

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0901

STATE OF LOUISIANA IN THE INTEREST OF
LAVERGNE MARTIN

Judgment Rendered: December 22, 2010

APPEALED FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF POINTE COUPEE
STATE OF LOUISIANA
DOCKET NUMBER 40,057, DIVISION "D"

THE HONORABLE WILLIAM C. DUPONT, JUDGE

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Appellant/Roland Martin, Jr.

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

On June 12, 2006, the Office of Elderly Affairs, Elderly Protective Services for the State of Louisiana, filed a petition for emergency protective services for Lavergne Martin, an elderly woman who lived with her son, Roland Martin, Jr. The petition asserted that Mrs. Martin was 81 years old, that she received care from Pointe Coupee Home Health, and that she had been diagnosed with high blood pressure, pneumonia, dehydration and Alzheimer's disease. The petition further asserted: that Mrs. Martin had essentially been neglected; that her physician, Dr. James Picard, had recommended nursing home placement for Mrs. Martin, and that Mrs. Martin was at immediate risk of substantial harm or deterioration from caregiver neglect. An affidavit by Tomiki Williams, an investigator for the Adult Protective Services Division of the Office of Elderly Affairs, asserted that the office had received a complaint of caregiver neglect of Mrs. Martin, that Mrs. Martin lacked the capacity to consent and was at immediate risk of substantial harm or deterioration from abuse and neglect, and that Mrs. Martin did not have any caregivers that were financially, physically or emotionally able to care for her.

On June 15, 2006, the district court ordered that Mrs. Martin be removed from her home and placed in Pointe Coupee Healthcare, L.L.C. nursing home. On that date, two sheriff's deputies and two employees from Elderly Protective Services, along with two employees from Pointe Coupee Healthcare, arrived at the Martin residence, where Mr. Martin was served with the order by the sheriff's deputies. Ms. Connie Pourciau, a social worker admissions coordinator for Pointe Coupee Healthcare, sat down and reviewed the contract for admission with Mr. Martin, which he signed. He also signed a note which obligated him to pay for the nursing home care.

On July 31, 2006, Mr. Martin signed a petition for intervention, asserting his right to participate in the proceedings, including a hearing on the complaint scheduled for hearing in court on August 24, 2006. After the hearing, the district court signed a judgment decreeing that the emergency protective order was granted for a period not to exceed 180 days.

Thereafter, on November 27, 2006, Pointe Coupee Healthcare filed a petition for intervention, asserting that Mrs. Martin had resided in its nursing home since June 15, 2006, and that Pointe Coupee Healthcare had not received payments for services due through November 30, 2006, amounting to \$12,985.56. Pointe Coupee Healthcare asserted that Mrs. Martin and Mr. Martin were responsible for the bill, that the suit was on an open account, and that defendants were liable for reasonable attorney fees for failure to pay within thirty days of written demand. Pointe Coupee Healthcare prayed for judgment in its favor against Mrs. Martin and Mr. Martin.

Michael Parks, the attorney appointed to represent Mrs. Martin, filed a motion and order to set attorney fees for services provided in his representation of Mrs. Martin. Thereafter, the district court set attorney fees for Mr. Parks at \$3,500.00, to be cast as costs of court, and to be paid by Mr. Martin.

After a hearing on December 21, 2006, the district court rendered judgment, decreeing that, pursuant to the pleadings, stipulations, testimony and law presented, the emergency protective order granted on August 24, 2006, would remain in effect for the remainder of the 180-day period; and allowing Mr. Martin to remove Mrs. Martin from Pointe Coupee Health Care and return her to his home, provided that Mr. Martin provide sitters for Mrs. Martin while he worked and any other time he was away from home. Further, the judgment decreed that Elderly Protective Services would make periodic visits to the Martin home, either scheduled or unscheduled, during the remainder of the protective order, that an

appointment would be made with her physician when she returned home, and that home health care would be reestablished. Further, the court decreed that if the requirements of the judgment were fulfilled and there were no further allegations of abuse or neglect, the protective order would expire without need for renewal. If, however, the requirements of the judgment were not fulfilled and there were further allegations of abuse or neglect, the protective order would remain in effect and Mrs. Martin could be removed from the home, or other action taken.

Mrs. Martin died on January 31, 2007. On August 21, 2009, Mr. Martin filed an answer to Pointe Coupee Healthcare's petition for intervention, asserting that employees of Point Coupee Healthcare came to his home in force to take away his mother, and represented to him that he was only signing forms authorizing that she be admitted into their nursing home. He asserted that he was under duress when he signed papers, and that no one told him that he was signing documents that made him personally liable for any debt to Pointe Coupee Healthcare. Mr. Martin asserted that the contracts were nullities due to material error, misrepresentation, and duress. He further asserted that the bills were excessive for the services rendered, and he raised the affirmative defenses of payment, error, mistake, misrepresentation, and duress, extinguishment of obligation, estoppel, excessive billing for services rendered, nullity, and failure of consideration. Mr. Martin asked for judgment in his favor, rejecting the demands of Pointe Coupee Healthcare.

The matter went to trial on September 8, 2009. After the trial, the district court rendered judgment in favor of Pointe Coupee Healthcare and against Mr. Martin in the amount of \$24,471.36 for the debt and finance charges, \$8,157.12 in attorney fees, \$697.40 in court costs, and interest from the date of judicial demand. Mr. Martin filed a motion for new trial, which was denied. Mr. Martin appealed the judgment against him and the denial of his motion for new trial.

In assignments of error numbers one and two, Mr. Martin asserts that the district court erred in refusing to nullify the admission agreement, and the handwritten agreement, for lack of free and voluntary consent on his part; that the contracts were vitiated by error, fraud or duress; and that the district court erred in failing to invalidate or nullify the two agreements because of the violation of 42 USC §1396r(c)(5)(A)(ii) by the representative of Pointe Coupee Healthcare, Ms. Pourciau, who required a third-party guarantee of payment as a condition of admission.

Ms. Pourciau testified at trial that Mr. Martin fully understood what he was signing, that there were no promises, threats or coercion, that she told Mr. Martin that his mother would be admitted into the nursing home regardless of whether he signed the agreement, and that he chose to sign the agreement and the note because it gave him more authority over the care of his mother.

Based upon the evidence, the trial court found that Mr. Martin freely signed the admission agreement and promissory note. We find no manifest error in this finding by the district court.

In assignment of error number three, Mr. Martin asserts that the district court erred in failing to apply the principles of failure of cause or consideration and failure to mitigate damages, because of Pointe Coupee Healthcare's failure to follow-up and make a full and proper application for Medicaid coverage for Mrs. Martin to pay her expenses at the nursing home.

Ms. Pourciau testified that she told Mr. Martin that she would apply for Medicaid benefits for Mrs. Martin, but she could not guarantee that she would be eligible for benefits. She further testified that she applied for the Medicaid benefits for Mrs. Martin, but the application was withdrawn by Mr. Martin. Mr. Martin testified at trial that he was not under the impression that Medicaid was definitely going to cover Mrs. Martin's nursing home care. Therefore, we cannot say that the

district court erred in finding that Pointe Coupee Healthcare did not fail to mitigate damages.

Regarding Mr. Martin's assignments of error number four, five and six, Mr. Martin asserts that the district court committed manifest error in the awarding of damages to Pointe Coupee Healthcare for the debt and finance charges, as well as attorney fees, court costs, and interest from the date of judicial demand. He also asserts that the attorney fees award is too high.

We find that the evidence in the record supports the amounts awarded to Pointe Coupee Healthcare by the district court for the debt and finance charges, the interest and attorney fees. Moreover, La. R.S. 9:2781 provides for attorney fees on a suit on an open account.

Therefore, for the foregoing reasons, we affirm the district court judgment. Costs of this appeal are assessed against Mr. Martin.

AFFIRMED.