[Cite as *Gibsonburg Health, L.L.C. v. Miniet,* 2015-Ohio-1863.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Gibsonburg Health, LLC	Court of Appeals No. S-14-023
Appellee	Trial Court No. CVF 1300168
v.	
Elena Miniet	**DECISION AND JUDGMENT**
Appellant	Decided: May 15, 2015

* * * * *

Corey J. Speweik, for appellee.

Stephen D. Hartman and Khary L. Hanible, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Elena Miniet, appeals the decision from the Sandusky County Court, District 2, denying her motion to dismiss and issuing a judgment against her in the amount of $13,837 for unjust enrichment. For the reasons that follow, we affirm.

{¶ 2} Appellant had been a resident of the Windsor Lane Health Care facility since 2008. In August of 2012, appellant lost her Medicaid benefits and did not pay the facility from October 2012 through November of 2013, when she was discharged and moved to another facility. Appellee brought suit for breach of contract, unjust enrichment, quantum meruit, account, account stated, trespass to chattels and damages in the amount of $13,837. The trial court ruled in favor of appellee, finding that appellant had been unjustly enriched for the time she stayed at appellee's facility without paying. It is from this decision that appellant now appeals.

{¶ 3} Appellant brings one assignment of error:

> 1: THE WOODVILLE TRIAL COURT COMMITTED ERROR WHEN IT ISSUED AN ORDER DENYING MS. MINIET'S MOTION TO DISMISS AND WHEN IT ISSUED A JUDGMENT IN FAVOR OF PLAINTIFF GIBSONBURG HEALTH LLC IN THE AMOUNT OF $13,837.

{¶ 4} Appellant had filed with the trial court a Civ.R. 12(B)(6) motion to dismiss for failing to state a claim upon which relief can be granted. The motion was denied by the trial court. The standard of review this court employs with motions to dismiss is abuse of discretion. *Ottawa Hills v. Afjeh,* 6th Dist. Lucas No. L-10-1353, 2012-Ohio-125. In conducting the review, this court presumes that all factual allegations are true, and makes all reasonable inferences in a light most favorable to the non-movant. *Mitchell v. Lawson Milk Co.,* 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). For a

complaint to be dismissed "it must appear beyond doubt that plaintiff can prove no set of facts warranting a recovery." *Whitetail Orchard, LLC v. Anadell,* 6th Dist. Erie No. E-13-064, 2014-Ohio-2110, ¶ 8, quoting *Mitchell, supra,* at 192.

{¶ 5} Denying motions to dismiss has always been well within the discretion of the trial court. *Procter v. Hackenberger,* 6th Dist. Wood No. WD-05-059, 2006-Ohio-3387. Appellee raised the issues of breach of contract and unjust enrichment before the trial court. Appellant alleges that there was no contract, as appellant never signed it. If this is found to be true, then appellee may pursue recovery for unjust enrichment. If it is found that a contract did exist then unjust enrichment does not apply. *See Donald Harris Law Firm v. Dwight-Killian,* 166 Ohio App.3d 786, 2006-Ohio-2347, 853 N.E.2d 364, ¶ 14 (6th Dist.) ("[A]bsent fraud or illegality, a party to an express agreement may not bring a claim for unjust enrichment.").

{¶ 6} Viewing the allegations in a light most favorable to appellee, there was a question of fact about whether or not a contract had been formed, and the trial court did not abuse its discretion by denying the motion to dismiss.

{¶ 7} Next, we must examine if appellant's due process rights were violated. After denying the motion to dismiss, the trial court sent notice to both parties with the decision and the date of the hearing on the merits. However, due to an error, the court had an incorrect address for appellant's counsel. Counsel did not receive the court's decision and notice of the hearing date until six days before the scheduled hearing.

Under Civ.R. 12(A), appellant is allowed fourteen days after denial of a motion to dismiss to answer the original complaint, which appellant argues she was not able to do.

{¶ 8} The Ohio Supreme Court has found that "[s]ervice of process by certified mail under the Civil Rules is consistent with due process standards where it is reasonably calculated to give interested parties notice of a pending action." *Mitchell v. Mitchell,* 64 Ohio St.2d 49, 413 N.E.2d 1182 (1980), paragraph two of the syllabus. The Supreme Court also determined that "an entry of the date of trial on the court's docket constitutes reasonable, constructive notice of that fact." *Ohio Valley Radiology Assocs., Inc. v. Ohio Valley Hosp. Ass'n,* 28 Ohio St.3d 118, 502 N.E.2d 599 (1986).

{¶ 9} While the Supreme Court declined to make notice by the court's docket the general rule for providing notice, the court found that when a party gets no other form of notice "they were at least entitled to the constructive notice that comes from the court's setting down the trial date upon its docket." *Id.* at 124. *See also Nalbach v. Cacioppo,* 11th Dist. Trumbull No. 2001-T-0062, 2002 WL 32704 (Jan. 11, 2002), and *Clelland v. Cartman,* 11th Dist. Lake No. 2009-L-024, 2009-Ohio-6514, ¶ 27.

{¶ 10} Applying the ruling from *Ohio Valley Radiology,* we find that appellant's due process was not violated. The date of the hearing had been on the court's docket for over a month before appellant's counsel received actual notice. This court finds that this constitutes adequate notice to satisfy appellant's right to due process under the facts of this case. Accordingly, we find appellant's assignment of error not well-taken.

{¶ 11} The decision of the Sandusky County Court, District 2, is affirmed.

Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE