

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001596-MR

MEMORIAL HOSPITAL, INC.

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT
HONORABLE OSCAR G. HOUSE, JUDGE
ACTION NO. 15-CI-00072

MCKINNLEY MORGAN

APPELLEE

OPINION
REVERSING AND
REMANDING

** ** * * * * *

BEFORE: DIXON, NICKELL, AND VANMETER,¹ JUDGES.

DIXON, JUDGE: Memorial Hospital, Inc., appeals from an order of the Clay Circuit Court granting summary judgment to McKinley Morgan. After careful review, we reverse and remand for further proceedings.

¹ Judge Laurence B. VanMeter concurred in this opinion prior to being elected to the Kentucky Supreme Court. Release of this opinion was delayed by administrative handling.

Morgan, an attorney, represented Stanley McQueen in a workers' compensation claim against Memorial. McQueen ultimately agreed to the terms of a settlement agreement to resolve his injury claim. According to the agreement, McQueen would receive a lump sum payment for past due benefits from January 21, 2013, through July 15, 2013, calculated at the monthly rate of \$915.40. In May 2013, the ALJ² approved the settlement and rendered an order awarding Morgan an attorney fee of \$10,837.41. On June 6, 2013, Memorial forwarded a check to Morgan's office in the amount of \$15,414.41. The check stub included the notation "past due benefits." Days later, after deducting litigation expenses of \$1,203.00, Morgan disbursed the remaining \$14,211.41 to McQueen.

In April 2015, Morgan filed a complaint against Memorial in Clay Circuit Court to enforce the attorney fee award, alleging Memorial had failed to comply with the ALJ's order. Memorial filed an answer and counterclaim denying the allegation and asserting Morgan's claim was fraudulent. Shortly thereafter, the parties filed cross-motions for summary judgment. To support his motion, Morgan asserted the check he received from Memorial was disbursed to McQueen because the check stub referenced "past due benefits" and did not indicate the attorney fee was included. In contrast, Memorial argued Morgan had erroneously disbursed the check to McQueen and was attempting to recoup the money from Memorial. Memorial submitted affidavits from its workers' compensation attorney and insurance adjuster to support its position that the check for \$15,414.41 included

² Administrative Law Judge

both McQueen's past due benefits and Morgan's attorney fee. In an order rendered September 17, 2015, the circuit court concluded no issues of fact existed and granted summary judgment in Morgan's favor. This appeal followed.

On appellate review, we must determine "whether the trial court correctly found there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Norton Hospitals, Inc. v. Peyton*, 381 S.W.3d 286, 290 (Ky. 2012). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

It was undisputed that Memorial submitted a check for \$15,414.41 to Morgan and that Morgan subsequently disbursed \$14,211.41 to McQueen. Morgan relied on the phrase "past due benefits" noted on Memorial's check stub to support his claim that Memorial had never tendered payment of the attorney fee. In contrast, Memorial presented documentary evidence and affidavits indicating the check included funds for both Morgan's attorney fee and McQueen's past due benefits. Viewing the record most favorably to Memorial, clearly it presented affirmative evidence that material issues of fact exist as to whether Morgan's attorney fee was included in the check for "past due benefits." Consequently, we must conclude the court erred by granting summary judgment; accordingly we reverse and remand.

For the reasons stated herein, we reverse the judgment of the Clay Circuit Court and remand for further proceedings consistent with this opinion.

NICKELL, JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS WITH RESULT BUT WILL FILE SEPARATE OPINION.

VANMETER, JUDGE, CONCURRING: I concur with the majority opinion in this case, specifically that the trial court erred in granting summary judgment in favor of Morgan. I write separately, however, because I note that both parties filed competing motions for summary judgment. As a result, the parties agree that no issues of material fact exist and that summary judgment is proper. Based on uncontroverted facts, the trial court erred in not granting summary judgment in favor of Memorial. *See Hart v. Hart*, 201 S.W.3d 457 (Ky. 2006)(reversing circuit court's grant of summary judgment with instructions to grant summary judgment in favor of appellant on basis of no genuine issues of material fact); *see also Roman Catholic Bishop v. Burden*, 168 S.W.3d 414, 419 (Ky. App. 2004)(noting exception to general rule that denial of a motion for summary judgment is interlocutory and non-appealable exists when (1) facts are undisputed, (2) the basis for the ruling was a matter of law, (3) the trial court denied the motion and (4) entered a final and appealable judgment). In this case, Memorial clearly paid Morgan the attorney fee and Morgan's office mistakenly paid the fee to McQueen. Morgan's remedy is to pursue reimbursement from

McQueen, not to have the Hospital pay again. On remand the only issue should be whether Memorial is entitled to recover punitive damages.

BRIEFS FOR APPELLANT:

Timothy J. Walker
Marcel Smith
Lexington, Kentucky

BRIEF FOR APPELLEE:

James R. Pennington
Roy G. Collins
Manchester, Kentucky