In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

MIDWEST NEUROSURGEONS, LLC, AND MIDWEST SURGERY CENTER, LLC,	)	No. ED113376
Respondents,	)	
v.	)	
SIMON JOHN CORT,	)	Filed: December 23, 2025
Appellant.	)	

Appeal from the Circuit Court of Cape Girardeau County
The Honorable Julia A. Koester, Judge

Introduction

Simon John Cort (Cort) appeals from the judgment of the associate circuit court entered in favor of Midwest Neurosurgeons, LLC and Midwest Surgery Center, LLC (together, Midwest), in their suit for damages against Cort. On appeal, Cort raises issues related to the trial court's denial of his motions for continuance, motion to dismiss, and counterclaim. Because we find that some of the claims against him were barred by the

statute of limitations, we reverse and remand for the trial court to enter judgment in favor of Cort in part and Midwest Neurosurgeons, LLC in part.

Background and Procedure

On July 17, 2024, Midwest filed a verified petition for damages against Cort claiming breach of contract, suit on account, and unjust enrichment. In its petition, Midwest asserted that on May 1, 2013, Cort entered into a financial agreement with Midwest for medical services and treatment, in which Cort agreed to pay for medical treatment. Midwest provided Cort with medical and surgical services and treatment between May 1, 2013 and February 7, 2017, but there was a remaining balance of $9,005.31 that Cort had not paid. Midwest sought judgment in the amount of the remaining balance, plus interest, costs, and fees. Midwest attached a copy of the May 1, 2013 financial agreement, which stated it was between Cort and Midwest Neurosurgeons, LLC (Midwest Neurosurgeons).

On November 4, 2024, Cort filed an amended motion to dismiss for failure to state a claim. As relevant to the issues raised on appeal, he sought dismissal of the claims by Midwest Surgery Center, LLC (Midwest Surgery), asserting that, while he had entered into a financial agreement with Midwest Neurosurgeons, he had not entered into a contract with Midwest Surgery. He further argued that the claims by Midwest Surgery were barred by the statute of limitations. During discovery, Cort submitted a copy of his patient ledger from Midwest Neurosurgeons, showing he still owed $398.70 for medical services; and his separate patient ledger from Midwest Surgery, showing that he still owed $8,584.00 for medical services.

After the trial was set for February 3, 2025, Cort sent interrogatories and requests for admissions and for production of documents to Midwest. Cort filed two motions for continuance to allow time for Midwest to respond to his discovery requests, but the trial court denied the first motion and did not rule on the second before trial began. At the start of trial, Cort acknowledged his outstanding motions to dismiss and for a continuance but stated he would like trial to proceed on all issues.

During the trial in February of 2025, Midwest presented the following evidence. A representative for Midwest's accounts-receivable department (Representative) testified that Cort entered into a contract with both Midwest Neurosurgeons and Midwest Surgery on May 1, 2013 and again on February 17, 2016, in which he accepted financial responsibility for medical services and for collection expenses, including court costs, interest, and attorney's fees. The trial court admitted the two contracts into the record, both of which named only Cort and Midwest Neurosurgeons as parties to the contract. Representative testified that both Midwest Neurosurgeons and Midwest Surgery provided medical services to Cort between May 1, 2013 and February 7, 2017,[1] for which he still owed a balance of $9,005.31.

The trial court then heard arguments on Cort's motion to dismiss and counterclaim, which were taken with the case. Regarding his motion to dismiss, Cort argued that his

[1] Representative indicated that Midwest provided two periods of treatment. First, Cort received medical treatment starting in 2013, for which an unpaid balance remained. Second, Cort received treatment following a 2015 car accident, but this medical treatment had been paid for or written off in its entirety by a lump-sum settlement resolving Cort's personal-injury lawsuit stemming from the car accident.

contract with Midwest Neurosurgeons did not include Midwest Surgery, and the medical charges submitted by Midwest Surgery were barred by both the five- and 10-year statutes of limitations listed in Section 516.120(1) and Section 516.110(1).[2] Midwest responded that the applicable statute of limitations was 10 years and that it did not start to run until Cort's final treatment in 2017, and thus their 2024 petition was not barred.

The trial court entered judgment in favor of Midwest and against Cort on "all issues" and entered judgment in the amount as follows: principal sum: $9,005.31; accrued interest: $447.09; filing fee: $60.50; service fee: $50; and attorney's fees: $250.00; for a total judgment of $9,812.90. This appeal follows.

Discussion

Cort raises five points on appeal. Because his fourth point is dispositive, we discuss only that point.

Point IV – Midwest Surgery's Claims Against Cort Are Barred By The Statute of Limitations

In his fourth point on appeal, Cort argues the trial court erred in denying his amended motion to dismiss and entering judgment in favor of Midwest on all issues because Midwest Surgery's claims against him were barred by the statute of limitations. We agree.

We will affirm the judgment of the trial court unless it is not supported by substantial evidence, it is against the weight of the evidence, it erroneously declares the law, or it erroneously applies the law. *DiGregorio Food Products, Inc. v. Racanelli*, 609 S.W.3d

[2] All statutory references are to RSMo. cum. supp. 2024, unless otherwise indicated.

478, 480 (Mo. banc 2020). Whether a claim is barred by the applicable statute of limitations is a question of law that this Court reviews *de novo*. *Id.*

"Missouri has two statutes of limitation relating generally to contract actions: sections 516.110(1) and 516.120[(1)]." *Id.* (citation omitted). Section 516.120(1) provides that a plaintiff must bring "[a]ll actions upon contracts, obligations or liabilities, express or implied, except those mentioned in section 516.110" within five years. Section 516.110(1) extends the time to bring "[a]n action upon any writing … for the payment of money or property" to 10 years. *Id.*

In 2024, Midwest Neurosurgeons and Midwest Surgery filed a joint petition for damages against Cort for unpaid medical bills that accrued between 2013 and 2017. Jointly, they claimed breach of contract, suit on account, and unjust enrichment. Because there was a written contract for the payment of money between Midwest Neurosurgeons and Cort, there is no question here that the 10-year statute of limitations applies to their claim for breach of contract. Cort does not challenge the timeliness of Midwest Neurosurgeons' claims against him. Reviewing Midwest Neurosurgeons' patient ledgers for Cort, he still owes $398.70 for medical services, plus court costs, interest, and attorney's fees.

Midwest Neurosurgeons aside, the issue here is which statute of limitations applied to the claims brought by Midwest Surgery. The record is clear that there was no written contract between Cort and Midwest Surgery for the payment of money. Midwest Surgery is not mentioned by name or reference anywhere in either the 2013 or the 2016 financial agreements between Cort and Midwest Neurosurgeons. Without a written contract for the

payment of money, the 10-year statute of limitations does not apply to Midwest Surgery's claims against Cort. *See DiGregorio*, 609 S.W.3d at 481-82.

Nevertheless, at oral argument, Midwest argued that that contract between Cort and Midwest Neurosurgeons included Midwest Surgery. This argument is unavailing. Generally, a defendant who has a contract with one party has no obligation to a plaintiff who is not a party to the contract. *Owens v. Unified Investigations & Sciences, Inc.*, 166 S.W.3d 89, 92 (Mo. App. E.D. 2005). This privity of contract allows the parties to the contract to sue one another, but prevents a third party from doing so. *Ebert v. Ebert*, 627 S.W.3d 571, 585-86 (Mo. App. E.D. 2021). The general rule of privity is intended to protect contractual parties from obligations they have not voluntarily assumed, and thus a third party cannot acquire rights arising under a contract to which he or she is not a party. *Id.*

To the extent Midwest argues that Midwest Surgery and Midwest Neurosurgeons can be treated as one entity for purposes of privity of contract, we disagree. While it appears from the record that Midwest Neurosurgeons and Midwest Surgery have cross-over in staffing, the record establishes that they are legally separate businesses. Notably, Midwest's petition identified Midwest Neurosurgeons and Midwest Surgery as separately recorded LLCs. Moreover, Midwest Neurosurgeons and Midwest Surgery did not perform the same medical treatments, and Midwest Surgery billed Cort separately for their different medical services, for which they could have entered into a separate financial agreement with Cort. Under these facts, Cort would not know that entering a contract with one company obligated him to the other. *See Ebert*, 627 S.W.3d at 586 (purpose of rule of privity is to protect contractual parties from obligations they have not voluntarily assumed).

Midwest Surgery cannot be considered a party to Cort's financial agreement with Midwest Neurosurgeons, and thus Midwest Surgery cannot sue for a breach of that written contract. *See id.* (third party cannot acquire rights arising under contract to which it is not party). Because Cort did not have a written contract to pay money to Midwest Surgery, Section 516.110(1)'s 10-year statute of limitations does not apply for Midwest Surgery's claims against him.

Midwest Surgery's remaining claims for suit on account[3] and unjust enrichment both carry a five-year statute of limitations. *See DiGregorio*, 609 S.W.3d at 479-81 (applying five-year statute of limitations to petition for suit on account); *Royal Forest Condominium Owners's Ass'n*, 416 S.W.3d 370, 373 (Mo. App. E.D. 2013) (five-year statute of limitations applies to actions for unjust enrichment). Cort does not challenge Midwest's assertion that the statute of limitations runs from the date of the last medical treatment, which, here, was on February 7, 2017. The five-year statute of limitations for both of Midwest Surgery's claims for suit on account and unjust enrichment began to run on February 7, 2017 and expired five years later on February 7, 2022. Thus, Midwest Surgery's claims against Cort for suit on account and unjust enrichment filed on July 17, 2024 are both barred by the statute of limitations.

Midwest asserted during oral arguments that Cort did not raise the statute of limitations as an affirmative defense below, and thus this issue was not properly raised and

[3] Cort does not challenge the merits of Midwest's Surgery's suit on account on appeal, and thus we do not consider whether their claim was supported by substantial evidence in the record.

preserved for appeal. However, Cort did raise the issue in his amended motion to dismiss, and the trial court heard arguments on the statute of limitations at trial. It is true that the statute of limitations is an affirmative defense that should be raised in a responsive pleading. Rule 55.08. However, an exception to this pleading requirement allows a defendant to file a motion to dismiss for failure to state a claim when it appears from the face of the petition that an affirmative defense applies. *Banks v. Kansas City Area Trans. Authority*, 637 S.W.3d 431, 444 (Mo. App. W.D. 2021). Here, Cort filed a motion to dismiss for failure to state a claim on the basis that Midwest Surgery's claims against him were barred by the statute of limitations. It was clear from the face of Midwest's pleading and attached exhibits that Midwest Surgery's claims against Cort were filed out of time, as we discuss above. The trial court erred in denying Cort's motion to dismiss Midwest Surgery claims against him on these grounds and in entering judgment in favor of Midwest Surgery on its petition for damages against Cort.

Point IV is granted. Because we reverse on this issue, we need not consider Cort's remaining points on appeal.

Conclusion

We reverse and remand for the trial court to enter a judgment dismissing Midwest Surgery's claims against Cort as barred by the statute of limitations. Midwest Neurosurgeons' claim for breach of contract was not barred by the statute of limitations, and Cort owes payment for medical services in the amount of $398.70 plus interest, court

fees, and attorney's fees under their financial agreements. On remand, the trial court shall determine the amount owed to Midwest Neurosurgeons and enter judgment accordingly.



GARY M. GAERTNER, JR., JUDGE

Rebeca Navarro-McKelvey, P.J., and James M. Dowd, J., concur.