

[Cite as *Gustin v. Chaney*, 2006-Ohio-1049.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

Vickie Gustin, et al.,	:	
	:	
Plaintiffs-Appellants,	:	
	:	Case No. 05CA7
v.	:	
	:	<u>DECISION AND</u>
Jeff Chaney, et al.,	:	<u>JUDGMENT ENTRY</u>
	:	
Defendants-Appellees.	:	File-stamped date: 3-02-06

APPEARANCES:

Gary D. Ostendarp, ELY & TRUE, Batavia, Ohio, and Paul N. Herdman, Lebanon, Ohio, for appellants.

Bradley A. Powell and Geoffrey M. Miller, DRODER & MILLER CO., LPA, Cincinnati, Ohio, for appellees.

Kline, J.:

{¶ 1} Vickie and Dennis Gustin appeal the Highland County Court of Common Pleas' judgment in their favor and subsequent denial of their motion for a new trial. The Gustins contend that the trial court committed reversible error when it granted the Chaney's motion in limine, prohibiting them from presenting evidence of the total medical expenses billed for Mrs. Gustin's treatment after the Chaney's dog bit her on the lip. Instead, the court only allowed them to present evidence of the amounts actually paid by the Gustins or their insurance company.

Because we find that the trial court erred as a matter of law by excluding the Gustins' evidence of Mrs. Gustin's total medical bills, we reverse the trial court's judgment and remand this cause for a new trial.

I.

{¶ 2} The parties stipulated that Mrs. Gustin was invited to the home of Jeff and Lori Chaney to plan a high school reunion. They further stipulated that on June 24, 2001, after being in the Chaney home for approximately one hour, Mrs. Gustin approached the Chaney's Weimaraner, and was bitten. The parties do not dispute that Mrs. Gustin sustained injuries to her upper and lower lip as a result of the dog bite. Accordingly, the trial court granted the Gustins' motion for partial summary judgment on the issue of liability, and the case proceeded to trial solely on the issue of damages.

{¶ 3} Before trial, the Chaney's filed a motion in limine, seeking a determination that any evidence of medical bills in excess of the amount paid by the Gustins' or their health insurance carrier was inadmissible. The Chaney's argued that the amount actually accepted by the medical providers as payment in full constituted the true measure of the Gustins' damages. The Gustins opposed the motion, arguing that pursuant to Ohio statutory and case law, a written medical bill or statement constitutes prima facie evidence of the reasonableness of the

charge. The Gustins noted that Mrs. Gustin's medical bills totaled \$33,356.57, but that they and/or their insurance carrier only paid \$13, 258.55 for her care. The Gustins argued that the collateral source rule served to prevent the Chaney's from benefiting from any payments made or discounts negotiated by the Gustins' insurance carrier. After conducting a hearing on the motion, the trial court orally granted the Chaney's motion, ruling that "the amount the medical provider actually settled for would be the amount that the jury would hear." Accordingly, the only evidence presented to the jury regarding Mrs. Gustin's medical bills consisted of the jury interrogatory form, which stated the lump sum of \$13,258.55 in past medical expenses—the amount that the parties stipulated was actually paid by the Gustins and/or their insurance carrier for Mrs. Gustin's medical treatment.

{¶ 4} In order to preserve their objection to the trial court's ruling, the Gustin's did proffer their Exhibit 1, a summary of the charges actually billed for Mrs. Gustin's medical treatment, at the close of their case-in-chief, noting that the court had already excluded that exhibit. The record does not reflect whether the trial court ruled upon this proffer. However, the parties acknowledge that, consistent with the trial court's ruling upon the motion in limine, Exhibit 1 was never presented to the jury.

{¶ 5} At trial, the jury returned a verdict in favor of the Gustins for \$108,258.55. On February 7, 2005, the trial court issued a judgment entry memorializing the verdict. Thereafter, the Gustins moved the court for a new trial, and the trial court denied the motion. The Gustins now appeal, raising the following assignments of error: (1) The trial court erred in granting [the Chaney's] Motion in Limine limiting the amount of each medical expense that could be presented to the jury to that portion of the expense paid by the [Gustins] or [their] medical insurer. (2) The trial court erred in denying [the Gustins'] Motion for New Trial.¹

II.

{¶ 6} In their first assignment of error, the Gustins argue that the trial court committed prejudicial, reversible error in granting the Chaney's motion in limine, effectively prohibiting them from introducing evidence of the medical bills incurred as a result of Mrs. Gustin's dog bite. Specifically, the Gustins contend that under Ohio law, a plaintiff's recovery of the reasonable value of medical treatment is not limited to the amount actually paid by the plaintiff's medical insurer. Instead, they assert that the jury should be permitted to consider the

¹ In their brief, the Gustins labeled their assignments of error as "STATEMENT OF THE ISSUES PRESENTED." Additionally, they have failed to separately argue their assignments of error as required by App.R. 16(A). We may disregard an assignment of error presented for review if the party raising it fails to separately argue the assignment in their brief, as required by App.R. 16(A). App.R. 12(A)(2). However, in the interests of justice we shall address both of the Gustins' assignments of error herein.

amount actually billed by the medical providers to determine the reasonable value of the services provided.

{¶ 7} “A motion in limine is a request that the court limit or exclude use of evidence which the movant believes to be improper, and is made in advance of the actual presentation of the evidence to the trier of fact, usually prior to trial. The motion asks the court to exclude the evidence unless and until the court is first shown that the material is relevant and proper.” *State v. Winston* (1991), 71 Ohio App.3d 154, 158.

{¶ 8} We have previously found that “[t]he granting of a motion in limine is not a final ruling on the admissibility of the evidence in question; rather, it is ‘a tentative, interlocutory, precautionary ruling by the trial court reflecting its anticipatory treatment of the evidentiary issue.’” *Board of County Com’rs, Lawrence County v. Burgess & Niple, Ltd.* (Jan. 27, 1993), Lawrence App. No. 91CA24, quoting *State v. Grubb* (1986), 28 Ohio St.3d 199, 201-202. Therefore, in order to preserve the error for appeal, the non-moving party who has been temporarily precluded from introducing the disputed evidence must proffer the evidence when the issue is reached during trial. Evid.R. 103(A)(2).

{¶ 9} Here, the trial court appears to have treated the Chaney’s motion in limine as a motion to suppress by regarding its ruling upon the motion as a final

ruling upon the admissibility of the evidence. However, the Gustins did proffer the disputed evidence at trial as required by Evid.R. 103(A)(2). Accordingly, we conclude that they have properly preserved their right to object on appeal to the exclusion of the evidence regarding the total medical expenses billed for Mrs. Gustin's medical treatment.

{¶ 10} It is well settled that, in the context of a personal injury action, an injured party is entitled to recover the reasonable and necessary medical expenses arising from the injury. See *Wagner v. McDaniels* (1984), 9 Ohio St.3d 184. R.C. 2317.421 provides: "In an action for damages arising from personal injury or wrongful death, a written bill or statement, or any relevant portion thereof, itemized by date, type of service rendered, and charge, shall, if otherwise admissible, be prima-facie evidence of the reasonableness of any charges and fees." Furthermore, the Ohio Supreme Court has held that "Proof of the amount paid or the amount of the bill rendered and of the nature of the services performed constitutes prima facie evidence of the necessity and reasonableness of the charges for medical and hospital services." *Wagner*, at paragraph one of the syllabus.

{¶ 11} Here, however, the trial court refused to allow the Gustins to admit evidence regarding the amount actually billed for Mrs. Gustin's medical care. The

court only permitted evidence regarding the amount the Gustins and/or their insurance carrier actually paid Mrs. Gustin's healthcare providers for her care.

{¶ 12} In *Robinson v. Bates* (2005), 160 Ohio App.3d 668, the First District Court of Appeals found, based in part upon R.C. 2317.421 and *Wagner*, supra, that a trial court must admit proffered medical bills as a matter of law. *Robinson* at ¶27. Once admitted, the defense may have an opportunity to rebut that prima facie evidence of necessity and reasonableness. *Id.* See, also, *Coleman v. Drayton* (Mar. 24, 1994), Franklin App. No. 93APE10-1402.

{¶ 13} The *Robinson* court specifically addressed the issue of whether a personal injury plaintiff could seek recovery of the amount billed for her medical care or only for the amount negotiated and paid by her insurance carrier. In doing so, the court noted that the collateral source rule prevents the reduction of a plaintiff's recovery for payments received from other sources. *Id.* at ¶32, citing *Prior v. Webber* (1970), 23 Ohio St.2d 104, 107. The collateral source rule embodies the public policy decision that the injured party, rather than the tortfeasor, should be the one to benefit if payment from an outside source creates a windfall. *Id.* Therefore, the rule prevents the jury from learning anything about any income or payments from collateral sources that might otherwise influence its determination of damages. *Id.*, citing *Prior*, supra, at 109.

{¶ 14} In determining that the collateral source rule applies to prevent a defendant-tortfeasor from benefiting from an agreement between a plaintiff's healthcare provider and insurer to write off a portion of the plaintiff's medical costs, the *Robinson* court examined decisions from a number of jurisdictions. The *Robinson* court's analysis reveals that the majority of jurisdictions considering the issue have allowed plaintiffs to recover the full amount of the necessary and reasonable treatment charges, regardless of what the injured party or their insurance carrier actually paid for the services, based upon either the collateral source rule or a contract analysis. The court noted that the jurisdictions allowing full recovery to all plaintiffs, whether insured or uninsured, "recognized that a defendant's liability is for the reasonable value of the damage caused[, and] * * * should not vary due to the financial situation of the plaintiff." *Id.* at ¶61.

{¶ 15} While the *Robinson* court noted that a number of jurisdictions have held that a plaintiff's recovery should be limited to the amount actually paid by the plaintiff's insurance, it also recognized that most of those courts have been influenced by state statutory limitations or abrogations of the collateral source rule. *Id.* at ¶62. However, the court noted that Ohio has no such statutory limitation. *Id.* at ¶70. Citing the public policy objective of the collateral source rule, the court concluded that, in Ohio, the collateral source rule applies to any amount written off

pursuant to an agreement between a plaintiff's insurance carrier and healthcare provider. Id. at ¶83.

{¶ 16} Here, the Chaney's argue that the collateral source rule should not apply because they did not attempt to introduce any evidence of payment from collateral sources. We disagree. Although the \$13,258.55 the Chaney's sought to submit to the jury did not explicitly identify any payment made by a third party, the amount consisted solely of the charges paid by a third party, while omitting any mention of the discount received as a benefit of the Gustin's contractual relationship with that third party. Admitting the amount actually paid by the insurer without admitting the actual billed charges violates the purpose and spirit of the collateral source rule by permitting the Chaney's to benefit from the insurer's discount without actually disclosing the existence of that benefit. As the First District noted, "[t]his result is directly contrary to the collateral source rule's goal of ensuring that 'the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons.'" *Robinson* at ¶43, quoting *Arthur v. Catour* (2004), 345 Ill. App.3d 804, 807, 281 Ill. Dec. 243, 803 N.E.2d 647 (citations omitted). Therefore, we find the Chaney's' argument without merit.

{¶ 17} We recognize that the possibility of a plaintiff recovering a substantial cash award for medical bills that exist only on paper is offensive to many in today's climate of spiraling medical and insurance costs. The root of the problem lies with medical providers charging inflated prices for their services, and then striking a bargain with insurance companies to accept a lesser amount as payment in full for those services. Undoubtedly, the lesser amount paid by the insurance companies is more reflective of the true value of the services rendered.

{¶ 18} That being said, we believe that the *Robinson* court reached the proper result under Ohio law as it exists today. Accordingly, we find that the trial court erred as a matter of law when it granted the Chaney's motion in limine and excluded the Gustins' evidence regarding Mrs. Gustin's total medical bills. Accordingly, we sustain the Gustins' first assignment of error. In so doing, we note that even if the evidence of a plaintiff's total medical bills is admitted into evidence, recovery of the full amount of those charges is not guaranteed. A defendant may still present evidence to rebut the reasonableness of the billed charges, which could substantially reduce a plaintiff's recovery.² While this process may be time consuming and unwieldy, in the absence of a statutory limitation of the collateral source rule, it is necessary.

² We note that the Chaney's did not dispute the amount billed by Mrs. Gustin's healthcare providers, and, at the hearing on their motion in limine, actually conceded that the billed charges were reasonable.

III.

{¶ 19} In their second assignment of error, the Gustins contend that, based upon the trial court's error in excluding their evidence of Mrs. Gustin's medical bills, the trial court erred in denying their Civ.R. 59(A)(9) motion for a new trial error.

{¶ 20} Civ.R. 59(A)(9) provides that the trial court may grant a new trial based upon "[e]rror of law occurring at the trial and brought to the attention of the trial court." Because the trial court's decision to deny the Gustin's motion for a new trial pursuant to this rule involves a decision of law, rather than an exercise of discretion, we review the trial court's decision de novo. *Ferguson v. Dyer* (2002), 149 Ohio App.3d 380, 383, citing *Rohde v. Farmer* (1970), 23 Ohio St.2d 82, at paragraph two of the syllabus.

{¶ 21} We have already determined that the trial court erred as a matter of law in excluding evidence of Mrs. Gustin's total medical bills. Additionally, we find that the Gustins brought this error to the trial court's attention at the time of trial. Therefore, we find that the trial court erred as a matter of law in denying the Gustins' motion for a new trial pursuant to Civ.R. 59(A)(9). Accordingly, we sustain the Gustins' second assignment, reverse the judgment of the trial court, and remand this cause for further proceedings consistent with this opinion.

**JUDGMENT REVERSED
AND CAUSE REMANDED.**

Harsha, J., dissenting:

I unflinchingly join the minority in believing economic damages for medical expenses should be limited to actual pecuniary loss caused by the defendant's conduct. Like my unlearned colleagues in Hanif v. Hous. Auth. of Yolo Cty. (1988), 200 Cal.App.3d 635, 246 Cal.Rptr. 192 and Moorhead v. Crozer (2001), 564 Pa. 156, 765 A.2d 786 I would restore the plaintiff as nearly as possible to the plaintiff's pre-tort condition. This means plaintiff's recovery for medical expenses should be limited to the amount actually paid. Thus, I cannot join in an attempt to bolster the plaintiff's verdict on the basis that the cost of litigation reduces plaintiff's net recovery. If the measure of damages fails to compensate plaintiff for all her injuries, the best public policy is to address the problem directly, rather than to misconstrue a rule that addresses actual payments made by or for the plaintiff.

Furthermore, before a medical bill can be admissible under R.C. 2317.421 as evidence of the reasonableness of charges for services rendered, it must be "otherwise admissible". Because a medical bill that does not reflect the amount actually paid is not relevant to plaintiff's true damages, it is not "otherwise admissible".

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and the cause remanded to the trial court for further proceedings consistent with this opinion and that costs herein be taxed to the appellee.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as the date of this Entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, P.J.: Dissents with Dissenting Opinion.

Abele, J.: Concurrency in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.