

STATE OF VERMONT
WINDSOR COUNTY, SS

Sullivan County Health Care
Plaintiff

v.

Rachel Eastman by her Temporary Guardian
Beth L. Eastman
Defendant

SUPERIOR COURT
Docket No. 121-2-09 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT AND MOTION FOR
SANCTIONS FOR NON-COMPLIANCE WITH MEDIATION

This is an action on a debt for health care services. Plaintiff has moved for summary judgment in a pleading filed August 3, 2009. Defendant has not responded.

Undisputed Facts

Rachel Eastman, by her temporary guardian, Beth Eastman, was admitted to the Sullivan County Health Care (SCHC) facility as an inpatient on May 9, 2008. Rachel Eastman received services from SCHC as a resident in their facility.

Upon admission, Beth Sullivan signed an admission agreement, as guardian of Rachel Eastman. The admission agreement obligated the resident or the resident's guardian to pay for services provided by SCHC within 20 days of billing. The agreement also obligated the resident and/or guardian to seek assistance from the state Medicaid program and any third party insurer which might pay a portion of the resident's bill.

Rachel Eastman was discharged from SCHC on November 1, 2008 for failure to pay her bill and failure to apply for Medicaid. At present, despite demand for payment, the unpaid balance on Rachel Eastman's account is \$36,832.98, exclusive of late fees, attorney's fees and costs.

Multiple attempts were made by Plaintiff to schedule mediation in this matter in compliance with the requirements of V.R.C.P. 16.3 and the Court Order concerning ADR dated August 5, 2009. After many unsuccessful attempts to coordinate a date with defendant, a date for mediation of September 2, 2009 was selected by Plaintiff and duly noticed pursuant to V.R.C.P. 5 to Defendant. Defendant did not appear at the mediation. Plaintiff has filed for sanctions, to which Defendant has not responded.

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Plaintiff has incurred attorneys fees and costs attending the scheduled mediation. Plaintiff claims attorney's fees and costs concerning the mediation and preparation of the motion for sanctions for failure to attend the mediation in the amount of \$837.48.

Conclusions of Law

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). The party moving for summary judgment has the burden of demonstrating that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). The non-moving party has the burden of setting forth specific facts showing a genuine dispute for trial. V.R.C.P. 56(e). The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citation omitted). Summary judgment is mandated where the non-moving party fails to make a showing sufficient to establish the existence of an element essential to his or her case, and on which she has the burden of proof at trial. *Poplaski v. Lamphere*, 152 Vt. 251, 254-55 (1989); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Here, the uncontested facts show that an express contract for services existed between SCHC and Rachel Eastman. SCHC provided the services, and the terms of the contract required Rachel Eastman to pay for the services she received. Ms. Eastman has subsequently breached the contract by failing to pay for the services provided to her. Since SCHC is entitled to enforcement of the payment terms of the contract, *Cass-Warner Corp. v. Brickman*, 126 Vt. 329, 337 (1967), and since Ms. Eastman has not established any reason why summary judgment should not be granted, SCHC is entitled to judgment as a matter of law.

Plaintiff's motion is styled as a motion for partial summary judgment. However, Plaintiff's complaint seeks only the monetary relief which is the subject of this motion. Further, no counterclaim has been asserted. Accordingly, the court views the present motion as dispositive of the case, as all claims are resolved by the motion.

V.R.C.P. 16.3(h) provides that the Court may impose sanctions for failure of a party to appear at or participate in required ADR proceedings. Here, an ADR order was signed by the Court on August 5, 2009. Defendant neither complied with the order nor appeared at the noticed ADR proceeding, and further has not opposed the motion for sanctions.

Rule 16.3(h) allows for the imposition of reasonable expenses, including attorney's fees, in the event of non-appearance. Here, the Court finds \$500 to be the reasonable expenses incurred as a result of Defendant's failure to appear, and such sum is awarded to Plaintiff as a sanction for Defendant's non-appearance.

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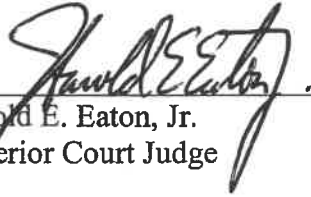
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Under V.R.C.P. 16.3(h), the Court may also impose other sanctions as appropriate, including rendering a decision or judgment by default. In the present case, the failure of Defendant to participate in the ADR as ordered by the Court, or to advance any reason for her non-appearance even after sanctions were sought, is an additional reason why judgment should be granted to Plaintiff.

ORDER

There being no disputed issues of material fact and Plaintiff having established an entitlement to judgment as a matter of, judgment is hereby **GRANTED** to Plaintiff. Plaintiff's motion for sanctions is **GRANTED** and \$500 is awarded to Plaintiff in sanction for Defendant's failure to appear at mediation. Plaintiff to submit affidavit of late fees, attorney's fees, costs along with a proposed judgment order on or before October 1, 2009. The \$500 sanction is to appear as a line item in the costs submitted and in the judgment order.

Dated at Woodstock this 21st day of September, 2009.



Harold E. Eaton, Jr.
Superior Court Judge

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