

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JEWISH HEALTH SYSTEMS/JEWISH HOSPITAL OF CINCINNATI, INC.,	:	APPEAL NO. C-080290
Plaintiff-Appellee,	:	TRIAL NO. A-0602299
vs.	:	
JOYCE DEUPREE,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Joyce Deupree appeals from the trial court's entry granting summary judgment in favor of plaintiff-appellee Jewish Health Systems/Jewish Hospital of Cincinnati, Inc., denying Deupree's motion for summary judgment, and awarding Jewish Hospital \$21, 545.51.

On December 13, 1995, Deupree was working as a sales representative for Jewish Hospital. While acting in the course and scope of her employment, she suffered injuries after a third-party motorist, George Sterne, struck the vehicle she was operating. Sterne died as a result of the collision. Deupree collected workers' compensation benefits from Jewish Hospital.

Deupree subsequently brought suit against Sterne's estate and Northbrook Property and Casualty Company. Northbrook had issued an automobile liability

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

insurance policy to Jewish Hospital. Jewish Hospital was joined in the action as a statutory subrogee pursuant to former R.C. 4123.931.

On May 1, 1998, Deupree, Jewish Hospital, Sterne's estate, and Northbrook settled the lawsuit and executed a settlement agreement. It provided, in pertinent part, as follows: "Northbrook, Deupree, and Jewish Hospital will enter into private binding arbitration to resolve Deupree's claim of UIM [underinsured-motorist] benefits against Northbrook. In connection with the UIM arbitration, and in the event of an award in excess of \$100,000, Deupree agrees to establish an escrow account from which Jewish Hospital will be reimbursed for any sums it becomes obligated to pay and does pay to and/or on behalf of Deupree for medical expenses and wages Jewish Hospital may be required to pay to Deupree in the future so long as said expenses are directly or proximately related to the accident."

By September 22, 1999, Deupree had reimbursed Jewish Hospital the \$21,049.04 it had paid her for wages and medical expenses following her accident. In March 2006, Jewish Hospital filed the underlying action for damages against Deupree. Jewish Hospital alleged that Deupree had breached the settlement agreement by failing to establish an escrow account and by failing to reimburse it for another \$21,545.51 that it had paid her for medical expenses and wages after June 28, 1999. Jewish Hospital alternatively argued that Deupree had been unjustly enriched by the payments.

Jewish Hospital subsequently moved for summary judgment on its breach-of-contract claim. Deupree filed a cross-motion for summary judgment, as well as a memorandum opposing Jewish Hospital's motion. The trial court, determining that Jewish Hospital had presented sufficient evidence that it had entered into a valid and enforceable settlement agreement with Deupree and that Deupree had breached the agreement by failing to reimburse Jewish Hospital for accident-related medical expenses and wages it had paid Deupree after June 28, 1999, granted the hospital's

motion for summary judgment, denied Deupree's motion for summary judgment, and awarded Jewish Hospital \$21,545.51 in damages. In this appeal, Deupree raises one assignment of error.

In her sole assignment of error, Deupree contends that the trial court erred in granting summary judgment to Jewish Hospital.

Summary judgment is appropriate when “(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party.”² We review a trial court's decision to grant a motion for summary judgment de novo.³

Deupree first argues that the settlement agreement was not a valid and enforceable contract because it contained no deadline for compliance, no funding requirement, and an unsatisfied condition precedent. But as Jewish Hospital points out, Deupree produced bank records showing that she had established an escrow account pursuant to the terms of the settlement agreement. She then paid Jewish Hospital \$21,049.04 for the accident-related wages and medical expenses it had paid on her behalf. Her actions, therefore, demonstrate not only that she had received an award in excess of \$100,000, but also that she understood the terms of the May 1998 settlement agreement to be a valid and enforceable contract. Consequently, we find her first argument meritless.

Deupree next argues that the trial court erred in granting summary judgment to Jewish Hospital without addressing its claim for unjust enrichment. We disagree. Once the trial court granted summary judgment in favor of Jewish Hospital on its

² *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

³ *Koos v. Central Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 641 N.E.2d 265.

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breach-of-contract claim, its unjust-enrichment claim was rendered moot.⁴ Thus, the trial court's decision in favor of Jewish Hospital on its breach-of-contract claim completely disposed of the case. We, therefore, overrule Deupree's sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., SUNDERMANN and DINKELACKER, J.J.

To the Clerk:

Enter upon the Journal of the Court on April 8, 2009

per order of the Court _____.
Presiding Judge

⁴ *Weiper v. W.A. Hill & Assocs.* (1995), 104 Ohio App.3d 250, 262, 661 N.E.2d 796.