SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3310-20

BERGEN ANESTHESIA GROUP,

Plaintiff-Appellant,

v.

BOGDANA ARSHYNOVA,

Defendant-Respondent.

Submitted May 26, 2022 – Decided June 7, 2022

Before Judges Haas and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. DC-009931-20.

Michael Harrison, attorney for appellant (Stacy Fronapfel, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff Bergen Anesthesia Group appeals from the Special Civil Part's July 1, 2021 order dismissing its collection complaint and entering judgment in favor of defendant Bogdana Arshynova following a bench trial. We affirm.

On May 31, 2018, defendant entered Valley Hospital in Ridgewood to give birth to her child. This was a scheduled procedure. Prior to her admission, Valley Hospital's staff assured defendant that all the costs of her treatment would be covered by her insurance policy and there would be no additional charges. Staff confirmed this arrangement after defendant entered the hospital.

Approximately ten hours after her admission, defendant's doctors decided she needed a Cesarean section surgery. Plaintiff has an agreement with Valley Hospital to "provide all the anesthesia and pain management services" for the hospital. Pursuant to this agreement, Valley Hospital arranged to have one of plaintiff's anesthesiologists provide services to defendant. Neither plaintiff nor Valley Hospital informed defendant there would be any additional charges for these services or that plaintiff would not accept her insurance. Plaintiff submitted no evidence that defendant signed a registration, admission, or other form agreeing to be financially responsible for all charges whether or not paid by insurance.

After defendant delivered her baby, plaintiff sent her a bill for $1,485.43. According to plaintiff's practice manager, plaintiff was not in defendant's insurance network. Plaintiff submitted a $4,165 bill for its services to defendant's insurance company as an out-of-network claim. The insurance company allowed $3,123.75 for the claim, but applied $444.18 of this amount to defendant's deductible. Thus, plaintiff received $2,679.57 from the insurance company, leaving a balance due from defendant of $1,485.43.

When defendant refused to pay plaintiff this sum, plaintiff filed a collection complaint against her. Defendant filed an answer and a counterclaim, asserting medical malpractice against plaintiff. The trial court later granted plaintiff's motion to dismiss defendant's counterclaim without prejudice because the Special Civil Part did not have jurisdiction over the matter.

The trial court then conducted a one-day trial at which plaintiff's practice manager and defendant testified. At the conclusion of the trial, the court entered judgment in defendant's favor. In its oral decision, the court credited defendant's testimony that Valley Hospital agreed "to accept [defendant's] insurance and that everything would be covered, . . . including the anesthesia services." Thus, the court found "[t]here was no agreement that [defendant] entered into that's been proved to show that she was to pay over and above that which [her insurance

company] determined to be the proper charges . . . ." The court observed that plaintiff accepted the insurance company's payment and "there was no agreement that [plaintiff] [w]ould balance book . . . bill [defendant] for these services." Because plaintiff failed to prove it had a valid contract with defendant, the court granted judgment to defendant and dismissed plaintiff's complaint.

On appeal, plaintiff has abandoned its breach of contract claim. Instead, it now argues for the first time that defendant was obligated to pay plaintiff the additional charges under the theories of unjust enrichment and quantum meruit, and that the court should have ordered defendant to turn over the deductible payment she received from the insurance company to plaintiff. We discern no basis for disturbing the trial court's decision.

Our review of a trial court's fact-finding in a non-jury case is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). The trial court enjoys the benefit, which we do not, of observing the parties' conduct and

demeanor in the courtroom and in testifying. Ibid. Through this process, trial judges develop a feel of the case and are in the best position to make credibility assessments. Ibid. We will defer to those credibility assessments unless they are manifestly unsupported by the record. Weiss v. I. Zapinsky, Inc., 65 N.J. Super. 351, 357 (App. Div. 1961). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. Mountain Hill, L.L.C. v. Twp. Comm. of Middletown, 403 N.J. Super. 146, 193 (App. Div. 2008).

Applying these standards, we conclude that the trial court's factual findings are fully supported by the record, and in light of those facts, its legal conclusions are unassailable. Plaintiff clearly failed to prove it had an agreement with defendant that she would pay anything more for its services than the amount reimbursed by her insurance company. We therefore affirm substantially for the reasons that the court expressed in its well-reasoned opinion.

We decline to consider the newly minted issues plaintiff raises for the first time on appeal. Under the plain error rule, we will consider allegations of error not brought to the trial court's attention that have a clear capacity to produce an unjust result. See R. 2:10-2. However, we generally decline to consider issues

that an appellant did not present at trial, unless the jurisdiction of the court is implicated, or the matter concerns an issue of great public performance. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Neither of these exceptions is applicable here.

Affirmed.