

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-11624  
Non-Argument Calendar

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D.C. Docket No. 4:16-cv-00290-WTM-BKE

ESTATE OF DEBBIE HELMLY, et al.,

Plaintiffs-Appellants,

versus

BETHANY HOSPICE AND PALLIATIVE CARE OF  
COASTAL GEORGIA, LLC,  
f.k.a. Bethany Hospice of Coastal Georgia, LLC  
(Bethany Coastal),  
BETHANY HOSPICE AND PALLIATIVE CARE, LLC,  
f.k.a. Bethany Hospice, LLC (Bethany Hospice),  
BETHANY BENEVOLENCE FUND, INC.,  
AVA BEST, et al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Georgia

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(April 26, 2021)

Before MARTIN, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

In this *qui tam* action, Debbie Helmly and Jolie Johnson (the “Relators”) appeal the dismissal of their complaint. Relators sued Bethany Hospice and Palliative Care, LLC (“Bethany Hospice”) on behalf of the United States and the State of Georgia,<sup>1</sup> alleging that Bethany Hospice violated the False Claims Act (“FCA”), 31 U.S.C. §§ 3729–3733, and the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168.1. In particular, Relators alleged that Bethany Hospice violated the so-called Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b(b),<sup>2</sup> by paying physicians remuneration for Medicare and Medicaid patient referrals. According to Relators, Bethany Hospice submitted false claims when it billed the government for services provided to illegally-referred patients. Relators further

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<sup>1</sup> See 31 U.S.C. § 3730(b)(1) (“A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government.”); *id.* § 3732(b) (“The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.”).

<sup>2</sup> An entity violates the AKS when it:

knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person . . . to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program.

42 U.S.C. § 1320a-7b(b)(2).

allege that Bethany Hospice falsely certified compliance with the AKS. Under Rule 9 of the Federal Rules of Civil Procedure, Relators were required to plead with particularity the submission of an actual false claim to the government. Because Relators failed to do so, the district court properly dismissed their complaint. Accordingly, we affirm.

### I. Background<sup>3</sup>

Bethany Hospice provides for-profit hospice care in Georgia. It operates care facilities in four cities: Douglas, Thomasville, Waycross, and Valdosta. In 2014, Bethany Hospice opened Bethany Hospice and Palliative Care of Coastal Georgia, LLC (“Bethany Coastal”). Relators are former employees of Bethany Coastal. Helmly was employed as the administrator of Bethany Coastal from December 2014 until July 2015. Johnson was employed as a marketer during the same period.

Although Bethany Coastal was organized as a separate company from Bethany Hospice and obtained a different business license number, the two entities are both owned and operated by Ava Best and Mac Mackey and share personnel, resources, and management software. According to Relators, Best and Mackey operated Bethany Coastal “as if it were another facility office of Bethany

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<sup>3</sup> Relators’ original complaint was filed under seal. After the United States and the State of Georgia declined to intervene, the complaint was unsealed. The following facts are taken from Relators’ third amended complaint (the “operative complaint”).

Hospice.” For that reason, Relators allege that they were “effectively . . . corporate insiders of Bethany Hospice.”

Relators allege that, as corporate insiders, they learned that Bethany Hospice operated an illegal kickback referral scheme in which Bethany Hospice paid doctors in exchange for referring Medicare beneficiaries<sup>4</sup> to Bethany Hospice. Relators further allege that, after rendering services to the illegally referred patients, Bethany Hospice submitted claims to Medicare for reimbursement.

In particular, Helmly alleged that when she and Best were negotiating the terms of Helmly’s employment as administrator of Bethany Coastal, Best offered her compensation based on the kickback scheme. During those negotiations, Best allegedly told Helmly that Best “would follow the same protocol to add compensation for . . . Helmly that [Best] used to pay referring doctors for their referrals.” Under that “protocol,” Helmly could make a below-market ownership investment in Bethany Coastal that would provide “huge returns” based on the number of referred patients. Helmly further alleged that Best said that she “paid all the medical directors who owned shares in Bethany Hospice according to this same formula, and the payments varied depending on the volume of referrals.”

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<sup>4</sup> Relators allege that the referral scheme involved Medicare and Medicaid beneficiaries. For simplicity, we will refer only to Medicare.

Relators also alleged that, on other occasions, Best acknowledged to them that the compensation structure was designed to avoid getting caught for FCA violations. Best was formerly employed by Odyssey Hospice—a predecessor to Bethany Hospice. Relators alleged that Odyssey also employed a kickback compensation scheme, Odyssey’s owner was eventually convicted of Medicare Fraud, and Odyssey agreed to a \$25 million settlement with the U.S. Department of Justice. According to Relators, Best acknowledged that kickbacks were improper but, because they were “the most effective way to get referrals,” Best “tried to have the best of both worlds: paying the kickbacks to referring physicians but hiding or masking them as compensation to medical directors and part owners of Bethany Hospice.”

Relators alleged that several doctors purchased ownership interests in Bethany Hospice and were paid kickbacks for referrals through “a monthly salary, dividends, and/or monthly bonuses.”<sup>5</sup> According to Relators, that compensation was not paid for the fair market value of their work but, rather, “as inducement for or reward for referrals of patients, which constitute kickbacks.” Relators’ complaint points to Dr. Tanner as an example: In 2007, he purchased a 5% interest in Bethany Hospice for \$20,000 and, seven years later, he sold that interest for

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<sup>5</sup> Relators also allege that, on at least one occasion, Bethany Hospice offered its doctors a paid family vacation as a kickback.

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