

IN THE COURT OF APPEALS 12/12/95
OF THE
STATE OF MISSISSIPPI
NO. 94-CA-00419 COA

MEG BOSARGE

APPELLANT

v.

BEHAVIORAL EDUCATIONAL TRAINING & ASSOCIATES, INC.

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

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

TRIAL JUDGE: HON. JASON H. FLOYD, JR.

COURT FROM WHICH APPEALED: HARRISON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

LISA D. COLLUMS

ATTORNEY FOR APPELLEE:

JAMES K. WETZEL

NATURE OF THE CASE: CIVIL: CONTRACT

TRIAL COURT DISPOSITION: BOSARGE LIABLE TO REIMBURSE B.E.T.A FOR \$3,629.25.

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

PER CURIAM:

Meg Bosarge [Bosarge] contracted services through Behavioral Educational Training & Associates, Inc. [BETA] from March 1989, until April 15, 1991 as a licensed professional counselor. BETA derives its income primarily from medical insurance coverage; therefore, the contract between Bosarge and BETA provided that Bosarge would receive a percentage of the receipts by BETA from medical coverage providers for her services. Bosarge counseled a family of four insured by a Blue Cross and Blue Shield Insurance [Blue Cross]. Blue Cross paid BETA for services to Bosarge's clients and BETA paid Bosarge her percentage, \$3,629.25. Soon thereafter, Blue Cross notified BETA that Bosarge's services were not covered by their policy and requested a refund. BETA contracted with Blue Cross to repay the monies received by it for non-covered services. When BETA requested that Bosarge return the \$3,629.25 erroneously paid for noncontractual services, she refused. BETA instituted this action in the Chancery Court of Harrison County for an accounting and to recover the funds erroneously paid to Bosarge. The chancery court found for BETA. Specifically, the court held that BETA's contract with Bosarge only entitled Bosarge to a percentage of the receipts from insurance providers for her services. Since Bosarge's services were not covered under the Blue Cross policy, there were no receipts under the contract; therefore, Bosarge was obligated to return the \$3,629.25. Aggrieved Bosarge perfected this appeal asserting the following error:

The issue raised by appellant Meg Bosarge is the following: if she is required to repay monies to the appellee, BETA, which the latter has not repaid on her behalf to Blue Cross Blue Shield, BETA will be unjustly enriched.

Bosarge does not attack any of the findings of fact or conclusions of law concerning whether a valid contract existed or whether that contract requires her to return the \$3,629.25. She only contends that for her to return the contract proceeds would unjustly enrich BETA. The uncontradicted testimony at trial established that BETA had an agreement to pay Blue Cross in full for the monies erroneously paid to BETA over a period of months in monthly installments. At the time of trial, BETA had repaid installments totaling 1,100.00 to Blue Cross. This contingency was anticipated by the chancellor in his bench ruling. The chancellor's opinion provided that if Blue Cross should forgive any of the repayments or alternate insurance proceeds should be paid to BETA, then Bosarge would be entitled to her percentage of those proceeds. The Chancellor stated as follows in his bench opinion:

[W]hen and if they [BETA] receive any money for this, it will be due and owing to Ms. Bosarge. If they do it from Commonwealth or -- and further if, and I don't see that there is any likelihood, but if any of this repayment to BETA to Blue Cross is forgiven, Ms. Bosarge should be given credit for her percentage of that forgiveness.

BETA cannot be unjustly enriched under the chancellor's bench ruling; therefore, we affirm.

THE JUDGMENT OF THE HARRISON COUNTY CHANCERY COURT IS AFFIRMED.

COSTS ARE ASSESSED TO BOSARGE. STATUTORY DAMAGES AND INTEREST ARE AWARDED.

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