MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lydia K. Rockey,
Appellant-Plaintiff,

v.

Med-1 Solutions, LLC,
Appellee-Defendant

May 31, 2023

Court of Appeals Case No. 22A-CT-2159

Appeal from the Marion Superior Court

The Honorable Jason G. Reyome, Magistrate

Trial Court Cause No. 49D13-2103-CT-9610

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Lydia K. Rockey filed a complaint against Med-1 Solutions, LLC (Med-1), alleging that it failed to stop communicating with her regarding a debt in violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. Section 1692*c*(c). Both parties moved for summary judgment. The trial court denied Rockey's summary judgment motion and granted Med-1's motion on the basis that it was shielded from liability by the bona fide error defense.

[2] Rockey now appeals. She argues that the trial court erred in granting summary judgment in favor of Med-1, that the undisputed evidence establishes as a matter of law that she is entitled to summary judgment on her FDCPA claim, and that the bona fide error defense is unavailable to Med-1. We agree that the undisputed evidence establishes as a matter of law all the elements of Rockey's FDCPA claim and that the bona fide error defense is unavailable to Med-1. However, it is inappropriate to enter summary judgment in Rockey's favor at this time because the threshold issue of standing, which Med-1 raised as an affirmative defense, has not been addressed. Accordingly, we reverse summary judgment in favor of Med-1 and remand for further proceedings.

Facts and Procedural History

[3] The facts are undisputed. In March 2019, Rockey received treatment at a hospital. In August 2020, that hospital transferred her debt to Med-1, a debt collection agency. The demographic information that Med-1 received from the hospital indicated that Rockey lived on Leander Lane in Indianapolis. In

August 2020, Med-1 began sending collection letters to Rockey at the Leander Lane address. However, Rockey was no longer living on Leander Lane; she was living on Sunset Cove. Both properties are owned by Rockey's ex-husband, Robert Duff, who is also her attorney in this case. Duff resided at the Leander Lane address. Typically, when Rockey received mail at Leander Lane, Duff provided it to her unopened.

[4] On January 4, 2021, Med-1 sent its fifth collection letter to Rockey. On January 12, 2021, Duff prepared a letter that was signed by Rockey and sent to Med-1, which stated, "I dispute and am refusing to pay the debt you are attempting to collect from me." Appellant's App. Vol. 2 at 13. The letter did not inform Med-1 that Rockey was no longer residing at the Leander Lane address.

[5] Under the FDCPA, if a consumer refuses to pay a debt, the debt collector is required to cease all communication with the consumer. 15 U.S.C. § 1692c(c). Consistent with the FDCPA, Med-1 has a procedures manual that informs its employees that a refusal to pay a debt requires the agency to stop communicating with the consumer. On January 15, 2021, Med-1 received Rockey's letter, and it was ultimately forwarded to Nicholas Moline, the "Senior Attorney and Chief Compliance Officer," for review. Appellant's App. Vol. 2 at 52. In his affidavit, Moline stated that he "misread Rockey's letter as a dispute and request for validation, not as a refusal to pay the debts." *Id*. at 55. Moline changed the disposition code for Rockey's account to "3MRJ," the code for a dispute and request for validation, which places a temporary hold on the

account and initiates a verification request to the creditor.[1] After the debt is verified by the creditor and the verification is sent to the consumer, the account is placed back into the active workflow category. According to Moline, he "should have coded this account in the '3600' disposition," which is the disposition code for a cease communication letter. *Id*. He explained that "[h]ad [he] not mistakenly read the letter to be a request for validation, [he] would not have placed the account in the improper disposition." *Id*. at 55.

[6] On February 22, 2021, Med-1 sent a collection letter to Rockey at the Leander Lane address. *Id*. at 14-15. Also, in February and March 2021, Med-1 called Rockey's phone and left three voicemails.

[7] In March 2021, Rockey filed a complaint against Med-1 alleging that it failed to stop communicating with her in violation of Section 1692c(c) by sending the February 22 letter. She attached her January 12 letter and Med-1's February 22 letter to the complaint. Med-1 filed an answer admitting that it sent the January 4 and February 22 letters but denied that it violated Section 1692c(c). In addition, Med-1 asserted two affirmative defenses: (1) that it was shielded from liability by the bona fide error defense under 15 U.S.C. Section 1692k(c); and (2) that Rockey lacked standing to bring her claims because she did not sustain a concrete and particularized injury.

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[1] A dispute and request for validation requires the debt collector to cease all collection on the debt until it obtains verification of the debt from the creditor and validates the debt by mailing the verification to the consumer. 15 U.S.C. § 1692g(b).

[8] In February 2022, Rockey filed a summary judgment motion arguing that there was no genuine issue of material fact and that she was entitled to judgment as a matter of law that Med-1 violated Section 1692c(c) because Med-1 admitted that it sent the February 22 letter. She did not address either of Med-1's affirmative defenses.

[9] Med-1 filed a summary judgment motion asserting that it was entitled to judgment as a matter of law that it did not violate Section 1692c(c) because the February 22 letter was sent to Rockey's attorney and Section 1692c(c) does not apply to communications with a consumer's attorney. Further, Med-1 asserted that it was entitled to judgment as a matter of law that it was shielded from liability by the bona fide error defense. Med-1's designated evidence included Moline's affidavit and Med-1's procedures manual.

[10] Rockey filed a response to Med-1's motion for summary judgment, in which she argued that Med-1 violated Section 1692c(c) because the February 22 letter was addressed to her, not her attorney, and also because Med-1 made telephone calls to her in February and March. Rockey further argued that the bona fide error defense did not apply because Med-1 made an error of law, not an error of fact.

[11] Following a hearing, the trial court entered the appealed order, in which it denied Rockey's summary judgment motion on the basis that she failed to show that she was entitled to judgment as a matter of law on her substantive claim or Med-1's affirmative defenses. As for Med-1's summary judgment motion, the

court concluded that Med-1 was entitled to summary judgment as a matter of law on its bona fide error defense because the undisputed material facts established that "any violation of the FDCPA by [Med-1] was unintentional [and] resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error." Appealed Order at 2. The trial court also found that the undisputed facts showed that "Med-1 did [not] communicate with Rockey in violation of 15 U.S.C. [Section] 1692c(c) as alleged in the complaint, and that Rockey's proffered issues of fact related to the phone calls were not placed at issue in the complaint." *Id*.[2] The trial court entered final judgment in favor of Med-1. This appeal ensued.

Discussion and Decision

[12] Rockey asserts that the trial court erred by granting Med-1's summary judgment motion and that she is entitled to summary judgment in her favor. Med-1 maintains that it is entitled to summary judgment on its bona fide error defense and, alternatively, on the basis that it did not communicate with Rockey in violation of Section 1692c(c). Our summary judgment standard of review is well established:

[2] It appears that the trial court made a scrivener's error by stating that Med-1 "did communicate" with Rockey rather than stating that Med-1 "did *not* communicate" with Rockey. As Rockey points out in her reply brief, the trial court appears to have adopted Med-1's proposed order, which also omits the word "not." We believe it is safe to assume that Med-1 did not intend to state that it violated the FDCPA. At any rate, if the trial court made an error, it is harmless because we review summary judgment rulings de novo. *Hopkins v. Indpls. Pub. Sch.*, 183 N.E.3d 308, 312 (Ind. Ct. App. 2022), *trans. denied*.

> We review a summary judgment ruling de novo, applying the same standard as the trial court. The moving party bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. We construe all factual inferences in favor of the nonmoving party and resolve all doubts as to the existence of a material issue against the moving party. Our review is limited to those facts designated to the trial court.[3]

Hopkins v. Indpls. Pub. Schs., 183 N.E.3d 308, 312 (Ind. Ct. App. 2022) (quoting *Ind. Univ. v. Thomas*, 167 N.E.3d 724, 731 (Ind. Ct. App. 2021)), *trans. denied.*

Section 1 – Med-1 violated Section 1692c(c).

[13] The purpose of the FDCPA is to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). As this Court has observed, "The FDCPA is a broad statute that was designed to protect consumers from a host of unfair,

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[3] We observe that Med-1 argues that it did *not* communicate with Rockey in violation of the FDPCA. As discussed in footnote 2, the appealed order may contain a scrivener's error in this regard. If there was no scrivener's error, Med-1's argument could be viewed as a cross-appeal, which would not affect our review. Where parties file cross motions for summary judgment, our standard of review is not affected. *Monroe Cnty. v. Boathouse Apts.*, 177 N.E.3d 1201, 1204 (Ind. Ct. App. 2021), *trans. denied* (2022). "We simply review each motion independently and construe the facts in favor of the nonmoving party in each instance." *Id*.

harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors." *Rhines v. Norlarco Credit Union*, 847 N.E.2d 233, 236 (Ind. Ct. App. 2006) (quoting *Spears v. Brennan*, 745 N.E.2d 862, 870 (Ind. Ct. App. 2001)), *trans. denied*, *cert. denied* (2007). A debt collector who "fails to comply with any [FDCPA] provision ... with respect to any person is liable to such person" for "actual damage[s]", costs, "a reasonable attorney's fee as determined by the court[,]" and statutory "additional damages[.]" 15 U.S.C. § 1692k(a).

[14] The threshold issue is whether Med-1 violated Section 1692c(c), which provides:

> If a consumer notifies a debt collector in writing that the consumer *refuses to pay a debt* or that the consumer wishes the debt collector to cease further communication with the consumer*, the debt collector shall not communicate further with the consumer with respect to such debt*, except—
>
> > (1) to advise the consumer that the debt collector's further efforts are being terminated;
> >
> > (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
> >
> > (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.
>
> If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(Emphases added.) For purposes of this section, consumer includes "the consumer's spouse, parent (if the consumer is minor), guardian, executor, or administrator." 15 U.S.C. § 1692c(d). The FDCPA defines "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium." 15 U.S.C. § 1692a(2). However, "§ 1692c as a whole permits debt collectors to communicate freely with consumers' lawyers" even after the consumer informs the debt collector that he or she refuses to pay. *Tinsley v. Integrity Fin. Partners, Inc.*, 634 F.3d 416, 419 (7th Cir. 2011). Here, the parties dispute whether the February 22 collection letter constitutes a communication with Rockey or with her attorney.

[15] The undisputed evidence establishes that the February 22 letter was addressed to "Lydia Kay Rockey" and sent to the address that Med-1 had on record as her home address. Appellant's App. Vol. 2 at 32. Med-1 was completely unaware that Rockey's attorney was living at the address. It seems absurd to conclude that Med-1 was communicating with Rockey's attorney when Med-1 sent the letter to Rockey and had no idea that the letter would pass through her attorney before she received it. We conclude that the February 22 letter was a communication with the consumer in violation of Section 1692c(c).

[16] In addition, we note that the three phone calls Med-1 made to her after receiving her January 4 letter are also violations of Section 1692c(c). Med-1 contends that Rockey is foreclosed from relying on the three phone calls to establish a violation of the FDCPA because she specifically identified only the February 22 letter as Med-1's violation of Section 1692c(c) in her complaint and

did not include the phone calls as a basis for the violation. We disagree that Rockey is foreclosed from relying on the phone calls. "Indiana is a notice-pleading state and only requires that pleadings contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *ResCare Health Servs., Inc. v. Ind. Family & Soc. Servs. Admin.*, 184 N.E.3d 1147, 1153 (Ind. 2022) (quoting Ind. Trial Rule 8(A)(1)). The phone calls are evidence in support of the theory of liability alleged in Rockey's complaint, and phone calls were brought to Med-1's attention during discovery. Thus, Med-1 was not prejudiced by a lack of notice. The cases cited by Med-1 are inapposite because they involved the plaintiff raising a new theory of liability. *See Beta Alpha Shelter of Delta Tau Delta Fraternity, Inc. v. Strain*, 446 N.E.2d 626, 629-30 (Ind. Ct. App. 1983) (concluding that trial court did not err by excluding evidence related to new theory of liability where theory was not pled in complaint and defendant did not have sufficient notice of it to prepare for trial); *Holsten v. Faur*, 174 N.E.3d 219, 226-27 (Ind. Ct. App. 2021) (concluding that trial court did not have subject matter jurisdiction over plaintiff's proposed new theory of liability in medical malpractice action where plaintiff had not raised theory of liability to medical review panel or alleged facts that would have supported that theory). We conclude that the undisputed evidence establishes that Med-1 violated the FDCPA.

Section 2 – The bona fide error defense is inapplicable.

[17] The FDCPA provides a safe haven for debt collectors:

> A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

15 U.S.C.A. § 1692k(c).

[18] "Under the bona-fide-error defense, a debt collector is not liable for violating the FDCPA if it shows by a preponderance of the evidence that (1) the violation was not intentional, (2) the violation resulted from a bona fide error, and (3) it maintained procedures reasonably adapted to avoid the error." *Ewing v. MED-1 Sols., LLC*, 24 F.4th 1146, 1154 (7th Cir. 2022) (citing *Abdollahzadeh v. Mandarich L. Grp.*, 922 F.3d 810, 815 (7th Cir. 2019)). "[A] defendant can invoke the bona fide error defense only if it claims it made an error of *fact*, not an error of *law*." *Evans v. Portfolio Recovery Assocs.*, 889 F.3d 337, 349 (7th Cir. 2018), *abrogation on other grounds recognized by Ewing*, 24 F.4th at 1152. Thus, "the bona fide error defense in § 1692k(c) does not apply to a violation of the FDCPA resulting from a debt collector's incorrect interpretation of the requirements of that statute." *Id*. at 349-50 (quoting *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 604-05 (2010)).

[19] The parties dispute whether Moline's "misreading" of Rockey's letter that led him to code it as a dispute letter rather than a cease communication letter was an error of law or an error of fact. We find *Evans* instructive in resolving this question. In *Evans*, a nonprofit legal aid organization representing multiple

consumers sent letters to Portfolio Recovery Associates (PRA) stating that the amount reported in PRA's debt validation letters was "not accurate." *Id*. at 342. PRA reported each debt to the credit reporting agencies without notifying the agencies that the debt was disputed as required by 15 U.S.C. Section 1692e(8). PRA claimed that the bona fide error defense shielded it from liability "because it did not 'inten[d] to violate the FDCPA or ignore a dispute' and *did not understand the Letters as stating* "a dispute on the debt balance." *Id*. at 349 (brackets in *Evans*) (emphasis added) (quotation marks omitted). The *Evans* court rejected that claim reasoning as follows:

> Here, PRA incorrectly believed the statement "the amount reported is not accurate" did not constitute a "dispute" under § 1692e(8). In other words, it incorrectly interpreted the requirements of the FDCPA. This is a mistake of law. By contrast, a mistake of fact would have occurred if, for example, PRA lost the Letters before opening them or did not actually read the language disputing the debt. But PRA concedes that it received and read the Letters, including the relevant phrase. Therefore, the district courts were correct that the bona fide error defense is not available.

Id. at 350 (quotation marks, brackets, and ellipsis omitted).

[20] As in *Evans*, Moline misread the January 4 letter as a "dispute and request for validation, not as a refusal to pay the debts." Appellant's App. Vol. 2 at 55. He incorrectly believed that the letter was a dispute and request for validation and purposely entered the disposition code for a dispute and request for validation. This is not an instance where an employee intended to enter the correct

disposition code and mistyped it or otherwise unknowingly entered the wrong code for the intended disposition.

[21] We acknowledge that Med-1 had a procedures manual in place that instructed employees that a refusal to pay would be treated as an instruction to stop communication and required a manager to enter "3600," that Moline attested in his affidavit that he entered "3MRJ" in contravention of Med-1's procedures manual and should have entered the cease communication code, and that his mistake was unintentional. However, these facts are not relevant to the dispositive question of whether the decision to enter the code for a dispute and request for validation was a mistake of law or fact. As the senior attorney and chief compliance officer, Moline was required to determine the legal significance of the letter. His misinterpretation of the letter was a mistake of law, not a mistake of fact. *See Goss v. Receivables Performance Mgmt., LLC*, No. 19-CV-0642, 2020 WL 2219048, at *5 (N.D. Ill. May 7, 2020) (concluding that failure to "interpret" consumer's verbal statement as a dispute was an error of law); *Flores v. Portfolio Recovery Assocs.*, No. 15-C-02443, 2017 WL 5891032, at *5 (N.D. Ill. Nov. 29, 2017) ("[F]ailing to recognize that the language of the letter qualifies as a 'dispute' within the meaning of the FDCPA is a legal error, not a factual or clerical error, so the bona fide error defense is not available."); *cf. Abdollahzadeh*, 922 F.3d at 815 (affirming summary judgment for debt collector on bona fide error defense where its "factual mistake—using the wrong date of last payment in its statute-of-limitations analysis—resulted in

unintentional violations of the [FDCPA] despite reasonable procedures to prevent errors of this type.").

[22] Med-1 also cites a number of cases, none of which are applicable. First, Med-1 cites *Jenkins v. Heintz*, 124 F.3d 824 (7th Cir. 1997), arguing that "it held that a mistake in individual judgment while executing a legally valid company policy is protected by the Bona Fide Error Defense." Appellee's Br. at 19. Med-1 mischaracterizes *Jenkins*. In that case, Jenkins asserted that a law firm acting as a debt collector violated the FDCPA by attempting to collect a balance due on an automobile that included unauthorized amounts of force placed insurance. In a lengthy opinion, the *Jenkins* court concluded, among other things, that there was "*no evidence that [the collection attorneys] exercised any legal judgment* as to the validity of the force placed insurance charges," that the bona fide error defense was available to attorneys acting as collection agencies, and that the collection attorneys had carried their burden to obtain the protection of the bona fide error defense. 124 F.3d at 831-32 (emphasis added).

[23] Med-1 also cites *Ewing*, 24 F.4th 1146, to support its claim that Moline made a mistake of fact. However, there was no issue in that case regarding whether the error was a mistake of law. Rather, the issue was whether the debt collectors had carried their burden to show that they maintained reasonable procedures to avoid the error. *Id*. at 1155. Likewise, the question as to whether the alleged error made by the collection agency in coding was a mistake of law or a mistake of fact was not raised or discussed in either *Washington v. Convergent Outsourcing, Inc.*, No. 15-C-7043, 2017 WL 1093152 (N.D. Ill. Mar. 23, 2017), or *Ross v.*

Financial Asset Management Systems, Inc., No. 21-C-00647, 2022 WL 444146 (N.D. Ill. Feb. 14, 2022). We conclude that the bona fide error defense is not applicable to shield Med-1 from liability. Accordingly, Med-1 is not entitled to judgment as a matter of law on its bona fide error defense, and Rockey is entitled to judgment as a matter of law that Med-1 made a mistake of law to which the bona fide error defense does not apply.

[24] Based on the foregoing, we reverse the grant of summary judgment in favor of Med-1 and remand for further proceedings. Although we have concluded that the undisputed evidence establishes as a matter of law that Med-1 violated the FDCPA and that the bona fide error defense does not apply, summary judgment in Rockey's favor is premature. We note that the trial court concluded that Rockey failed to show that she was entitled to judgment as a matter of law on Med-1's affirmative defense that she lacked standing. Rockey has not challenged this conclusion. Accordingly, this issue should be addressed on remand.

[25] Reversed and remanded.

Robb, J., and Kenworthy, J., concur.