IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY FLORIDA

DAVID ROCHA, on behalf of himself and all others similarly situated,

Plaintiff,

v.

BAPTIST HEALTH SOUTH FLORIDA, INC.,

Defendant.
_____/

CASE NO.: 2020-CA-004343

Judicial Section: CA27

ORDER GRANTING DEFENDANT'S MOTION FOR RECONSIDERATION AND ENTERING FINAL SUMMARY JUDGMENT FOR DEFENDANT

Docket Index Number:[1] 166 (Motion for Reconsideration).

THIS CAUSE came before the Court, on September 26, 2023, upon Defendant's Motion for Reconsideration of Order Granting Plaintiff's Motion for Rehearing Based on Recently Issued Decisions, filed May 19, 2023 (DE# 166) (the "Motion"). The hearing was conducted via Zoom, and a court reporter was present. The Court, having reviewed Defendant's Motion (DE# 166), Plaintiff's response thereto (DE# 171), and Defendant's reply (DE# 172), and having heard argument of counsel for both parties, it is hereby **ORDERED[2] AND ADJUDGED** as follows:

---

[1] In compliance with Administrative Order 22-02, the Docket Index Number is provided with respect to the Motion for Reconsideration.

[2] At the conclusion of the hearing the Court orally announced its rulings on the record and requested that Defendant's Counsel prepare an initial draft of the written order. The Court then carefully reviewed and edited counsel's draft, ensuring that this Order accurately reflects its independent and unexaggerated judgment. *See, e.g., Corp. Mgmt Advisors, Inc. v. Boghos*, 756, So.2d 246, 249 (Fla. 5th DCA 2000) ("a judge's practice of delegating the task of drafting sensitive, dispositive orders to counsel, and then uncritically adopting the orders nearly verbatim would belie the appearance of justice and creates the potential for overreaching and exaggeration on the part of the attorney preparing findings of fact"); *Perlow v. Berg-Perlow*, 875 So. 2d 383, 390 (Fla. 2004) ("[w]hen the trial judge accepts verbatim a proposed final judgment submitted by one party without an opportunity for comments or objections by the other party, there is an appearance that the trial judge did not exercise his or her independent judgment in the case. This

1. This action concerns the receipt by Plaintiff of one letter and two phone calls that are alleged to have been seeking payment for medical care provided on July 16, 2019, to Plaintiff. On May 25, 2019, Plaintiff was injured by being hit in the head and knocked unconscious by a falling tree while working for a grove clearing company. Defendant sought medical treatment that same day from an urgent care facility and from a hospital. Almost two months later, on July 16, 2019, Plaintiff again sought medical care, this time from a different hospital. The visit to a hospital on July 16, 2019, led to the three alleged communications at issue in this case. Plaintiff claims that, as an injured worker, he is not liable for his medical expenses and that, instead, his employer is legally responsible under Florida's Workers' Compensation laws. Plaintiff further contends that the three communications at issue violated the Florida Consumer Collection Practices Act (FCCPA) because they allegedly misrepresented that Plaintiff was liable for his medical expenses when he is not. *See* Fla. Stat. § 559.72(9) (2023). If a violation of the FCCPA is proven, the FCCPA provides a right to recover "actual damages and . . . additional statutory damages as the court may allow, but not exceeding $1,000, together with court costs and reasonable attorneys' fees . . . ." *See* Fla. Stat. § 559.77(2) (2023).

2. On January 26, 2023, this Court entered summary judgment for Defendant on the grounds that Plaintiff "made no payments as a result of the communications at issue and suffered no other economic or non-economic harm." *See Saleh v. Miami Gardens Square One, Inc.*, 353 So. 3d 1253, 1255 (Fla. 3d DCA 2023); *Trichell v. Midland Credit Mgmt., Inc.*, 964 F. 3d 990

---

is especially true when the judge has made no findings or conclusions on the record that would form the basis for the party's proposed final judgment. This type of proceeding is fair to neither parties involved in a particular case nor our judicial system ... the better practice would be for the trial judge to make some pronouncements on the record of his or her findings and conclusion in order to give guidance for preparation of the proposed final judgment"). Before rendering this Order, the Court also considered Plaintiff's objections to the proposed order e-filed 9/29/23.

(11th Cir. 2020); *Davis v. Prof'l Parking Mgmt. Corp.*, No. 0:22-CV-61070-KMM, 2022 WL 17549961, at *3 (S.D. Fla. Oct. 31, 2022). The Court determined that Plaintiff lacked standing because he "did not suffer 'an injury in fact, which is concrete, distinct and palpable . . . .'" (DE# 145, ¶ 3).

3. On February 10, 2023, Plaintiff sought rehearing (DE# 151) and argued that he has standing based on "wasted time" and "emotional distress" under *Walters v. Fast AC, LLC*, 60 F.4th 642 (11th Cir. 2023), and *Toste v. Beach Club at Fontainebleau Park Condo. Ass'n, Inc.*, No. 21-14348, 2022 WL 4091738 (11th Cir. Sept. 7, 2022). On May 5, 2023, this Court granted rehearing. (DE# 163). In that Order, the Court rejected Rocha's requested amendment to add a claim under subsection (7) of the FCCPA based on "Plaintiff's concession that a cause of action [under such subsection] does not lie under the facts of this case" but, otherwise, permitted Plaintiff to amend his complaint to "specify his allegations of actual damages . . . ." (DE# 163). On May 11, 2023, Plaintiff filed his amended pleading.[3] (DE# 165). In paragraph 20 of Plaintiff's amended pleading, Plaintiff alleged that Defendant's conduct was "an intrusion upon Plaintiff's right to privacy." (DE# 165, ¶ 20). Plaintiff alleged the following injuries based on his receipt of a letter and two phone calls: (a) mental distress; (b) medical expenses; (c) the cost of hiring a lawyer to defend the alleged unlawful collection efforts; and (d) lost time spent hiring and conferring with his lawyer. (DE# 165, ¶ 20).

4. On May 19, 2023, Defendant filed the instant Motion seeking reconsideration due to the decisions of *Pet Supermarket, Inc. v. Eldridge*, 360 So. 3d 1201 (Fla. 3d DCA 2023), issued May 10, 2023; *Pucillo v. Nat'l Credit Sys., Inc.*, 66 F.4th 634 (7th Cir. 2023), issued April 26,

---

[3] Plaintiff's amended pleading was entitled "Corrected Amended Class Action Complaint." (DE# 165).

2023; and *Van Vleck v. Leikin, Ingber, & Winters, P.C.*, No. 22-1859, 2023 WL 3123696 (6th Cir. 2023), issued Apr. 27, 2023. Based on these authorities (and particularly *Pet Supermarket*, which is controlling on this Court), this Court permitted briefing and heard argument to determine whether Plaintiff could meet the test of "concreteness for standing purposes" by showing he "suffer[ed] an intangible harm with a 'close relationship' to the harm associated with a common law analogue." *Pet Supermarket*, 360 So. 3d at 1206 (citing *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) (explaining that as to "the concrete-harm requirement in particular, [the *Spokeo*] . . . inquiry asks whether plaintiffs have identified a close historical or common law analogue for their asserted injury")).

5. The Court, having previously rejected the common law analogs of (i) fraud/misrepresentation due to Plaintiff's lack of detrimental reliance (no payment or partial payment) under *Trichell v. Midland Credit Mgmt., Inc.*, 964 F. 3d 990 (11th Cir. 2020) *see* DE# 145, and (ii) harassment due to Plaintiff's concession that there were no facts to support a harassment claim, *see* DE# 163, the only common law analog left (as set forth in Plaintiff's amended pleading) was a common law claim for invasion of privacy. (*See* DE# 165, at ¶ 20). The Court deems Plaintiff's common law analog to an invasion of his right to privacy fails under *Pet Supermarket*, which requires such an intrusion to "be one that would be 'highly offensive to a reasonable person.' . . . that is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.'" *Id.* at 1207 (citations omitted). The Court concludes that no reasonable juror could conclude that sending one letter and making two phone calls rises to the level of the offensiveness, outrageousness and indecency required for Plaintiff to have standing under *Pet Supermarket*. The Court further holds that the harms that could be redressed by the alleged common law analog of invasion of privacy are not akin to the alleged harms sought to be

redressed by Plaintiff in this action.

6. At the hearing, the Court requested multiple times for Plaintiff to identify a common law analog with a close relationship to the harms at issue so that the Court could conduct any further analysis Plaintiff might request with respect to the *Pet Supermarket* framework. Plaintiff was unable to do so, acknowledged that the Court had earlier decided that privacy was not an applicable analog and argued, instead, that the intangible harms were "actual damages" without the need for such an analog. The Court rejects Plaintiff's argument for several reasons.

7. If the Court were writing on a clean slate perhaps it would reach a different conclusion. Plaintiff persuasively argues that the Florida legislature made any person who fails to comply with any provision of section 559.72 of the Florida Consumer Collection Practices Act "liable for actual damages . . . ." § 559.77(2), Fla. Stat. (2023). Plaintiff then argues that, under the plain language of the statute, the evidence of his emotional or mental distress and lost time dealing with the communications at issue are "actual damages" upon which a reasonable fact-finder could award him compensation.

8. But the slate is – to say the least - far from clean. The Florida legislature has itself mandated that in "applying and construing [section 559.77], due consideration and great weight shall be given to the interpretations of the . . . federal courts relating to the federal Fair Debt Collection Practices Act." § 559.77(5), Fla. Stat. (2023).

9. In the *Pet Supermarket* case, the Third DCA expressly followed the standing analysis set forth in *TransUnion LLC v. Ramirez*, —— U.S. ——, 141 S. Ct. 2190, 2204, 210 L.Ed.2d 568 (2021). That analysis requires that – for statutorily created claims – "where a plaintiff suffers an intangible harm," they must identify a "close historical or common-law analogue for their asserted injury." *See Pet Supermarket*, at 1206. Here, the historical or common-law analogue

must be identified under Florida law. The Court is obligated to follow these authorities, and to give "great weight" to the interpretations of the federal courts on these issues. This Court is legally unable to provide redress for whatever emotional distress and lost time Plaintiff may have incurred, unmoored to a traditional Florida common-law cause of action.

10. In other words, under this standing analysis, it is not enough for Plaintiff to simply present evidence of emotional distress and lost time and to declare that it is enough for a reasonable juror to find "actual damages" in his favor. Instead, Plaintiff must identify a Florida common-law analogue which would provide redress for the injuries he swears he has suffered.

11. Not only does the conclude that Plaintiff has no standing under a right-to-privacy common-law analogue under *Pet Supermarket*, but also the record evidence in this case as to Plaintiff's claimed harms is of the same kind that has been rejected as a basis for standing in other similar cases. As to the alleged mental distress, the record evidence demonstrates that Plaintiff testified at his deposition that he "was basically freaking out," he "d[idn't] know what's going on," and he "f[elt]" very stressed." (Rocha Depo. 48: 9–11, 49:5–14). Additionally, Plaintiff testified that, after receiving the bill, he was "stressed about getting something that [he wasn't] supposed to be getting and not knowing how it's going to be resolved." *Id.* at 100: 3–16. This evidence amounts to no more than the confusion, fear and worry that was rejected as a basis for standing in *Van Vleck*, 2023 WL 3123696, *2, 6. (no standing for immunocompromised plaintiff served with process by in-person delivery during stay-at-home orders, who claimed he suffered fear that he had been exposed to COVID "spreader" and "cried after being served with process because he was afraid that he or his parents, with whom he lived, could have contracted COVID-19 from the process server"); *Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 45 F. 4th 816, 820 (5th Cir. 2022) (no standing for plaintiff who claimed that a misleading letter "'created a significant risk of

harm' in that she might have paid her time-barred debts" and that it "misled and confused her about the enforceability of her debt"); *Pierre v. Midland Credit Mgmt., Inc.*, 29 F. 4th 934, 937 (7th Cir. 2022) (no standing for plaintiff who was "surprised and confused" by letter concerning a time-barred debt); *Pucillo*, 66 F. 4th at 636-637 (no standing for plaintiff who received communications seeking payment of a debt that had been discharged in bankruptcy, was "confused and alarmed," feared that his bankruptcy "may have been futile and that he did not have the right to a fresh start that Congress had granted him," "'feared' that 'the nonpayment of the debt would impact [his] credit,'" and was "'scared' [] because he 'thought that it would take even longer to improve [his] credit"). Importantly, there is no record evidence in this case that Plaintiff's alleged emotional injury manifested itself in any physical symptoms. *See Toste*, 2022 WL 4091738 at *3 (Plaintiff suffered "emotional distress manifesting in 'loss of sleep, extreme stress, frustration, anger, agitation, and anxiety.'"). Further, the record evidence was that Plaintiff's treatment by a psychologist was caused by the workplace injury - - being knocked unconscious after being hit in the head by a tree (Plaintiff explained: "being close to death traumatizes you") - - and not because of the communications at issue. Plaintiff merely testified that the communications "did not help." (Rocha Depo. 98:22-24, 101:17-19). The psychologist plaintiff saw for his workers' compensation case opined that Plaintiff's emotional distress was 100% attributable to his workplace injury and 0% attributable to "other factors." (DE# 154). Based on this evidence, no reasonable juror could find that the mental health treatment sought and obtained by Plaintiff was related to the three collection communications at issue in this case.

12. As to alleged medical expenses, there is no record evidence of any medical expenses. Further, Plaintiff's theory of the case is that any such expenses were covered by his employer in the workers' compensation case and that he is not liable for them regardless. (*See* DE#

165 at ¶ 9 "Florida's Workers' Compensation Statute (F.S. Chapter 440 et seq.) prohibits medical providers from collecting or receiving payment from employees that are injured in the course and scope of their employment. Injured employees are thus not liable for payment of these medical services."). In fact, the record evidence is that Plaintiff settled his workers' compensation case for $100,000.00.

13. As to the cost of hiring a lawyer and the time spent conferring with the lawyer, the record evidence is that Plaintiff hired his workers' compensation attorney about one month after his injury and *before* he went to the hospital on July 16, 2019, which is the hospital visit that resulted (months later) in the letter and two phone calls at issue. (Rocha Depo. 93:1-18). There is, thus, no causation (or, in the language of standing, traceability) between these events. Plaintiff further testified that his workers' compensation attorney referred this action to his current counsel. (Rocha Depo. 77:21-24). There is thus no record evidence upon which a reasonable juror could conclude that Rocha incurred any expense with respect to any lawyer that can be attributed to the communications at issue.

14. Further, Plaintiff's deposition testimony was that his "wasted time" was in getting ready for his deposition in this action. (Rocha Depo. 99:19-100:2). After this Court entered summary judgment for Defendant, Plaintiff submitted an affidavit from his workers' compensation counsel stating that Plaintiff had "contacted" her once and "consulted with" her three times about the bill. (DE# 151 at Ex. A). The record evidence as to these alleged harms is no different than that rejected in *Perez*, 45 F. 4th at 825 (rejecting standing for plaintiff who claimed injury for "the time she wasted by consulting with her lawyer after receiving [a] letter"); *Pierre*, 29 F.4th at 939 (plaintiff lacked standing even though she called the company to contest the debt and hired a lawyer because she "didn't make a payment, promise to do so, or other-wise act to her detriment");

and *Van Vleck* at *7 (no standing even though plaintiff hired a lawyer to defend himself).

15. The Court concludes that the record evidence as to Plaintiff's claimed harms is short of that in *Toste*, at *3 (standing where plaintiff had "significant time wasted 'to determine whether the amounts sought were correct, and whether to make payments in response to the communications, contesting and preparing to contest the amounts sought in each of Defendants' communications, taking time away from [his] work and personal life'" and in "retaining and working with an attorney and an accountant to identify the defendants' improper charges and miscalculations"). Here, there is no evidence that Plaintiff spent any time with his lawyer trying to figure out if the amounts sought by Defendant were correct. The Court further recognizes that "a plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit." *Toste*, at *4 (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998)).

16. Accordingly, the Court determines that there is no genuine issue of material fact that Plaintiff lacks an injury in fact, which is concrete, distinct and palpable, and has failed to identify a common-law analogue sufficient to meet the *Pet Supermarket* framework. Therefore, Plaintiff lacks standing to pursue this action. The Motion (DE#166) is hereby GRANTED. Because the Court has found that Plaintiff lacks standing, FINAL SUMMARY JUDGMENT is hereby entered in favor of Defendant and against Plaintiff. Plaintiff shall take nothing by this action, and Defendant shall go forth hence without day. The Court reserves jurisdiction to consider any timely-filed motions for attorneys' fees and/or court costs.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida, on this 9th day of OCTOBER, 2023.

Hon. Thomas J. Rebull
CIRCUIT JUDGE

cc: All counsel of record

FINAL ORDERS AS TO ALL PARTIES
ORS DISPOSITION
NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES
Judge's Initials TJR