

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01214 COA

CHAMPA NAGAPPA, M.D.

APPELLANT

v.

NORTH MISSISSIPPI HEALTH SERVICES

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. LEE J. HOWARD

COURT FROM WHICH APPEALED: CLAY COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

JIM WAIDE

VICTOR ISRAEL FLEITAS

ATTORNEYS FOR APPELLEE:

JOHN P. SNEED

JAMES W. CRAIG

NATURE OF THE CASE: BREACH OF CONTRACT

TRIAL COURT DISPOSITION: GRANT OF SUMMARY JUDGMENT IN FAVOR OF
APPELLEE

BEFORE FRAISER, C.J., BARBER, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

The Circuit Court of Clay County granted Summary Judgment to Defendant, North Mississippi Health Services (NMHS), in a breach of contract action brought by Champa Nagappa, M.D. NMHS was not the party with whom Dr. Nagappa contracted and the court found that it was not the real party in interest. Dr. Nagappa appeals, arguing that the separate corporation with whom she contracted was a mere instrumentality of NMHS, and that NMHS was the proper defendant. There was no evidence that would make a jury issue as to whether NMHS was the real party in interest. Therefore, we affirm. Accordingly, it is unnecessary to address other issues.

FACTS

Dr. Nagappa ran a solo practice for seven years as the only pediatrician in West Point, Mississippi. When she found the management aspects of running the business detracting from her practice of medicine and from her family, she approached an administrator of the Clay County Medical Center (CCMC), about becoming a salaried employee of the hospital. Dr. Nagappa also wanted CCMC to hire a second pediatrician with whom she could share call coverage.

CCMC is a wholly owned subsidiary of Appellee NMHS. CCMC established a pediatric clinic, the West Point Children's Clinic (Children's Clinic), which was operated by North Mississippi Family Medical Clinics, Inc. (FMC), another subsidiary of NMHS. FMC hired Dr. Nagappa's former staff to be staff for the Children's Clinic.

While FMC provided staff for the Children's Clinic, a corporation called Regional Medical Services, P.A.(RMS) provided the doctors for the Clinic. RMS is a professional medical association which contracts with medical centers like the Children's Clinic to provide doctors' services. RMS hired Dr. Nagappa and a second doctor, Dr. McCraw, for the Children's Clinic.

Dr. Nagappa negotiated her employment contract with officers of CCMC and RMS for over a year. Two people with whom she discussed her contract were Gerald Wages and John Hicks, who incorporated RMS and served as its officers. Wages and Hicks were also officers of NMHS, the parent corporation of CCMC and FMC, the corporations that owned and ran the Children's Clinic, respectively.

NMHS is a non profit tax exempt health care holding company and is the parent corporation of sixteen non profit and for profit corporations that provide institutional and non institutional health care services to the residents of northeast Mississippi and western Alabama. It owns no stock in RMS and has no control over the business affairs of RMS.

Dr. Nagappa worked at the clinic until October 31, 1992, a period of about 12 months. She resigned and moved with her husband, who began working at the University of Arkansas--Pine Bluff. On October 20, 1993, Dr. Nagappa brought suit solely against NMHS for breach of contract, alleging

that intolerable work conditions and failure of NMHS to perform contract obligations made her resignation unavoidable.

Dr. Nagappa admits that her contract was with RMS, but claims that she was told by employees of NMHS that RMS was simply an arm of NMHS, and structured as a different corporation to avoid violating Medicaid Regulations. She claims Wages and Hicks made promises to her regarding the employment of Dr. McCraw's wife as a nurse in the Clinic, and she relied on those promises in signing the contract. She argues that even though her contract says it was with RMS, that NMHS is the real party in interest, and she should be allowed to sue them for breach of contract. Summary judgment was granted NMHS on October 25, 1995.

DISCUSSION

I. General Principles

When reviewing grants of summary judgment, this Court applies a *de novo* standard of review. *Short v. Columbus Rubber and Gasket Co.*, 535 So. 2d 61, 63 (Miss. 1988).

A basic premise of corporate law is that a corporation possesses a separate identity from its shareholders, unless the corporation exists to perpetrate a fraud or is a mere instrumentality, agent, adjunct, or sham designed to subvert the ends of justice. *Johnson & Higgins of Mississippi, Inc. v. Commissioner of Insurance*, 321 So. 2d 281, 285 (Miss. 1975) Courts applying Mississippi law have repeatedly refused to disturb a corporation's separate identity without extraordinary circumstances. See, *MST, Inc. v. Mississippi Chemical Corp.*, 610 So. 2d 299 (Miss. 1992), *rehearing denied*, (1992), *Gray v. Edgewater Landing, Inc.*, 541 So. 2d 1044 (Miss. 1989), *North American Plastics, Inc. v. Inland Shoe Manufacturing Co., Inc.*, 592 F. Supp. 875 (N.D. Miss. 1984), *Johnson & Higgins of Mississippi, Inc. v. Commissioner of Insurance*, 321 So. 2d 281, 285 (Miss. 1975), *U.S. v. State Tax Comm.*, 505 F.2d 633 (5th Cir. 1974), *rehearing denied*, 541 F.2d 469 (5th Cir. 1976), *Houston Oil Field Material Co. v. Stuard*, 406 F.2d 1052 (5th Cir. 1969). However, if there is sufficient proof that a corporation exists to perpetrate a fraud or is a mere instrumentality, agent, adjunct, or sham designed to subvert the ends of justice, courts will disregard the corporation's identity and "pierce the corporate veil," allowing recovery from the responsible party, whether it be the individual shareholders of the corporation or its parent corporation. *Thames & Co. v. Eicher*, 373 So. 2d 1033 (Miss. 1979).

In 1989, the supreme court concluded that a breach of contract, without more (i.e. a showing of fraud) does not justify the disregard of the corporate identity. *Gray v. Edgewater Landing, Inc.*, 541 So. 2d 1044, 1047 (Miss. 1989). While in *Gray*, the plaintiff was seeking to pierce the veil to get to the shareholders, its reasoning is instructive on the issue of disregarding corporate identity to reach another corporate entity. The court stated that since contract liability arises from an essentially consensual relationship, courts generally decline to disregard the corporate entity, choosing instead to enforce the contract as written. *Gray*, 541 So. 2d at 1046. The court quoted *Grayson v. Nordic Constr. Co., Inc.*:

The attempt to hold another party liable where the claim asserted is of contractual origin presents difficulties. The question which must be met and answered is why one who contracted with a selected party and received the promise he bargained for should be

allowed to look to another merely because he is disappointed in the selected party's performance. The answer under contract law is that he may not hold the other liable without additional compelling facts.

Gray v. Edgewater Landing, Inc., 541 So. 2d 1044, 1047 (Miss. 1989), citing, *Grayson v. Nordic Constr. Co., Inc.*, 589 P.2d 283, 286 (1978).

Gray teaches that, to pierce the corporate veil, a party must present some credible evidence to demonstrate (a) some frustration of contractual expectations regarding the party to whom he looked for performance; (b) the flagrant disregard of corporate formalities by the defendant corporation and its principals; and (c) a demonstration of fraud or other equivalent misfeasance on the part of the corporate shareholder. *Gray*, 541 So. 2d at 1047. We will examine each of those points in order.

II. Application of Principles: Frustration of Contract Expectations

Dr. Nagappa's principal frustration argument is an alleged promise that "NMHS would take care of any problems" with nurse Terri McGraw, whose employment at the clinic was in possible violation of NMHS's nepotism rules. Mrs. McGraw was the wife of one of the doctors at the clinic. Dr. Nagappa cites problems with this nurse as one of the matters that compelled her to leave the clinic, as the nurse was allegedly convincing patients to see the nurse's husband instead of Dr. Nagappa.

The difficulties with this argument take several forms. If a contracting party fails to perform, a cause of action against that entity arises. What Dr. Nagappa must show is that having RMS instead of NMHS as the contracting entity frustrated her ability to enforce whatever rights she had.

First, Dr. Nagappa admitted she had no evidence that the nurse did what was alleged. On summary judgment, reliance on conclusory statements or allegations in the complaint are insufficient. "Once a party files a motion for summary judgment, the party opposing the motion 'may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.' Rule 56(e), *Mississippi Rules of Civil Procedure.*" *MST, Inc. v. Mississippi Chemical Corp.*, 610 So. 2d 299, 304 (Miss. 1992). The only evidence was from the depositions taken of at least two individuals, nurse Terri McGraw being one of them, which denied any such actions. Thus there was no dispute as to a material fact on the issue. Regardless of whether NMHS or RMS was the real party in interest, Dr. Nagappa has raised no fact question to create liability. Second, Dr. Nagappa's contract paid her a set salary, unrelated to the number of patients that she saw. Whether patients were steered elsewhere did not affect her compensation; if anything, the allegation constitutes a complaint she made the same amount of money for less work than she expected. Finally, the promise to "take care of any problems" is too nebulous to be enforceable. Dr. Nagappa does not allege she was led to understand this meant the nurse would be removed from her position if Dr. Nagappa became dissatisfied. Without some structure to the alleged promise, there is nothing to enforce. *See, First Money, Inc. v. Frisby*, 369 So. 2d 746, 751 (Miss. 1979).

III. Application of General Principles: Disregard of Corporate Formalities

Dr. Nagappa argues that the commonality of the officers between NMHS and RMS, Gerald Wages and John Hicks being officers in both corporations, is clear evidence that RMS is a sham corporation because it shows that RMS lacked independence as a separate corporation. On the contrary, under Mississippi law, commonality of officers is not enough to prove that a corporation was a sham.

In *Johnson & Higgins of Mississippi, Inc. v. Commissioner of Insurance*, 321 So. 2d 281 (Miss. 1975), the court reversed a lower court's decision to pierce the corporate veil and hold a parent corporation responsible for its subsidiary. The court held that one corporation owning all the stock in the other and having common officers were not sufficient evidence to hold that the two should be treated as a single entity. *Johnson*, 321 So. 2d at 285.

In *North American Plastics, Inc. v. Inland Shoe Manufacturing Co. Inc.*, 592 F. Supp. 875, 877 (Miss. Dist. Ct. 1984), the court refused to treat a parent and subsidiary as one entity where the president of one corporation served on the board of directors and chaired the finance committee of the other, and where the Plaintiff made unsubstantiated allegations of fraud by the officers. The court held that under Mississippi law, bald allegations of fraud and commonality of ownership were not sufficient grounds for piercing the corporate veil. *North American Plastics*, 592 F. Supp. at 877.

A Dr. James Speck was RMS's sole shareholder. He admitted he knew nothing of Dr. Nagappa's employment. Dr. Nagappa claims that "(t)he fact that a corporation's president and sole shareholder does not have a clue about his business speaks directly to the issue of whether RMS is a mere instrumentality of NMHS." She argues that Dr. Speck's being the sole shareholder and president of RMS, and his lack of any involvement in the running of the corporation is clear proof that corporate formalities were not followed by RMS. Dr. Nagappa's contention that lack of knowledge by the president and sole shareholder is evidence of a disregard in corporate formality is unsupported by authority in Mississippi. A shareholder's not being involved in the operation of a corporation has never been used as grounds to ignore a corporation's existence. In fact, the inverse of this argument is usually employed: that a shareholder's active involvement in day-to-day operations is evidence that a corporation ceases to be a distinct entity from a shareholder and should be disregarded. In holding that the principal shareholder overseeing day-to-day operations did not justify disregarding a corporate entity, the court, in *Gray v. Edgewater Landing, Inc.*, 541 So. 2d 1044 (Miss. 1989), stated:

Because the cardinal rule of corporate law is that a corporation possesses a legal existence separate and apart from that of its officers and shareholders.... the mere operation of corporate business does not render one personally liable for corporate acts.... Sole ownership of a corporation by one person or another corporation *is not a factor*, and neither is the fact that the sole owner uses and controls it to promote his ends.

Id. at 1047, quoting, *Amason v. Whitehead*, 367 S.E.2d 017, 108 (1988).

If sole ownership and an owner using and controlling a corporation are not factors in determining whether to disregard a corporation's identity, then it follows that the lack of involvement of a sole

owner would also not be a factor, and Dr. Speck's lack of knowledge of RMS would be irrelevant to such a determination.

In addition, day-to-day involvement of shareholders is not traditional corporate practice -- officers conduct day-to-day affairs, and directors provide broader direction. Shareholders, if all goes well, get the financial benefits.

Circumstances where courts have "pierced the veil" for disregard of corporate formalities include: that regular meetings were not held, that minutes documenting corporate decisions were not kept, that a subsidiary was undercapitalized and received financial assistance from a parent, and that a corporation did not file its own tax return. See *General Motors Acceptance Corp. v. Bates*, 954 F.2d 1081 (5th Cir. 1992), *Star Brite Distributing, Inc. v. Gavin*, 746 F.Supp. 633 (N.D. Miss. 1990), *Thames & Co. v. Eicher*, 373 So. 2d 1033 (Miss. 1979). Dr. Nagappa does not even argue that RMS failed to hold regular meetings or that RMS did not follow any of the generally accepted corporate formalities. Evidence that RMS's sole shareholder did not "have a clue" about the running of the business is simply not relevant to prove disregard of corporate formalities.

IV. Application of General Principles: Fraud

Dr. Nagappa argues that she provided credible evidence of fraud or other equivalent misfeasance on the part of NMHS in that NMHS employees "fraudulently stated to (her) that RMS and NMHS were related entities structured to avoid violating Medicaid regulations." She claims that based on these misrepresentations that RMS was "affiliated" with NMHS or was an "arm" of NMHS, she was induced into contracting with RMS.

Taking Dr. Nagappa's assertions that RMS and NMHS were related entities to be true, and assuming that RMS was formed to prevent violating Medicaid regulations, there still was no fraud. Complying with statutory or regulatory requirements is not fraud. Even if RMS were a subsidiary of NMHS, which there is no evidence to support, that alone would not be enough to hold NMHS liable for RMS's breach of contract. This court cannot "pierce the corporate veil" and allow Dr. Nagappa to sue NMHS unless she can prove that RMS existed to perpetrate a fraud, that it was a "mere instrumentality" of NMHS, or that it was a sham created by NMHS to avoid liability. Prior case law holds that being misled as to the relationship between two corporations is not enough to rise to the level of fraud.

In *MST, Inc. v. Mississippi Chemical Corp.*, 610 So. 2d 299 (Miss. 1992), *rehearing denied*, (1992), the court granted summary judgment to Defendant Mississippi Chemical Corporation, in a breach of contract action, where the Plaintiff did not show that Mississippi Chemical was the corporation with whom it contracted. *MST*, 610 So. 2d at 304 (Miss. 1992), *rehearing denied*, (1992) MST had contracted with a corporation called the Committee, which was a subsidiary of Mississippi Chemical. MST argued in opposition to summary judgment and on appeal that Mississippi Chemical was the party with whom it contracted. *Id.* While MST did not oppose the motion with affidavit testimony, it offered evidence through a proffer of testimony at a hearing on the motion. The supreme court considered the evidence for the sake of argument. *Id.* MST argued that negotiations were held at an office of Mississippi Chemical, that it was led to believe it was contracting with Mississippi Chemical, and that statements were made by Mississippi Chemical employees that Mississippi Chemical "really wants this project." *Id.* The court, however, stated that "(t)hese averments do nothing to support

MST's claims of breach of contract and fraud, and do nothing to show why the Committee should be considered an alter ego of Mississippi Chemical." *Id.* at 304. The court found that the Committee was duly incorporated and operated as a separate entity from Mississippi Chemical even though the two corporations shared some of the same officers, and refused to treat the two corporations as one entity. *Id.*

CONCLUSION

After considering the evidence presented by Dr. Nagappa, this Court holds there is insufficient evidence to create an issue of fact. There is no basis to disregard the identity of RMS. Finding summary judgment was proper, we affirm.

THE JUDGMENT OF THE CLAY COUNTY CIRCUIT COURT GRANTING SUMMARY JUDGMENT TO NORTH MISSISSIPPI HEALTH SERVICES, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO CHAMPA NAGAPPA, M.D.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.