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APPELLANT PRO SE:

MARTHA NYATAWA

IN THE
COURT OF APPEALS OF INDIANA

MARTHA NYATAWA,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 84A01-0906-CV-268
	)	
CORVEE, INC.	)	
	)	
Appellee.	)	

APPEAL FROM THE VIGO COURT
The Honorable Michael R. Rader, Judge
Cause No. 84D05-0711-SC-12132

November 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Our review of the transcript submitted in conjunction with this case reveals that this action involves an appeal from a small claims decision of the Vigo Superior Court. The appellant, Martha Nyatawa, was the defendant in a collection action that involved a mental health facility referred to in the record as the Hamilton Center. The Hamilton Center is evidently owned, managed, or in some other way affiliated with Corvee, Incorporated, the plaintiff in the small claims action below. Nyatawa, pro se, appeals the small claims court's decision in favor of Corvee.

We affirm.

The terse, four-sentence statement of facts contained in Nyatawa's appellate brief consists not of facts, but conclusory assertions, which is all the more difficult to understand because it is provided in a manner bereft of factual or contextual explanation. Corvee chose not to file an appellee's brief. Thus, we are left to our own devices in seeking to reconstruct what happened below and why this matter is before us. The facts favorable to the decision must be gleaned entirely from an independent review of the transcript of the small claims hearing. It appears that Nyatawa was a patient at the Hamilton Center over a period of years. We cannot discern whether treatment was rendered on an outpatient or in patient basis; perhaps it was both. In any event, we presume the services rendered by the Hamilton Center included private counseling because a "Mr. Mackey" attended the hearing and identified himself as Nyatawa's therapist. *Transcript* at 4. Corvee's attorney identified Mackey as a witness, or at least that "Mackey was gonna be a witness". *Id*. In fact, however, Mackey

functioned at the hearing more as Nyatawa's advocate, or even attorney,[1] because he participated in the questioning of at least one of Corvee's witnesses and he (Mackey) was not called to testify. It is clear that the Hamilton Center's services to Nyatawa also included prescription medication.

Possessing only these most basic of foundational facts, we are left to discern for ourselves the gist of the lawsuit by reading the informal discussion between the court and the principals at the small claims hearing. Our task in doing so was not unlike that of attempting to discern the underlying plot of a television program by listening to the dialogue in a single scene that we tuned in to midway through the program. As best we can tell, Nyatawa had two sources of medical insurance, including something referred to as "Magellan", which was identified by Corvee as Nyatawa's primary insurer, and Medicaid, which was identified as Nyatawa's secondary insurer. At the hearing Corvee introduced into evidence an itemized list of services it had provided to Nyatawa. With respect to each service thus listed,[2] Corvee had received payment from both insurers, leaving a balance owed by Nyatawa, or at least that was Corvee's contention. Nyatawa denied that she owed what was essentially a co-pay payment for each itemized service on Corvee's list.

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[1] There is nothing in the record that would lead us to believe Mackey is admitted to the bar in Indiana.

[2] Corvee also explained that "many" of its services rendered to Nyatawa were "written off" because of "billing issues." *Id*. at 16, 17. According to Corvee, " [t]here was a point in time when Magellan thought they were secondary when in fact they were primary and … we had to get that straightened out. While we were waiting to get that straightened out some charges fell outside the time to file … so we just adjusted those off." *Id*. at 16-17.

At the hearing, Corvee presented the aforementioned itemized list of services and the resultant charges, as well as the testimony of Andrew Garber, a patient account representative for the Hamilton Center who was responsible for, or at least familiar with, Nyatawa's account. Garber testified that after the earlier confusion between Nyatawa's two insurers was remedied, each paid their portion of the charges on the list, leaving a balance due, the total of which for all services rendered was $934.38. Although the record does not contain a copy of the judgment order, it appears that the small claims court found in Corvee's favor, with the amount of the judgment being $934.38. Although the court discussed its preference that Nyatawa's payments should be made in the form of a minimal monthly payment ($10 was the specific amount mentioned), this appears to have been conditioned on the classification of benefits received by Nyatawa from the Social Security Administration. We simply do not know what form, if any, Nyatawa's payment obligation was to take. In any event, Nyatawa appeals the judgment in favor of Corvee.

Because this case was tried before the bench in small claims court, we review for clear error. *Lowery v. Housing Auth. of City of Terre Haute*, 826 N.E.2d 685 (Ind. Ct. App. 2005). We will affirm a judgment in favor of a party having the burden of proof if the evidence was such that a reasonable trier of fact could conclude that the elements of the claim were established by a preponderance of the evidence. *Id*. We presume the trial court correctly applied the law and give due regard to the trial court's opportunity to judge the credibility of the witnesses. *Id*. We will not reweigh the evidence, and we will consider only the evidence and reasonable inferences therefrom that support the trial court's judgment. *Id*.

As stated previously, Corvee has not filed an appellee's brief. As such, we are not required to develop arguments on its behalf, and we may reverse the trial court upon Nyatawa's prima facie showing of reversible error. *McKinney v. McKinney*, 820 N.E.2d 682 (Ind. Ct. App. 2005). In this context, "prima facie" is defined as "'at first sight, on first appearance, or on the face of it.'" *Burrell v. Lewis*, 743 N.E.2d 1207, 1209 (Ind. Ct. App. 2001) (quoting *Johnson County Rural Elec. Membership Corp. v. Burnell*, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985)).

Nyatawa has not sustained her burden of making a prima facie showing that the trial court committed clear error. We understand that Nyatawa is not an attorney and is not represented by one. Unfortunately for Nyatawa, we can make no allowances for her lack of legal expertise. Instead, we are bound to observe the rule that an appellant who proceeds pro se is "'held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action.'" *Anthony v. Indiana Farmers Mut. Ins. Group*, 846 N.E.2d 248, 252 (Ind. Ct. App. 2006) (quoting *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003)). In this case, the shell of Nyatawa's appellate brief contains all of the correct section headings, but this is the only sense in which Nyatawa's brief can be said to comply with the relevant Indiana Rules of Appellate Procedure. Substantively, the brief is so nonconforming as to be utterly inadequate to its purposes, which are to inform us about this case and convince us that the trial court committed error. As indicated before, it was only by reading the transcript of the small claims hearing that we were able to discern who filed this lawsuit and why, and how and why

it was brought before us in the first place.

Leaving aside the considerable procedural shortcomings of Nyatawa's appellate submissions, it strikes us that her case on appeal suffers the same fatal flaw that it did at the trial court level. She did not, and does not, back her claim that she was not liable for the several co-payments at issue with even a soupçon of evidence. She claimed via a one-sentence interjection at one point in the hearing that Corvee did not bill her primary insurer, but never followed up with further argument or evidence. She claimed that her medications were covered 100% by Magellan, but followed that only with a rhetorical question, i.e., "So why haven't they paid it. I have right here the form to send in the claims. I'm sending it to them." *Transcript* at 14. In fact, it seems to us that Nyatawa did not so much argue and attempt to prove her case as she did express her confusion and anger at her predicament: "It doesn't seem ethical to have an insurance which does cover the insurance have them write something saying they don't cover it because they do cover it so I don't know how he [sic]. I've never seen them and I don't know what they are, it seems unethical to me." *Id*. at 15. She even admitted at one point, "I'm not understanding any of this." *Id*. at 19. In the end, it seems that the best articulation of Nyatawa's position was made by Nyatawa herself: "[The insurers] should have paid for all of it. ... I don't feel like I should be forced to pay for it." *Id*. at 21.

It will come as small solace to Nyatawa that many share her frustration and confusion when it comes to matters of insurance. Moreover, we are no better equipped than the trial court professed to be to untie for her the Gordian knot that often results when more than one

medical insurer is involved in questions of coverage for medical treatment. Be that as it may, Nyatawa has presented absolutely no basis on appeal for even questioning the trial court's judgment, much less reversing it.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.