[Cite as *Carreon v. Duncan*, 2010-Ohio-703.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

THERESA M. CARREON	C. A. No. 09CA009601
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ROXANNA W. DUNCAN	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 08CV155303

DECISION AND JOURNAL ENTRY

Dated: March 1, 2010

CARR, Judge.

{¶1} Appellant, Roxanna Duncan, appeals the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} Theresa Carreon ("Plaintiff") filed a complaint against Roxanna Duncan ("Defendant"), alleging a claim for negligence arising out of an automobile accident. Ms. Duncan answered, denying the claim.

{¶3} Defendant filed a notice of her intent to introduce medical billing information, specifically evidence of medical bills which were "written off," for the jury's consideration in determining the fair and reasonable value of medical expenses incurred by Plaintiff. Defendant argued that both the Ohio Supreme Court's decision in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, and R.C. 2315.20 support the admission of such evidence for that purpose. Plaintiff filed a motion in limine to exclude collateral source evidence, specifically the amounts

of contractual write-offs or adjustments. Plaintiff argued that Defendant's reliance on the *Robinson* decision is misplaced because the provisions of R.C. 2315.20 are controlling in a case where a health insurance company who paid Plaintiff's medical bills has a contractual right of subrogation. On June 1, 2009, the trial court granted Plaintiff's motion in limine to exclude collateral source evidence for the reason that Plaintiff's cause of action accrued after the effective date of R.C. 2315.20, rendering the statute controlling. The trial court ordered that "[D]efendant and defense counsel are ordered not to inquire, reference or mention at any phase of the trial any thing to suggest that the medical bill amounts should be reduced by any contractual write-offs or adjustments to medical bills."

{¶4} The matter proceeded to trial on the issues of causation and damages, negligence having been admitted by Defendant. At the conclusion of trial, the jury rendered judgment in favor of Plaintiff, awarding her $34,809.00 in economic damages, and $50,000.00 in non-economic damages, for a total of $84,809.00. On June 5, 2009, the trial court reduced the jury's verdict to a final judgment for Plaintiff in the amount of $84,809.00, plus post-judgment interest and costs. Defendant filed a timely appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

> "THE TRIAL COURT ERRED BY EXCLUDING EVIDENCE OF AMOUNTS WRITTEN OFF OR ADJUSTED BY THE PLAINTIFF'S MEDICAL PROVIDERS, CONTRARY TO *ROBINSON V. BATES* [], 112 OHIO ST.3D 17, 2006-OHIO-6362."

{¶5} Defendant argues that the trial court erred by excluding evidence of any amounts written off by medical providers for the jury's consideration in determining the fair and reasonable amount of medical bills, contrary to the Ohio Supreme Court's decision in *Robinson*, supra. This Court disagrees.

{¶6} When Defendant filed her notice of appeal, she failed to complete the docketing statement regarding the composition of the record to be assembled and transmitted by the clerk of courts. On July 27, 2009, the parties filed with this Court an agreed statement as the record on appeal pursuant to App.R. 9(D). On September 16, 2009, this Court ordered the July 27, 2009 agreed statement stricken from the record because it did not comply with the requirements of App.R. 9(D).

{¶7} App.R. 9(D) states:

> "In lieu of the record on appeal as defined in division (A) of this rule, the parties, no later than ten days prior to the time for transmission of the record pursuant to App.R. 10, may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with additions as the trial court may consider necessary to present fully the issues raised by the appeal, shall be approved by the trial court prior to the time for transmission of the record pursuant to App.R. 10 and shall then be certified to the court of appeals as the record on appeal and transmitted to the court of appeals by the clerk of the trial court within the time provided by App.R. 10."

{¶8} On September 11, 2009, Defendant filed a motion in the trial court to correct, supplement and certify the record with an agreed statement. Defendant conceded therein that she had earlier filed an agreed statement pursuant to App.R. 9(D) directly with the appellate court without first obtaining approval by the trial court. Plaintiff timely responded in opposition. The trial court granted the motion to correct or supplement the record and ordered the clerk of courts to certify the parties' agreed statement and transmit it as part of the record on appeal. On September 22, 2009, the parties filed an agreed statement as the record on appeal pursuant to App.R. 9(D) in the trial court. However, there is no record that the agreed statement was ever filed with this Court. The record contains no agreed statement bearing a time-stamp from the appellate clerk. Nor does the appellate docket indicate that the agreed statement was filed with

this Court. The record in this case consists solely of the original papers, exhibits, a certified copy of the docket and journal entries, and any transcripts of proceedings that were filed in the trial court prior to final judgment. It does not, however, contain a valid App.R. 9(D) agreed statement.

{¶9} Both Defendant and Plaintiff raised the issue of the admissibility of amounts written off by medical providers prior to trial. Plaintiff filed a motion in limine, while Defendant filed a notice of intent to introduce evidence of write-off amounts with her argument as to why that was proper pursuant to *Robinson*, supra. The trial court granted Plaintiff's motion in limine and ordered the exclusion of such evidence.

{¶10} This Court has stated:

> "A motion in limine is a request for a preliminary order regarding the admissibility of evidence that a party believes may be improper or irrelevant. *Riverside Methodist Hosp. Assn. v. Guthrie* (1982), 3 Ohio App.3d 308, 310. The purpose of a motion in limine is to alert the court and counsel of the nature of the evidence in order to remove discussion of the evidence from the presence of the jury until the appropriate time during trial when the court makes a ruling on its admissibility. Id. An appellate court need not determine the propriety of an order granting or denying a motion in limine, unless the claimed error is preserved by an objection, proffer, or ruling on the record at the proper point during the trial. *State v. Maurer* (1984), 15 Ohio St.3d 239, 259-260. In order for an appellate court to review the propriety of the exclusion of evidence, the party claiming prejudice must proffer into the record the substance of the excluded evidence. *State v. Tait* (Jan. 29, 1997), 9th Dist. No. 96CA006339. See, also, Evid.R. 103(A)(2). This enables the reviewing court to 'determine whether or not the [ruling] of the trial court [was] prejudicial.' *Smith v. Rhodes* (1903), 68 Ohio St. 500, 505." *State v. Keenan* (Feb. 20, 2002), 9th Dist. No. 20528.

{¶11} An appellant is responsible for providing this Court with a record of the facts, testimony, and evidentiary matters necessary to support the assignments of error. *Volodkevich v. Volodkevich* (1989), 48 Ohio App.3d 313, 314. Specifically, it is an appellant's duty to transmit the transcript of proceedings. App.R. 10(A); Loc.R. 5(A). "When portions of the transcript which are necessary to resolve assignments of error are not included in the record on appeal, the

reviewing court has 'no choice but to presume the validity of the [trial] court's proceedings, and affirm.'" *Cuyahoga Falls v. James*, 9th Dist. No. 21119, 2003-Ohio-531, at ¶9, quoting *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶12} The trial court's order granting Plaintiff's motion in limine to exclude evidence of write-off amounts was not dispositive of the issue. The issue could only be properly resolved at the proper point during trial. While the record contains several deposition transcripts, it does not contain a transcript of the trial or a properly filed App.R. 9(D) statement. Because a review of the trial transcript is necessary for a determination of Defendant's assignment of error, this Court must presume regularity in the trial court's proceedings and affirm the judgment of the trial court. See *Knapp*, 61 Ohio St.2d at 199. Defendant's sole assignment of error is overruled.

III.

{¶13} Defendant's assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

PATRICK F. ROCHE, Attorney at Law, for Appellant.

JAMES GALLAGHER, Attorney at Law, for Appellant.

JOHN MIRALDI, Attorney at Law, for Appellee.