

2021 IL App (1st) 192093-U
No. 1-19-2093
February 22, 2021

FIRST DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MARGUITA ZARETSKY)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 17 L 006910
)	
JENNIFER THOMA,)	The Honorable
)	Israel A. Desierto
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE WALKER delivered the judgment of the court.
Justices Hyman and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in allowing medical bills into evidence over defendant's objections.

¶ 2 Plaintiff, Marguita Zaretsky, filed a complaint against defendant, Jennifer Thoma, to recover damages for injuries she sustained in an automobile accident. At trial, the circuit court admitted Zaretsky's medical bills into evidence over Thoma's objections. Thoma appeals arguing that the circuit court abused its discretion in admitting the medical bills where certain

bills were written off or adjusted, and Zaretsky failed to lay a proper foundation that the charges were usual and customary for the services rendered. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4

On July 11, 2017, Zaretsky filed a three-count complaint alleging personal injuries against Thoma, Daniel Copil (incorrectly sued as Danile Copil), and Henrique Bergman. The complaint alleged that Zaretsky was involved in two motor vehicle accidents but sustained a single indivisible injury. On June 20, 2012, Zaretsky was injured in an accident involving Copil at the intersection of Crawford Avenue and Cleveland Street in Skokie, Illinois. On September 24, 2012, Zaretsky was injured in an accident involving Thoma and Bergman at the intersection of Lake Shore Drive and Fullerton Avenue in Chicago, Illinois. Bergman, Zaretsky's brother, was the driver, and Zaretsky was the passenger of a car that Thoma rear-ended.

¶ 5

On August 29, 2017, Thoma filed an appearance, jury demand, and answer to the complaint. In Thoma's answer, Thoma denied all material allegations of liability. On January 10, 2018, Copil filed an answer to the complaint. On October 10, 2018, the matter was set for trial to commence on July 8, 2019.

¶ 6

On July 8, 2019, Zaretsky's case against Copil was dismissed with prejudice pursuant to a settlement agreement. Zaretsky did not pursue a cause of action against Bergman. The trial as to Thoma proceeded. Opening statements and the presentation of evidence commenced on July 11, 2019. The following day, closing arguments were presented and jury instructions were read.

¶ 7

At trial, Zaretsky testified that she had a pre-existing condition that caused neck pain prior to either car accident. She had a congenital fusion of the fourth (C4) and fifth cervical vertebra

(C5), which caused stress on surrounding levels. However, she testified that the pain was always on her right side prior to the September 2012 accident. On October 10, 2011, Zaretsky underwent a C3-C6 anterior fusion surgery performed by Dr. Michael Haak. Following surgery, she participated in physical therapy for 8 or 9 months. After the June 2012 accident, her pain worsened slightly, but only on the right side. Zaretsky then participated in additional physical therapy. After the September 2012 accident, she initially felt soreness only in her neck. However, she slowly began experiencing pain from her neck radiating down the shoulders to her left arm. Dr. Haak ordered a CT scan and recommended additional physical therapy.

¶ 8 By February 2013, Zaretsky's pain had increased on her left side. Dr. Haak ordered an EMG study on Zaretsky and recommended she follow up with one of his partners. Instead, in October 2013, Zaretsky chose to follow up with Dr. Martin Herman. Dr. Herman performed surgery in August 2015. Zaretsky testified that around the time of this surgery, the pain felt like hammers breaking her bones and a metal rod going from her neck up to her brain. Following surgery, Zaretsky testified that the pain on her left side "subsided quite a bit."

¶ 9 Dr. Herman testified that on January 7, 2014, he ordered a cervical MRI scan for Zaretsky. The scan revealed that Zaretsky had a leftward predominance of a disc osteophyte at C6-7, which caused an abutment of her spinal cord. Additionally, her spinal cord was mildly flattened and had moderate to advanced left foraminal stenosis. This disc herniation was impinging on Zaretsky's left nerve causing radiating pain down her left arm. Dr. Herman opined that the September 2012 accident likely caused Zaretsky's left-sided herniated disc.

¶ 10 On August 3, 2015, Dr. Herman performed a C6-7 anterior discectomy and fusion, whereby he removed the disc herniation and put a piece of bone into the space between the C6 and C7 bone and a new plate to fuse the C6 and C7 bones.

¶ 11 When questioned about the cost of surgery, the following exchange occurred at trial:

Q And it can be an expensive surgery as well; is that right?

A Sure.

Q In fact, I think you had initially, before you did the surgery, estimated it would be as much as \$200,000 total to do the surgery?

A With the hospital costs and everything, yes.

Q Okay. And I think this one got done for 150,000 total.

Does that sound reasonable?

A Yeah. Bargain deal. Right.

Q Well, you have to get paid --

A You know I don't get paid that, right?

Q Well, I think that there was a surgeon's bill for \$100,000.

Is that a reasonable fee for this type of neurosurgery?

A I mean, that's pretty typical.

Q The hospital bill was approximately 50,000.

Is that fairly typical?

A You know, I'm -- I'm not sure exactly. It's often flipped. It's often 50 for us and 100 for the hospital, but I don't know those numbers, so I couldn't tell you for sure.

¶ 12 Prior to trial, Thoma admitted negligence regarding the September 2012 accident. At trial, Thoma admitted causing the crash, but denied negligence was a proximate cause of Zaretsky's injury.

¶ 13 The trial court admitted Zaretsky's medical bills into evidence over Thoma's objections. Zaretsky testified that the bills were paid in full. Thoma argued that Zaretsky failed to offer witness testimony establishing the amount of the charges or that they were in fact paid. Additionally, Thoma argued that Zaretsky only partially paid some charges. According to Thoma, Zaretsky was entitled to seek recovery only to the extent of the paid bills, not the total amount billed. The trial court admitted Zaretsky's bills but did not allow the individual bills to be given to the jury during deliberation, unless requested by the jury.

¶ 14 In closing argument, Zaretsky requested \$176,062.94 in medical expenses. On July 12, 2019, the jury returned a verdict in Zaretsky's favor and awarded a total sum of \$172,000, which consisted of \$160,000 in medical expenses and \$12,000 for pain and suffering.

¶ 15 On August 8, 2019, Thoma filed motions for a new trial, remittitur, and a setoff. On September 11, 2019, the circuit court denied Thoma's motions for a new trial and remittitur but granted the motion for a setoff for the settlement amount between Zaretsky and Copil.

¶ 16 This timely appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, Thoma argues that the trial court abused its discretion in admitting Zaretsky's medical expenses where certain bills were adjusted or written off and where Zaretsky failed to lay a proper foundation that the charges were usual and customary for the services rendered.

Zaretsky limits her argument to the two largest medical expenses, the hospital bill and the surgeon's fee.

¶ 19 The admission of evidence is within the circuit court's discretion, and the court's ruling will not be reversed absent an abuse of discretion. *Gill v. Foster*, 157 Ill. 2d 304, 312–13 (1993). An abuse of discretion may be found only where no reasonable person would take the view adopted by the circuit court. *Fennell v. Illinois Cent. R. Co.*, 2012 IL 113812, ¶ 21. “In determining whether the circuit court abused its discretion, the reviewing court should consider whether the jury’s verdict was supported by the evidence and whether the losing party was denied a fair trial.” *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992).

¶ 20 An injured plaintiff is entitled to recover reasonable medical expenses. *Klesowitch v. Smith*, 2016 IL App (1st) 150414, ¶ 44. “When evidence is admitted, through testimony or otherwise, that a medical bill was for treatment rendered and that the bill has been paid, the bill is *prima facie* reasonable.” *Baker v. Hutson*, 333 Ill. App. 3d 486, 493 (2002). Additionally, admission of bills requires evidence that plaintiff necessarily incurred the medical bill because of injuries caused by the defendant's negligence. *Arthur v. Catour*, 216 Ill. 2d 72, 81-2 (2005). However, evidence of an unpaid medical bill is not admissible unless it can be established, through the testimony of a person having knowledge of the services rendered, that the bill was reasonably based on the usual and customary charges for such services. *Wills v. Foster*, 229 Ill. 2d 393, 414 (2008) (citing *Arthur*, 216 Ill. 2d at 82).

¶ 21 Illinois follows the collateral source rule. *Boden v. Crawford*, 196 Ill. App. 3d 71, 76 (1990). “Under the collateral source rule, benefits received by the injured party from a source completely independent of, and collateral to, the tortfeasor will not diminish damages

otherwise recoverable from the tortfeasor.” *Arthur*, 216 Ill. 2d at 78 (quoting *Wilson v. The Hoffman Group, Inc.*, 131 Ill.2d 308, 320 (1989)). The rule provides that “ ‘[p]ayments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor’s liability, although they cover all or a part of the harm for which the tortfeasor is liable.’ ” *Wills*, 229 Ill. 2d at 399 (quoting Restatement (Second) of Torts § 920A (2), at 513 (1979)). Our supreme court has observed that the rule is premised upon the public policy that a benefit directed to the injured party should not be shifted to become a windfall for the tortfeasor. *Arthur*, 216 Ill. 2d at 90.

¶ 22 The collateral source rule has both evidentiary and substantive components. *Wills*, 229 Ill. 2d at 400. As a rule of evidence, it prevents defendants from introducing any evidence that all or part of a plaintiff’s losses have been covered by insurance. *Id.* As a substantive rule, it bars a defendant benefiting from the plaintiff’s award by the amount the plaintiff received from a collateral source. *Id.* The purpose of the rule is to prevent jurors from becoming aware of collateral source that could influence their decision. *Boden*, 196 Ill. App. 3d at 76.

¶ 23 Thoma argues Dr. Herman’s testimony did not lay a proper foundation for the surgeon’s fees or hospital bill, and providing treatment does not indicate that Dr. Herman knew whether the charges were usual and customary. However, based on the record, Dr. Herman was an expert in the field of neurosurgery and has performed thousands of similar surgeries throughout his career. While Dr. Herman does not prepare the billing statements, he demonstrated his familiarity with the cost of surgery at trial. Dr. Herman testified that he initially estimated Zaretsky’s surgery to cost as much as \$200,000, including hospital costs. Dr. Herman then opined that Zaretsky’s final bill of \$160,000 was a “bargain deal.” When questioned about the

reasonableness of a \$100,000 surgeon's fee for Zaretsky's surgery, he responded that the amount was "pretty typical." The admission of medical bills into evidence does not require the testimony of a billing specialist, only someone with "knowledge of the services rendered and the usual and customary charges for such charges." *Klesowitch*, 2016 IL App (1st) 150414, ¶ 45. Dr. Herman demonstrated that he has such knowledge.

¶ 24 Thoma then argues that Dr. Herman did not review the specific amount of the surgeon's fees or hospital bill, and only testified in generalities. Although Dr. Herman did not testify to the specific costs of Zaretsky's surgery, his testimony nonetheless revealed his knowledge of the usual and customary charges for the type of surgery Zaretsky received. Therefore, the circuit court did not abuse its discretion in determining that Dr. Herman's testimony laid a proper foundation for the medical bills.

¶ 25 The total cost of Zaretsky's surgery was approximately \$160,000: \$104,911 for Dr. Herman's surgeon's fees and \$56,413 for the hospital bill. Both expenses were properly recoverable, and the jury's verdict of \$160,000 in medical expenses to Zaretsky was not against the manifest weight of the evidence. Therefore, the circuit court's denial of Thoma's motions for a new trial and remittitur was proper.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 28 Affirmed.