintiff's bench trial commenced. Plaintiff called defendant to the stand, and he testified he received medical services from Carle Clinic between April 2004 and December 2008. He stated he did receive billing statements and made payments of \$100 per month.

¶ 12 Nancy Harmon testified she is the collection auditor at Carle Foundation Hospital, formerly known as Carle Clinic Association. She testified to a listing of defendant's outstanding charges for services provided. The balance due was \$23,666.44. Harmon also testified to the assignment of the account to plaintiff. She stated Gaskin had the authority to sign the document on behalf of Carle Clinic.

¶ 13 After plaintiff rested, defense counsel moved "for a directed verdict," arguing there was no oral or written contract binding defendant to pay the bill. The trial court denied the motion. Defense counsel then indicated he would not present any evidence and would rest on his argument.

¶ 14 Following closing arguments, the trial court found defendant presented himself for services at Carle Clinic between April 2004 and December 2008. He acknowledged receiving billing statements and made payments. The court found evidence to establish the existence of a contract and defendant failed to make the necessary payments. The court entered

judgment in favor of plaintiff for \$23,666.44 plus court costs. This appeal followed.

¶ 15

II. ANALYSIS

¶ 16

A. Standing

¶ 17 Defendant argues plaintiff lacked standing to bring an action on assignment from Carle Clinic. We disagree.

¶ 18 "Standing consists of an 'injury in fact to a legally recognized interest.'" *Barber v. City of Springfield*, 406 Ill. App. 3d 1099, 1101, 943 N.E.2d 1157, 1161 (2011) (quoting *Martini v. Netsch*, 272 Ill. App. 3d 693, 695, 650 N.E.2d 668, 669 (1995)). "The doctrine of standing requires that a party, either in an individual or representative capacity, have a real interest in the action brought and in its outcome." *In re Estate of Wellman*, 174 Ill. 2d 335, 344, 673 N.E.2d 272, 276 (1996). The doctrine seeks "to ensure that courts are deciding actual, specific controversies, and not abstract questions or moot issues." *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 279-80, 545 N.E.2d 731, 734 (1989). "[A]n assignee for collection has standing to bring suit in its own name in order to collect a debt." *Unifund CCR Partners v. Shah*, 407 Ill. App. 3d 737, 742, 946 N.E.2d 885, 890 (2011).

¶ 19 Under section 8b(a) of the Collection Agency Act (Act), an account may be assigned to a collection agency provided the assignment is manifested by a written agreement and the document states and includes "(i) the effective date of the assignment; and (ii) the consideration for the assignment." 225 ILCS 425/8b(a)(i), (a)(ii) (West 2008). Section 8b(e) states "[n]o litigation shall commence in the name of the licensee as plaintiff unless: (i) there is an assignment of the account that satisfies the requirements of this Section." 225 ILCS 425/8b(e) (West 2008).

¶ 20 In *Business Service Bureau, Inc. v. Webster*, 298 Ill. App. 3d 257, 258, 698 N.E.2d 702, 703 (1998), the defendant received ambulance services and was billed for the cost. After the defendant became delinquent on the account, the ambulance provider assigned the debt to a collection agency. *Webster*, 298 Ill. App. 3d at 258, 698 N.E.2d at 703. The purported assignment document from the ambulance provider to the debt collection agency provided as follows:

" 'For valuable consideration of an agreed to percentage of the amount collected, and pursuant to the Collection Agency Agreement, the undersigned representative of ARROW MEDICAL SERVICES, hereby assigns all of its rights, title and interest in and to the following named delinquent accounts owing by the person or persons so specified, to BUSINESS SERVICE BUREAU, to sue for and take all legal steps that may be deemed proper or necessary to affect collection thereof, in such company's own name.' " *Webster*, 298 Ill. App. 3d at 258, 698 N.E.2d at 703.

The document had two different dates, one at the top and another beneath the signature of the ambulance provider's agent. *Webster*, 298 Ill. App. 3d at 258, 698 N.E.2d at 703. The trial court found in favor of the collection agency.

¶ 21 On appeal, the defendant argued the assignment was invalid because it did not specify the effective date of the assignment and it failed to specify the consideration for the assignment. *Webster*, 298 Ill. App. 3d at 259, 698 N.E.2d at 703. This court agreed on both points. As to the effective-date requirement, we noted "[i]t is important that a debtor know the

exact date of the assignment so that he will know when he must deal with the assignee and when he must cease dealing with the assignor." *Webster*, 298 Ill. App. 3d at 259, 698 N.E.2d at 704. We found the two different dates in the assignment could have caused confusion as to when it became effective. *Webster*, 298 Ill. App. 3d at 259, 698 N.E.2d at 704.

¶ 22 On the consideration issue, we concluded the assignment agreement's clause stating "consideration was 'an agreed to percentage of the amount collected' " was nonspecific and "could be anything from 100% to 0%." *Webster*, 298 Ill. App. 3d at 259, 698 N.E.2d at 704. As the agreement failed to meet the requirements of the Act, we reversed the trial court's judgment finding in favor of the collection agency. *Webster*, 298 Ill. App. 3d at 259, 698 N.E.2d at 704.

¶ 23 In the case *sub judice*, the assignment agreement specified defendant's account and the delinquent amount. Carle Clinic agreed to assign the account to plaintiff and pay as consideration 32% of the net amount collected. The document was signed by Jodi Gaskin, a collection auditor for Carle Clinic. The effective date of assignment was listed as "8/28/09." The document was notarized on the same date. As the assignment document specifically stated the effective date of the assignment and the consideration for the assignment, we find it met the requirements of the Act.

¶ 24 Defendant, however, argues Gaskin's signature on behalf of Carle Clinic, a professional services corporation, was insufficient under section 8b(c) of the Act, which provides as follows:

"All assignments shall be voluntary and properly executed
and acknowledged by the corporate authority or individual trans-

ferring title to the collection agency before any action can be taken in the name of the collection agency." 225 ILCS 425/8b(c) (West 2008).

Defendant claims that Gaskin, as a nonphysician, cannot be a corporate authority for a professional service corporation. He cites section 15 of the Professional Service Corporation Act (Professional Service Act) (805 ILCS 10/15 (West 2008)), which states "[n]o person who is not licensed in that category of professional service or related professional services shall have any part in the ownership, management or control of the corporation."

¶ 25 We find no merit in defendant's argument. A professional service corporation is authorized to employ ancillary personnel. 805 ILCS 10/4 (West 2008). Under section 3.1 of the Professional Service Act (805 ILCS 10/3.1 (West 2008)), ancillary personnel include those employed by a professional service who:

"(1) Are not licensed to engage in the category of professional service for which a professional corporation was formed; and

(2) Work at the direction or under the supervision of those who are so licensed; and

(3) Do not hold themselves out to the public generally as being authorized to engage in the practice of the profession for which the corporation is licensed; and

(4) Are not prohibited by the licensing authority, regulating the category of professional service rendered by the corporation from being so employed and includes clerks, secretaries, techni-

cians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering the professional services for which the corporation was formed."

As collection auditor for Carle Clinic, Gaskin falls under the definition of ancillary personnel. Gaskin's duties are unrelated to the professional medical services of Carle Clinic. Instead, her authority to execute and acknowledge assignments with collection agencies arises out of an agency relationship with Carle Clinic. Thus, as Gaskin had the authority to sign the assignment on behalf of Carle Clinic, a valid assignment existed to confer standing to plaintiff to bring this action.

¶ 26 B. Breach of Contract

¶ 27 Defendant argues plaintiff failed to present *prima facie* evidence of a breach-of-contract claim. We disagree.

¶ 28 "In Illinois, an offer, an acceptance and consideration are the basic ingredients of a contract." *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 151, 847 N.E.2d 99, 109 (2006).

The conduct of the parties may indicate an agreement to the contract's terms. *Jannusch v. Naffziger*, 379 Ill. App. 3d 381, 386, 883 N.E.2d 711, 716 (2008). "Any act or promise which is a benefit to one party or a detriment to the other is a sufficient consideration to support a contract." *De Fontaine v. Passalino*, 222 Ill. App. 3d 1018, 1028, 584 N.E.2d 933, 939 (1991) (citing *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 330, 371 N.E.2d 634, 639 (1977)).

¶ 29 "To succeed on a claim for breach of contract, a plaintiff must plead and prove the existence of a contract, the performance of its conditions by the plaintiff, a breach by the defendant, and damages as a result of the breach.'" *Larsen v. Carle Foundation*, 386 Ill. App. 3d

799, 803, 898 N.E.2d 728, 731 (2008) (quoting *Kopley Group V., L.P. v. Sheridan Edgewater Properties, Ltd.*, 376 Ill. App. 3d 1006, 1014, 876 N.E.2d 218, 226 (2007)). Whether a breach of contract has occurred is a fact question, and the trial court's finding on that issue will not be overturned on appeal unless it is against the manifest weight of the evidence. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 72, 866 N.E.2d 85, 96 (2006).

¶ 30 In this case, the evidence indicated Carle Clinic agreed to provide medical services and defendant agreed to pay. Healthcare workers for Carle Clinic provided that service, and defendant received the appropriate billing statements and made payments for a time. The conduct of Carle Clinic and defendant indicate an agreement existed between them. When defendant failed to pay for the services provided, he breached the contract. Damages to Carle Clinic were shown in the unpaid amount of \$23,666.44. We find the trial court's conclusion that a contract existed and defendant was in breach by failing to make the required payments was not against the manifest weight of the evidence.

¶ 31 Even if the agreement between Carle Clinic and defendant was not precisely expressed, a contract implied in fact existed.

" 'A contract implied in fact is an actual contract; the only difference between an express contract and a contract implied in fact is that in the former the parties arrive at their agreement by words, either written or oral, while in the latter their agreement is arrived at by a consideration of their acts and conduct.' " *Owen Wagener & Co. v. U.S. Bank*, 297 Ill. App. 3d 1045, 1052, 697 N.E.2d 902, 907 (1998) (quoting *Barry Mogul & Associates, Inc. v. Terrestris*

Development Co., 267 Ill. App. 3d 742, 750, 643 N.E.2d 245, 251 (1994)).

¶ 32 Here, defendant's conduct creates an inference that he intended to be bound by his agreement to receive services from Carle Clinic. See *People ex rel. Hartigan v. Knecht Services, Inc.*, 216 Ill. App. 3d 843, 851, 575 N.E.2d 1378, 1383 (1991) ("Contracts implied in fact arise from a promissory expression which may be inferred from the facts and circumstances showing an intent to be bound"). Defendant admitted going to Carle Clinic for treatment, receiving that treatment, and beginning payment on the bills for that treatment. Carle Clinic's conduct in providing treatment and billing defendant also indicates its intent to be bound. Thus, the trial court's decision finding defendant owed \$23,666.44 was not in error.

¶ 33 C. Frauds Act

¶ 34 Although we have found a valid contract existed, defendant argues plaintiff's claim is barred by the statute of frauds. We disagree.

¶ 35 Section 1 of the Frauds Act provides, in part, as follows:

"No action shall be brought *** to charge any executor or administrator *** upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." 740 ILCS 80/1 (West 2008).

"The statute of frauds prohibits oral contracts that cannot be performed within one year of their making." *Robinson v. BDO Seidman, LLP*, 367 Ill. App. 3d 366, 370, 854 N.E.2d 767, 772 (2006). However, "[t]he test is whether the contract was capable of being performed within one year after its formation, not whether the parties contemplated that it would be performed within that time." *Barnes v. Michalski*, 399 Ill. App. 3d 254, 271, 925 N.E.2d 323, 339 (2010).

¶ 36 Here, the Frauds Act does not apply to the agreement between Carle Clinic and defendant because the terms of the contract, *i.e.*, to provide medical services on the days of defendant's appointments in exchange for payment, does not affirmatively show the services will take over one year to perform. Each of defendant's visits to Carle Clinic for treatment was a transaction that became subject to billing from Carle and the requirement of payment from defendant. Thus, the contract was capable of being performed within one year after its formation.

¶ 37 Moreover, the Frauds Act does not apply because Carle Clinic completely performed its duties under the contract to provide medical treatment. "[T]he Frauds Act does not apply to a contract that has been performed completely by one party." *B & B Land Acquisition, Inc. v. Mandell*, 305 Ill. App. 3d 1068, 1072, 714 N.E.2d 58, 62 (1999). As Carle Clinic performed the medical services in return for compensation, defendant's obligation to pay for services rendered was enforceable by Carle Clinic and plaintiff, its assignee.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the trial court's judgment.

¶ 40 Affirmed.