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ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-17-401

ARKANSAS CENTER FOR
PHYSICAL MEDICINE AND
REHABILITATION

APPELLANT

V.

GLORIA MAGEE

APPELLEE

Opinion Delivered: December 6, 2017

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION

[NO. 60CV-16-4473]

HONORABLE TIMOTHY DAVIS
FOX, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Arkansas Center for Physical Medicine and Rehabilitation (ACPMR) appeals the order of the Pulaski County Circuit Court dismissing its complaint against Gloria Magee. On appeal, ACPMR argues that the circuit court erred in granting Magee's motion for judgment on the pleadings because (1) Magee waived her statute-of-limitations defense when she failed to raise it as an affirmative defense in her answer; and (2) Arkansas Code Annotated section 16-56-106(b)(Repl. 2015) did not bar her claim as to account number 1007157. We affirm.

ACPMR is a chiropractic and physical-therapy clinic. Magee had been a patient at ACPMR. On August 12, 2016, ACPMR filed a complaint against Magee seeking to collect \$7,195.68 in unpaid medical bills. ACPMR attached to its complaint an August 16, 2011 contract with Magee and account ledgers for account numbers 1007157 and 1006694. In

account number 1007157, ACPMR charged Magee for services performed from August 16, 2011, through January 13, 2012, and the unpaid balance totaled \$6,060. In account number 1006694, ACPMR charged Magee for services performed from February 4, 2014, through September 11, 2014, and the unpaid balance totaled \$1,135.68.

On August 26, 2016, Magee filed an answer to ACPMR's complaint. She asserted the affirmative defenses of lack of subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency of process and service of process, failure to state a claim, waiver, setoff, laches, payment, failure of consideration, illegality of contract, unclean hands, and comparative fault.

On November 2, 2016, Magee filed a motion for judgment on the pleadings. She asserted that ACPMR could not recover on account number 1007157 because the claim was barred by the statute of limitations set forth in Arkansas Code Annotated section 16-56-106(b). Specifically, she pointed out that subsection 106(b) requires that a claim for unpaid medical bills be filed two years from the date the services were performed, or from the date of the most recent partial payment, whichever is later. She asserted that she last made a payment on that account on November 9, 2011, and that ACPMR last provided her services on that account on January 13, 2012, but that ACPMR did not file its complaint until August 12, 2016, more than two years later. Accordingly, she asked the court to dismiss ACPMR's complaint as to account number 1007157 with prejudice.

On November 7, 2016, ACPMR filed a motion to dismiss Magee's motion for judgment on the pleadings. It argued that its claim for account number 1007157 was not

barred by the statute of limitations because Magee had received ongoing treatment as recently as September 4, 2014, with respect to account number 1006694.

The court held a bench trial on December 16, 2016. ACPMR did not appear. The court orally granted Magee's motion for judgment on the pleadings as to account number 1007157. The court then proceeded to the merits of ACPMR's remaining claim on account number 1006694. However, because ACPMR did not appear, Magee moved for a directed verdict, and the court granted it. The court entered a written order on January 13, 2017.

ACPMR timely filed a notice of appeal. On appeal, ACPMR argues that the court erred in granting Magee's motion for judgment on the pleadings because (1) she waived the statute-of-limitations defense when she failed to raise it as an affirmative defense in her answer; and (2) Arkansas Code Annotated section 16-56-106(b) did not bar her claim as to account number 1007157.

Motions for judgment on the pleadings are not favored by the courts. *Landsn Pulaski, LLC v. Ark. Dep't of Corr.*, 372 Ark. 40, 269 S.W.3d 793 (2007). Such a judgment should be entered only if the pleadings show on their face that there is no defense to the suit. *Id.* When considering the motion, the court views the facts alleged in the complaint as true and in the light most favorable to the party seeking relief. *Id.*

As to ACPMR's first argument, we hold that the issue is not preserved for our review. It is well established that an appellant must raise an issue and make an argument to the circuit court for it to be preserved on appeal. *See Porter v. Ark. Dep't. of Human Servs.*, 374 Ark. 177, 286 S.W.3d 686 (2008). Here, ACPMR failed to raise the waiver argument to the circuit court. Accordingly, we decline to address the issue on appeal.

ACPMR next argues that the court erred in finding that Arkansas Code Annotated section 16-56-106(b) barred her claim as to account number 1007157. Specifically, ACPMR argues that its claim is not barred because Magee revived the debt when she received additional treatment from February 4, 2014, through September 11, 2014, in account number 1006694. It cites *Raynor v. Kyser*, 338 Ark. 366, 993 S.W.2d 913 (1999), wherein our supreme court discussed the continuous-treatment doctrine, which tolls the statute of limitations for medical-malpractice claims, and it asks us to apply the doctrine here.

We find ACPMR's argument without merit. Arkansas Code Annotated section 16-56-106(b) states as follows:

No action shall be brought to recover charges for medical services performed or provided after March 31, 1985, by a physician or other medical service provider after the expiration of a period of two (2) years from the date the services were performed or provided or from the date of the most recent partial payment for the services, whichever is later.

This court has held that an action barred by this statute can be continued or revived only by “(1) an express promise to pay the debt or an express acknowledgement of the debts from which [the patient’s] promise to pay may be inferred and (2) an acknowledgement of the specific debts asserted to ‘the party in interest’ or to ‘the person to whom the debt is due.’” *Kitchens v. Evans*, 45 Ark. App. 19, 26, 870 S.W.2d 767, 770 (1994) (holding that the appellant did not revive a medical debt by filing a lawsuit against a third party seeking medical expenses associated with the debt or by agreeing to pay all medical expenses incurred by him in his divorce decree). “A mere acknowledgment . . . of the debt as having once existed is not sufficient to raise an implication of such a new promise. To have this effect, there must be a distinct and unequivocal acknowledgement of the debt as still

subsisting as a personal obligation of the debtor.” *Id.* at 24, 870 S.W.2d at 769 (quoting *Morris v. Carr*, 77 Ark. 228, 91 S.W.187 (1905) (quoting *Shepard v. Thompson*, 122 U.S. 231 (1887))).

Here, the only evidence ACPMR offered is the August 2011 contract and the account ledgers. These documents do not show an express promise by Magee to pay her unpaid balance or an express acknowledgement of the balance from which her promise to pay may be inferred.

Further, we decline to apply the continuous-treatment doctrine to this case. Our supreme court has applied the continuous-treatment doctrine only in medical-malpractice cases when the patient received active, ongoing medical treatment. *See Raynor*, 338 Ark. 366, 993 S.W.2d 913 (citing *Taylor v. Phillips*, 304 Ark. 285, 801 S.W.2d 303 (1990); *Lane v. Lane*, 295 Ark. 671, 752 S.W.2d 25 (1998)). Continuous medical treatment is “something more than the mere continuation of the physician-patient relationship.” *Id.* at 372, 993 S.W.2d at 916 (declining to apply the doctrine when the patient did not see the physician for three and one-half years). This case is not a medical-malpractice case, and Magee did not receive continuous treatment. Specifically, she did not receive services from ACPMR for a period of more than two years from January 13, 2012, through February 4, 2014. Accordingly, we affirm.

Affirmed.

MURPHY and BROWN, JJ., agree.

Wallace, Martin, Duke & Russell, PLLC, by: *Valerie L. Goudie*, for appellant.

Bryce Brewer Law Firm, by: *Bryce Brewer*; and *Walas Law Firm, PLLC*, by: *Breean Walas*, for appellee.