

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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NOVEMBER 12, 2012
STATE OF NORTH DAKOTA

Arthur M. Hayden and Joy Lynn
Hayden, as co-conservators and
co-guardians of Todd Lowell Hayden,
and in their individual capacity, and
Smith Bakke Porsborg Schweigert &
Armstrong,

Plaintiffs and Appellants,

v.

Medcenter One, Inc., Medcenter One
Living Centers, Billings Clinic, and
Sidney Health Center,

Defendants.

Medcenter One, Inc., Medcenter One
Living Centers, and Billings Clinic,

Appellees.

Supreme Court No. 20120337

District Court No. 08-2012-CV-00207

BRIEF OF DEFENDANT/APPELLEE BILLINGS CLINIC

On Appeal from Order on Motion for Summary Judgment and
Judgment of the District Court
South Central Judicial District
Burleigh County, North Dakota
The Honorable Thomas J. Schneider

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STATEMENT OF THE ISSUES

[¶ 1] I. Whether the district court found Arthur and Joy Lynn Hayden were personally liable for Todd Hayden’s medical bills.

[¶ 2] II. Whether the district court erred in dismissing Appellants’ unjust enrichment claim.

[¶ 3] III. Whether the district court erred in dismissing Appellants’ quantum meruit claim.

[¶ 4] IV. Whether the district court erred in dismissing Appellants’ equitable estoppel claim.

[¶ 5] V. Whether the district court erred in dismissing Appellants’ common fund doctrine claim.

STATEMENT OF THE CASE

[¶ 6] In January 2012, Appellants commenced an action in North Dakota state court, seeking attorney’s fees expended in an ongoing action in the United States District Court for the District of North Dakota. Appellee Billings Clinic (“Billings Clinic”) moved to dismiss the case, and Appellees Medcenter One, Inc. and Medcenter One Living Centers (“Medcenter One”) concurrently moved for summary judgment. Billings Clinic joined in the legal arguments presented in Medcenter One’s motion for summary judgment. After full briefing and a hearing, the district court entered summary judgment in favor of Billings Clinic and Medcenter One.

[¶ 7] Appellants appeal from the order and judgment of the district court.

STATEMENT OF THE FACTS

[¶ 8] This is a case about the Smith Bakke law firm seeking attorney fees for itself from non-clients. On June 12, 2009, Todd Hayden was seriously injured in an ATV accident in Montana. See Complaint, Appellants' Appendix at 9. After initial treatment in Sidney, Montana, Hayden was transported by air ambulance to Billings Clinic, in Billings, Montana, where he received treatment for approximately one month. See Complaint, Appellants' Appendix at 9. Hayden was then transported to Medcenter One, in order to receive medical treatment closer to his parents' home in South Heart, North Dakota. See Complaint, Appellants' Appendix at 9.

[¶ 9] Upon his admission to Billings Clinic, someone on behalf of Hayden presented health insurance information for Blue Cross Blue Shield of Texas ("BCBSTX"). See BCBSTX Health Insurance Policy, Appellants' Appendix at 77. Hayden incurred medical bills in Montana at Billings Clinic of at least \$227,265.60. See Complaint, Appellants' Appendix at 10. Billings Clinic submitted Hayden's medical bills to BCBSTX, which denied coverage for the medical bills. See Complaint, Appellants' Appendix at 10. Sometime later, BCBSTX remitted payment to Billings Clinic for the medical bills less substantial deductions. See Complaint, Appellants' Appendix at 14.

[¶ 10] Prior to BCBSTX remitting payment to Billings Clinic for the medical bills, Appellants Arthur and Joy Lynn Hayden, as co-conservators and co-guardians of Todd Hayden and in their individual capacity, brought suit against BCBSTX in the United States District Court for the District of North Dakota, alleging claims under ERISA and claims for bad faith denial of coverage (the "federal court action"). See Appellants' Brief

at ¶ 22. Arthur and Joy Lynn Hayden and Smith Bakke Porsborg Schweigert & Armstrong (“Smith Bakke”) (collectively, “Appellants”) contend it was through their efforts in the federal court action that BCBSTX reversed its coverage denial and provided payment of medical bills to Billings Clinic. After BCBSTX remitted payment to Billings Clinic for the medical bills, Appellants brought suit against Billings Clinic in North Dakota district court, demanding that Billings Clinic pay Smith Bakke’s attorney fees in the federal court action. Despite having no attorney fee agreement with Billings Clinic, Smith Bakke sought its contingency fee from Billings Clinic for the gross amount of the medical bills. See Complaint, Appellants’ Appendix at 17.

[¶ 11] The district court granted summary judgment in favor of Billings Clinic and Medcenter One, concluding Billings Clinic and Medcenter One “were not unjustly enriched because they only received what they were entitled to receive for services rendered to Todd Hayden.” Order on Motion for Summary Judgment, Appellants’ Appendix at 201-202. The court also concluded the quantum meruit claim failed, because Billings Clinic and Medcenter One “were not ‘forewarned’ [Appellants] would seek attorney’s fees from them if BCBSTX paid them for medical services rendered to Todd Hayden.” Order on Motion for Summary Judgment, Appellants’ Appendix at 201-202. Finally, the court concluded Appellants’ equitable estoppel claim failed, as did their common fund doctrine claim. Order on Motion for Summary Judgment, Appellants’ Appendix at 206-12. Appellants appealed the order and judgment of the district court only as to Arthur and Joy Lynn Hayden in their individual capacity. See Appellants’ Brief at ¶ 4. They do not “dispute[] on appeal Todd had a legal obligation to pay for the

services provided to him by Billings Clinic and Medcenter One.” See Appellants’ Brief at ¶ 4.

[¶ 12] Importantly, in the interim between the district court’s decision and this brief, Appellants were granted an award of their attorney fees in the federal court action on an hourly basis “for the work undertaken since the [federal court action] was filed” and a substantial award of prejudgment interest and a statutory penalty. See Hayden v. Blue Cross and Blue Shield of Texas, et al., Case No. 1:10-cv-50, Order (Doc. ID No. 110) (D.N.D. 2012). These are the very same attorney fees Appellants sought in this action. Not only does this illustrate a legal remedy available through the federal court action, which requires Appellants’ equitable claims to fail, but it also shows that this action is now moot.

ARGUMENT

[¶ 13] The North Dakota Supreme Court has stated its standard of review for summary judgment as follows:

We review this appeal under our standards for summary judgment, which is a procedure for promptly resolving an action on the merits without a trial if there are no disputed issues of material fact or inferences to be drawn from undisputed facts and if a party is entitled to judgment as a matter of law. Whether a trial court properly grants summary judgment is a question of law, which we review de novo on the entire record. A party seeking summary judgment bears the initial burden of showing there are no genuine disputes regarding the existence of material facts. On appeal, we view the evidence in the light most favorable to the party opposing the motion.

Nationwide Mut. Ins. Cos. v. Lagodinski, 2004 ND 147, ¶ 6, 683 N.W.2d 903 (citations omitted).

[¶ 14] Summary judgment is appropriate against a party who fails to establish the existence of a genuine factual dispute on an essential element of a claim on which he will bear the burden of proof at trial. Buchholz v. Barnes County Water Bd., 2008 ND 158, ¶ 15, 755 N.W.2d 472. For an opposing party to establish the existence of a genuine factual dispute, the party must present enough evidence to allow a reasonable jury to rule in his favor. Davis v. Enget, 2010 ND 34, ¶ 6, 779 N.W.2d 126. The moving party has the burden of showing there are no genuine issues of material fact, and the party is entitled to judgment as a matter of law. Id., at ¶ 5. If the moving party meets its initial burden of showing the absence of a genuine issue of material fact, the nonmoving party may not rest on mere allegations or denials in the pleadings, but must present competent admissible evidence to show the existence of a genuine issue of material fact. Id. at ¶ 6. “The nonmoving party cannot rely on the pleadings, briefs, speculation or unsupported, conclusory allegations, but must present competent, admissible evidence on an essential element of the claim . . . otherwise, it is presumed such evidence does not exist.” Halvorson v. Sentry Ins., 2008 ND 205, ¶ 5, 757 N.W.2d 398. Here, Appellants contend the district court’s grant of summary judgment was in error, because it was “premised upon an erroneous determination Todd’s Parents are or were legally obligated to pay for the health care provided to Todd.” See Appellants’ Brief at ¶ 30.

I. The district court did not find Arthur and Joy Lynn Hayden were “personally liable” for Todd Hayden’s medical bills.

[¶ 15] Appellants argue the district court erred in finding Arthur and Joy Lynn Hayden were personally responsible for Todd Hayden’s medical bills. However, the district court made no such determination. The district court found Arthur and Joy Lynn Hayden had

“financial responsibility to pay Todd Hayden’s bills as his co-conservators and co-guardians.” Order on Motion for Summary Judgment, Appellants’ Appendix at 201 (emphasis added). Appellants argue the district court found “the Haydens expressly agreed that either they [or] Todd Hayden would pay [Medcenter One] for charges related to Todd Hayden’s medical treatment.” See Appellants’ Brief at ¶ 32; see also Order on Motion for Summary Judgment, Appellants’ Appendix at 203. The district court, as noted above, found Arthur and Joy Lynn Hayden were responsible only as Todd Hayden’s co-conservators and co-guardians. See Order on Motion for Summary Judgment, Appellants’ Appendix at 201 (stating the Haydens had “financial responsibility to pay Todd Hayden’s bills as his co-conservators and co-guardians”); Appellants’ Appendix at 209-10 (noting “had BCBSTX not paid Todd Hayden’s medical bills, Todd Hayden, or the Haydens as his co-conservators and co-guardians, would have been responsible to pay them”); Appellants’ Appendix at 210 (stating “the Haydens understood, and continue to understand, that they are not primarily responsible for Todd Hayden’s medical bills”) (“[T]here is no evidence that Billings [Clinic] or [Medcenter One] ever sought to hold Arthur or Joy Hayden liable for Todd Hayden’s medical bills.”). [¶ 16] The district court at no time determined Arthur and Joy Lynn Hayden were individually responsible for Todd Hayden’s medical bills.

II. The district court did not err in dismissing Appellants’ unjust enrichment claim.

[¶ 17] Appellants next argue the district court erred in dismissing Appellants’ claim for unjust enrichment. First, it is worth noting Appellants appeal only as to Arthur and Joy Lynn Hayden individually. See Appellants’ Brief at ¶ 4 (“The trial judge’s dismissal of

the equitable claims of unjust enrichment, quantum meruit and equitable estoppel of Smith Bakke and Todd Hayden are not being appealed.”). Again, the district court did not find Arthur and Joy Lynn Hayden were individually liable for Todd Hayden’s medical bills. While Appellants argue “Todd’s Parents had no legal obligation to incur the impoverishment for the benefit of Billings Clinic and Medcenter One,” see Appellants’ Brief at ¶ 36, the Haydens were responsible for the medical bills because they were the co-conservators and co-guardians of Todd Hayden.

[¶ 18] The undisputed facts are that Todd Hayden was an adult. Todd Hayden incurred substantial medical bills at Billings Clinic for which he would be individually and personally responsible in the absence of insurance coverage. However, Todd Hayden is now incapacitated as a result of his injuries. Therefore, his parents have been appointed as co-guardians and co-conservators over Todd Hayden and his estate, and the Haydens are here in that capacity. Fundamentally, Arthur and Joy Lynn Hayden, as co-conservators and co-guardians of Todd Hayden, would have had to pay the medical bills or be subject to legal proceedings for recovery of the expenses.

A. Billings Clinic provided medical services to Todd Hayden and was not unjustly enriched by the payment made for those services.

[¶ 19] In North Dakota, unjust enrichment “is an equitable doctrine based upon a quasi or constructive contract implied by law to prevent a person from being unjustly enriched at the expense of another.” Ritter, Laber, & Assoc. v. Koch Oil, 2004 ND 117, ¶ 26, 680 N.W.2d 634. The doctrine serves as a basis for requiring restitution of benefits conferred in the absence of an express or implied contract. Id. The five elements of unjust enrichment are: 1) an enrichment; 2) an impoverishment; 3) a connection between the

enrichment and the impoverishment; 4) an absence of justification for the enrichment and impoverishment; and 5) an absence of remedy provided by law. Id. The doctrine may be invoked when a party retains benefits which in justice and equity belong to another. Id. “An essential element of recovery under unjust enrichment is the receipt of a benefit by the defendant from the plaintiff that would be inequitable to retain without paying for its value.” Id. “Even when a person has received a benefit from another, that person is liable only if the circumstances of the receipt or retention are such that, as between the two persons, it is unjust to retain the benefit.” Id.

[¶ 20] Here, as the district court found, there was no unjust enrichment, because Billings Clinic and Medcenter One “were not unjustly enriched because they only received what they were entitled to receive for services rendered to Todd Hayden.” Order on Motion for Summary Judgment, Appellants’ Appendix at 201-202. Todd Hayden received important medical care at Billings Clinic. If BCBSTX would not have provided coverage for the medical expenses, Todd Hayden or Arthur and Joy Lynn Hayden, as co-conservators and co-guardians of Todd Hayden, would have been responsible for the full medical expenses. As the district court found, Billings Clinic and Medcenter One “received what they were entitled to receive for services rendered to Todd Hayden.” Order on Motion for Summary Judgment, Appellants’ Appendix at 202.

B. Similarly, a justification exists for each of the alleged impoverishments.

[¶ 21] Additionally, concerning the element of impoverishment, Arthur and Joy Lynn Hayden claim they were impoverished by making COBRA payments to continue Todd Hayden’s insurance coverage, because Todd Hayden is still exposed to co-pays and

deductibles, and because they owe Smith Bakke attorney fees. As the district court found, even if the enrichment were unjust, a justification existed for each of the alleged impoverishments. Order on Motion for Summary Judgment, Appellants' Appendix at 203. Arthur and Joy Lynn Hayden entered into a written fee agreement with Smith Bakke for the provisions of legal services relating to the federal court action. On appeal, Appellants acknowledge "Smith Bakke has a legal remedy available against Todd's Parents, individually, and as the co-conservators of Todd, for collection of its attorney's fees and costs in securing the insurance payments to Billings Clinic and Medcenter One." Appellants' Brief at ¶ 4. Appellants argue, however, Arthur and Joy Lynn Hayden individually were impoverished, "both because of the time and out-of-pocket expenses they incurred in maintaining coverage under the group health plan by paying COBRA premium payments" and "by paying out-of-pocket expenses and incurring personal liability relative to attorneys' fees and costs associated with obtaining payment from BCBSTX for the care provided by Billings Clinic and Medcenter One." Appellants' Brief at ¶ 36.

[¶ 22] The issue of COBRA payments is irrelevant to Billings Clinic. The Haydens "began making COBRA premium payments in approximately October 2009" in order to maintain insurance coverage. See Complaint, Appellants' Appendix at 14. Todd Hayden received medical treatment from Billings Clinic in June and July of 2009, when there was still primary coverage. See Complaint, Appellants' Appendix at 10. Despite showing Appellants the error of their position at the district court level, Appellants continue to make this incorrect argument.

[¶ 23] Second, concerning the exposure of Todd Hayden to co-pays and deductibles, Todd Hayden had an express contract with BCBSTX under which he is liable for co-pays and deductibles. Order on Motion for Summary Judgment, Appellants' Appendix at 203. Arthur and Joy Lynn Hayden, as his co-conservators and co-guardians, are also liable for such co-pays and deductibles.

[¶ 24] Third, concerning the attorney fees owed to Smith Bakke, neither Medcenter One nor Billings Clinic had any sort of agreement with Smith Bakke regarding attorney fees. The agreement was solely between Arthur and Joy Lynn Hayden and Smith Bakke. "When an impoverishment results from a valid contractual arrangement made by a party, the result is not contrary to equity and there has been no unjust enrichment." Lochthowe v. C.F. Peterson Estate, 2005 ND 40, ¶ 9, 692 N.W.2d 120. Put simply, even if Appellants' argument is true—that insurance coverage was provided only as a result of their efforts—then they owe their attorneys one-third of the amount of the bills instead of owing Billings Clinic one hundred percent of the amount of the bills. This is not an impoverishment.

C. The unjust enrichment claim failed as a matter of law.

[¶ 25] Appellants' unjust enrichment claim failed as a matter of law. Billings Clinic would have had a legal right to payment of the medical expenses in the absence of the federal court action. That legal right was directly against the Haydens, as co-conservators and co-guardians of Todd Hayden. The claims here are factually identical to the claims pursued in Lynch v. Deaconess Med. Ctr., 776 P.2d 681 (Wash. 1989).

[¶ 26] In Lynch, the claimant’s insurer denied insurance coverage for hospital bills. The claimant hired counsel to pursue an action against the insurer. During the litigation against the insurer, the insurer reversed its denial and paid certain medical bills directly to the medical provider. Claimant’s attorney then sued the hospital for payment of attorney fees in establishing coverage. Lynch v. Deaconess Med. Ctr., 776 P.2d 681, 682 (Wash. 1989). Identical to the claims here, the Washington Supreme Court reviewed the issue of “whether an attorney is entitled to compensation, from one other than his client, when services rendered to his client incidentally benefit another.” Id.

[¶ 27] In Lynch, the medical provider was acutely aware that the claimant had hired counsel. In fact, unlike here, the claimant’s counsel actually sent numerous, specific letters to the medical provider, offering to represent the provider’s subrogation interests, and after the provider declined, specifically notifying the provider that he would seek a recovery of attorney fees if his efforts benefited the provider. Id. Furthermore, the provider had even written off the charges as uncollectable and given the claimant a charitable deduction for the entire bill. Id.

[¶ 28] On these facts, the Washington Supreme Court refused to allow recovery. As to unjust enrichment, the Court determined that the provider was not unjustly enriched by the attorney’s efforts. Id. at 683. The provider only recovered what it was owed for its medical services and had only been incidentally benefitted by the attorney’s efforts. Id. The Court relied on the Restatement of Restitution § 1 (1937) in reaching its conclusion. The Court held the attorney was hired by the claimant to pursue a claim against the insurer. The attorney was obligated to pursue that claim diligently on behalf of his client.

Thus, “the receipt of an incidental benefit by [provider] does not create an implied contract between the parties, nor does it impose the obligation of restitution upon the recipient.” Id. The Court concluded by noting that when presented with this type of issue, “a number of courts in other jurisdictions have rejected claims for attorney fees based on theories of unjust enrichment, quantum meruit and equitable subrogation.” Id. at 684. Instead, “these courts apply a general rule that there is no implied promise to pay an attorney whom one has not employed because of incidental benefits derived from his services.” Id. (citing cases from Montana, Texas, Illinois and Iowa, as well as a secondary source); see also Wilson v. Sisters of St. Francis Health Servs., 952 N.E.2d 793 (Ind. Ct. App. 2011) (holding an attorney was not entitled to payment from a hospital based upon the theories of unjust enrichment or quantum meruit after the attorney persuaded a health insurer to pay one of the hospital’s patient’s medical bills). As the North Dakota Supreme Court has held, “[P]ersons who have not contracted for legal services do not become legally obligated to pay for those services merely because they have received benefit from the rendering of those services.” Zuger v. N.D. Ins. Guar. Ass’n, 494 N.W.2d 135, 139 (N.D. 1992).

III. The district court did not err in dismissing Appellants’ quantum meruit claim.

[¶ 29] Similarly, Appellants argue Billings Clinic and Medcenter One should pay their attorney fees in the federal court action under a quantum meruit claim. “To prevail on a ‘quantum meruit’ claim, the claimant must establish the recipient accepted benefits under circumstances which would reasonably notify the recipient that the claimant had an expectation of payment for the services rendered.” Disciplinary Bd. v. Moe, 1999 ND

110, ¶ 14, 594 N.W.2d 317. “To be compensable, the services rendered [must be] of such a nature that, under the circumstances of a particular case, fairness and justice compel the conclusion that they ought to be compensated on an implied-in-law contractual theory because the recipient ought to have been forewarned that such services do not come cost-free.” Estate of Zent, 459 N.W.2d 795, 800 (N.D. 1990).

[¶ 30] Peppered throughout Appellants’ brief, just as in the district court briefs, are misrepresentations that Billings Clinic was “put on notice” of the federal court action and was given an opportunity to join the federal court suit. Appellants claim, “Billings Clinic and Medcenter One refused a request to join in federal civil litigation against Todd’s insurer to compel coverage.” Appellants’ Brief at ¶ 36. These allegations are false. Appellants base these misrepresentations on a letter sent by Smith Bakke to Billings Clinic to obtain medical records. See Letter dated April 1, 2010, Appellants’ Appendix at 178; see also Appellants’ Brief at ¶ 50 (“Billings Clinic was on notice regarding the lawsuit against BCBSTX at least as early as April 1, 2010, when Smith Bakke sent a records request to Billings Clinic notifying them of the lawsuit and requesting Todd’s medical records.”).

[¶ 31] The letter states solely, “Please be advised that our office represents Todd Hayden in relation to serious injuries he sustained as a result of an ATV accident which occurred on June 12, 2009.” See Letter dated April 1, 2010, Appellants’ Appendix at 178. The letter goes on to state, “The purpose of this letter is to request a complete copy of any and all medical billing records regarding the treatment for care of Mr. Hayden while at your facility.” Id. The letter makes no request for Billings Clinic to join the federal court

action; nor does it in any way allude that Billings Clinic will be held responsible for the attorney fees in the federal court action. Id. In fact, the letter does not identify a federal court action or even representation regarding insurance coverage issues. Id. Instead, Smith Bakke represented to Billings Clinic in the letter that it represented Todd Hayden in relation to his injuries sustained in an ATV accident. Id.

[¶ 32] The district court specifically determined that that there was no evidence that Smith Bakke ever notified Billings Clinic of the federal court action or asked Billings Clinic to join in the suit. Order on Motion for Summary Judgment, Appellants' Appendix at 201.

IV. The district court did not err in dismissing Appellants' equitable estoppel claim.

[¶ 33] Under an equitable estoppel claim in North Dakota, plaintiffs must prove three elements: 1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are other than those which the defendant subsequently attempts to assert; 2) the intention, or at least the expectation, that such conduct will be acted upon by, or will influence, the plaintiff; and 3) knowledge, actual or constructive, of the real facts. Dalan v. Paracelsus Healthcare Corp., 2002 ND 46, ¶ 19, 640 N.W.2d 726, 732 (N.D. 2002) (citation omitted). “Reliance on the conduct of the party against whom equitable estoppel is asserted must be reasonable, and there must be some form of affirmative deception by that party.” Id. (citation omitted). As the district court found, Appellants did not allege any deceptive conduct by either Billings Clinic or Medcenter One in their Complaint.

See Order on Motion for Summary Judgment, Appellants’ Appendix at 207; see also Complaint, Appellants’ Appendix at 7-19.

[¶ 34] Additionally, Appellants presented no evidence to the district court that either Billings Clinic or Medcenter One made any false representations, concealed any material facts, or engaged in any deceptive conduct. See Order on Motion for Summary Judgment, Appellants’ Appendix at 208. On appeal, the only reference Appellants make to communications with Billings Clinic or Medcenter One is a single communication with a Medcenter One representative. Appellants make no allegations as to Billings Clinic, other than to state Billings Clinic requested payment for the medical services rendered to Todd Hayden. See Appellants’ Brief at ¶ 55. Appellants allege the payment request conveyed the impression that they would be or were responsible for paying the medical bills, and the request induced the federal court action. Appellants do not allege “affirmative deception”; nor can they allege the Haydens would not have been responsible for Todd Hayden’s medical bills as the co-conservators and co-guardians of Todd Hayden. The equitable estoppel claim fails.

V. Finally, the district court did not err in dismissing Appellants’ common fund doctrine claim.

[¶ 35] Under the common fund doctrine, “[i]n a rare exception to the American rule that parties bear their own costs in litigation, a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney fees from the fund as a whole.” Ritter, Laber, & Assoc. v. Koch Oil, 2004 ND 117, ¶ 27, 680 N.W.2d 634. As the district court noted, most courts agree a hospital which has rendered services to a patient is not required to pay a proportionate share of attorney fees arising

out of future lawsuits brought by the patient. See, e.g., Wendling v. S. Ill. Hosp. Servs., 950 N.E.2d 646 (Ill. 2011). Appellants cite case law in which hospitals secured liens against judgments and settlements, after which the patient's attorney sought attorney's fees from the hospital. See, e.g., Bishop v. Burgard, 764 N.E.2d 24 (Ill. 2002). Here, as the district court properly noted, neither Medcenter One nor Billings Clinic has a hospital lien against Todd Hayden. Billings Clinic and Arthur and Joy Lynn Hayden, as co-conservators and co-guardians of Todd Hayden, were in a debtor/creditor relationship, and the common fund doctrine is inapplicable. See Lynch v. Deaconess Med. Ctr., 776 P.2d 681, 684 (Wash. 1989). Appellants have cited no cogent authority in support of their position.

CONCLUSION

[¶ 36] On the entire record, the district court properly granted summary judgment. The district court did not err in dismissing Appellants' claims in their entirety. Billings Clinic respectfully requests that the order and judgment of the district court be in all respects affirmed.

Dated at Bismarck, North Dakota, this 12th day of November, 2012.

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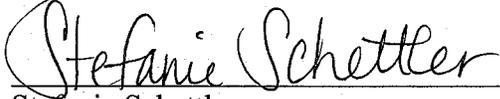
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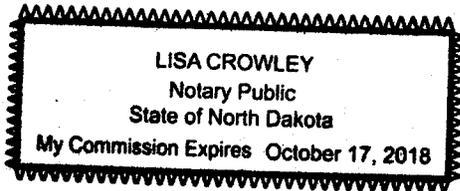
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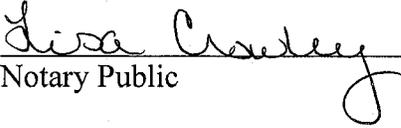
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Stefanie Schettler

Subscribed and sworn to before me this 12th day of November, 2012.





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