[J-71-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JAYNET A. MOORHEAD, ADMINISTRATRIX OF THE ESTATE OF CATHERINE B. BAXTER, DECEASED,	:	No. 184 M.D. Appeal Docket 1998
	:	Appeal from the Order and Opinion of the Superior Court at No. 261 PHL 1997, affirming the Judgment of the Court of Common Pleas of Delaware County at No. 94-5637.
Appellant	:	
v.	:	
	:	705 A.2d 452 (Pa. Super. 1997)
CROZER CHESTER MEDICAL CENTER,	:	
	:	ARGUED: April 27, 1999
Appellee	:	

OPINION [1]

MR. JUSTICE CAPPY **DECIDED: January 29, 2001**

The issue in this case concerns the appropriate measure of compensatory damages for past medical expenses. For the following reasons, we affirm the order of the Superior Court, although on different grounds.[2]

Appellant's decedent Catherine Baxter ("Baxter") fell and injured herself while she was a patient at Appellee's facility. Appellee provided medical services to Baxter for the injuries she received. Subsequently, Baxter commenced a medical malpractice action against Appellee. Following Baxter's death, Appellant, as administratrix of Baxter's estate,

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[1] This opinion was reassigned to this author.

[2] We may affirm the order of the court below if the result reached is correct without regard to the grounds relied upon by that court. Pennsylvania Game Comm'n v. State Civil Service Comm'n (Toth), 747 A.2d 887, 888 n.1 (Pa. 2000) (citations omitted).

was substituted as the plaintiff. As the case proceeded to trial, an issue arose as to the appropriate measure of compensatory damages for Baxter's past medical expenses. The court reserved that issue for itself and submitted the case to the jury, which returned a verdict in favor of Appellant, awarding $46,500 in non-economic damages including pain and suffering.

In an "Agreed Upon Statement of Facts Pursuant to Pa.R.A.P. 1925", the parties established the following facts with regard to the issue of compensation for past medical expenses: Baxter was covered by Medicare as well as a "Blue Cross 65" supplemental plan, for which she had paid premiums. R. 12a. The fair and reasonable value of the medical services rendered to Baxter was $108,668.31. Id. The Medicare allowance for those services was $12,167.40. Id. Of the $12,167.40, eighty percent was paid by Medicare and twenty percent was paid by Blue Cross 65. Id. Appellee was a voluntary participant in the Medicare program and consequently accepted the $12,167.40 as payment in full for the medical services it rendered. Id. Appellee cannot obtain the difference of the cost of its services and the Medicare allowance (i.e. $96,500.91) from Appellant or from any other source. R. 12a-13a. Conversely, Appellant never was and never will be legally obligated to pay more than $12,167.40 for the medical services. R. 13a. Appellant contended that she was entitled to the full $108,668.31, while Appellee maintained that her recovery was limited to $12,167.40. R. 12a.

The trial court agreed with Appellee that Appellant was entitled to recover $12,167.40, the amount actually paid and accepted as full payment for the medical services rendered by Appellee. On appeal, a divided panel of the Superior Court affirmed, but on different grounds. Two judges, relying on Kashner v. Geisinger, 638 A.2d 980 (Pa. Super. 1994), determined that the reasonable value of the services was $108,668.31, but that Appellee was entitled to a setoff of $96,500.91 since Appellee, as tortfeasor, forgave that

amount, thereby contributing that amount towards its liability. See Restatement (Second) of Torts §920A(1)[3]. Since Appellee's liability for damages after the setoff was $12,167.40, the same amount awarded by the trial court, the Superior Court affirmed the trial court's judgment. One judge dissented, arguing that Appellee was not entitled to a setoff for forgiving the excess amount because Appellee was contractually bound to accept that amount and therefore made no contribution to Appellant that Appellant had not already received from Medicare.

Appellant contends that Appellee is not entitled to a setoff because it was contractually bound to accept the Medicare allowance and therefore made no payment to Baxter; that a setoff presupposes an existing obligation of the plaintiff which in this case is non-existent; that the collateral source rule precludes Appellee from profiting from the Medicare benefits; and that the Superior Court's decision arbitrarily assigns second-class claimant status to senior citizens who provide for their retirement medical expenses. Appellee counters that the trial court correctly determined that the reasonable value of the services was the amount actually paid, and in the alternative, the Superior Court properly granted a setoff.

On appeal, conclusions of law are always subject to our review. Fiore v. Fiore, 174 A.2d 858, 859 (Pa. 1961). As this issue involves a question of law, our scope of review is

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[3] Section 920A, entitled "Effect of Payments Made to Injured Party", provides:

> (1) A payment made by a tortfeasor or by a person acting for him to a person whom he has injured is credited against his tort liability, as are payments made by another who is, or believes he is, subject to the same tort liability.
>
> (2) Payments 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.

plenary. Phillips v. A-Best Products Co., 665 A.2d 1167, 1170 (Pa. 1995). The issue we must resolve is this: is Appellant entitled to collect the additional amount of $96,500.91, or is her recovery limited to $12,167.40, the amount actually paid for the medical services? We find that consistent with principles of fair compensation, she is entitled to the amount actually paid.

Initially, we will address Appellant's contention that Appellee is bound by the "Agreed Upon Statement Pursuant to Pa.R.A.P. 1925," which indicates that the fair and reasonable value of the medical services is $108,668.31. R. 12a. "Parties may by stipulation resolve questions of fact or limit the issues, and, if the stipulations do not affect the jurisdiction of the court or the due order of the business and convenience of the court, they become the law of the case." Parsonese v. Midland Nat'l Ins. Co., 706 A.2d 814, 815 (Pa. 1998) (citations omitted). In this case, the statement was only as to facts (R.R. 11a), and this court's review of a legal issue cannot be supplanted by a stipulation. See Pittsburgh Miracle Mile Town & Country Shopping Center v. Board of Property Assessment, Appeals & Review of Allegheny Co., 209 A.2d 394 (Pa. 1965) (stipulation as to fair market value is merely evidentiary expedient on appeal and does not change court's obligation to determine correctness of the assessment as a whole). It is clear that Appellee was not conceding that Appellant was entitled to the full $108, 668.31; to the contrary, both parties agreed that Appellee contended that Appellant's recovery should be limited to $12,167.40. R.12a. The stipulation cannot preclude this court's evaluation of the legal issue regarding the amount of damages to which Appellant is entitled.

Pennsylvania case law allows a plaintiff to recover the reasonable value of medical services. See, e.g., Piwoz v. Iannacone, 178 A.2d 707 (Pa. 1962); Fougeray v. Pflieger, 170 A. 257 (Pa. 1934). The controlling question in this case is whether the definition of "reasonable value" permits an injured party to recover from the tortfeasor damages in an

amount greater than the amount that the plaintiff has actually paid or for which he or she has incurred liability. We find that the amount paid and accepted by Appellee as payment in full for the medical services is the amount Appellant is entitled to recover as compensatory damages.

"The expenses for which a plaintiff may recover must be such as have been actually paid, or such as, in the judgment of the jury, are reasonably necessary to be incurred." Goodhart v. Penn. R.R. Co., 35 A. 191, 192 (Pa. 1896). Appellant concedes that pursuant to agreements with Medicare and Blue Cross, Appellee was contractually obligated to accept $12,167.40 as full payment for services rendered. When a plaintiff will continue to incur expenses for medical services, it is appropriate for the factfinder to determine the amount of damages which will compensate the plaintiff for those expenses that "are reasonably necessary to be incurred." Conversely, where, as here, the exact amount of expenses has been established by contract and those expenses have been satisfied, there is no longer any issue as to the amount of expenses for which the plaintiff will be liable. In the latter case, the injured party should be limited to recovering the amount paid for the medical services. See 25 Corpus Juris Secundum, Damages §91(3) (1996 & Supp. 1999) ("Where the amount paid for medical services is in accordance with a contractual schedule of rates, recovery is limited to that amount although the reasonable value of the services in the absence of contract is higher.") (footnote omitted).

This evaluation of the reasonable value of services is in accord with the Restatement (Second) of Torts, §911 comment h (1977), which states: "When the plaintiff seeks to recover for expenditures made or liability incurred to third persons for services rendered, normally the amount recovered is the reasonable value of the services rather than the amount paid or charged. If, however, the injured person paid less than the exchange rate, he can recover no more than the amount paid, except when the low rate

was intended as a gift to him." It also is consistent with the approach taken in other jurisdictions. See Hanif v. Housing Authority of Yolo County, 200 Cal. App. 3d 635, 641 (Cal. Ct. App. 1988) (declining to award plaintiff amount in excess of the amount actually paid by Medi-Cal, and stating "when the evidence shows a sum certain to have been paid or incurred for past medical care and services, whether by the plaintiff or by an independent source, that sum certain is the most the plaintiff may recover for that care despite the fact it may have been less than the prevailing market rate."); Bates v. Hogg, 921 P.2d 249 (Kan. Ct. App.), rev. den. 260 Kan. 991 (1996) (plaintiff properly prohibited from admitting evidence of market value of medical services; because of medical provider's contractual agreement, the amount allowed by Medicaid represented the customary charge under the circumstances). Given Appellee's contractual obligations, the trial court did not err in determining that Appellant was limited to recovering $12,167.40, the amount that was paid and accepted as payment in full for past medical expenses.

Awarding Appellant the additional amount of $96,500.91 would provide her with a windfall and would violate fundamental tenets of just compensation. It is a basic principle of tort law that "damages are to be compensatory to the full extent of the injury sustained, but the award should be limited to compensation and compensation alone." Incollingo v. Ewing, 282 A.2d 206, 228 (Pa. 1971) (citations omitted). Appellant never has, and never will, incur the $96,500.91 sum from Appellee as an expense. We discern no principled basis upon which to justify awarding that additional amount.

Our approach is consistent with theories of fair compensation reflected in Pennsylvania case law, such as the following: remedies seek to put the injured person in a position as nearly as possible equivalent to his or her position prior to the tort, Trotsky v. Civil Service Comm'n, City of Pittsburgh, 652 A.2d 813, 817 (Pa. 1995); evidence of damages cannot be presumed (Maxwell v. Schaeffer, 112 A.2d 69, 73 (Pa. 1955)) and

must be reasonably precise in order to provide the jury with an adequate framework upon which to base a verdict, Nakles v. Union Real Estate Co. of Pittsburgh, 204 A.2d 50, 52 (Pa. 1964); an injured party cannot recover twice for the same injury, on the theory that duplicative recovery results in unjust enrichment, Rossi v. State Farm Auto. Ins. Co., 465 A.2d 8, 10 (Pa. Super. 1983); the loss the injured person sustained should be compensated with the least burden to the wrongdoer, consistent with the idea of fair compensation to the person injured, Incollingo, 282 A.2d at 228; a plaintiff has a duty to mitigate damages, Thompson v. De Long, 110 A. 251, 253 (Pa. 1920); and a defendant may show such facts in mitigation to preclude the plaintiff from obtaining full compensation for damages occasioned by himself or herself, see Robison v. Rupert, 23 Pa. 523, 525 (Pa. 1854).

Additionally, we find that the collateral source rule is inapplicable to the additional amount of $96,500.91. The rule "provides that payments from a collateral source shall not diminish the damages otherwise recoverable from the wrongdoer. [Citation omitted]. The principle behind the collateral source rule is that it is better for the wronged plaintiff to receive a potential windfall that for a tortfeasor to be relieved of responsibility for the wrong." Johnson v. Beane, 664 A.2d 96, 100 (Pa. 1995). Appellant relies upon comment b to the Restatement (Second) of Torts §920A, which provides in pertinent part: "If the plaintiff was himself responsible for the benefit, as by maintaining his own insurance or by making advantageous employment arrangements, the law allows him to keep it for himself. If the benefit was a gift to the plaintiff from a third party or established for him by law, he should not be deprived of the advantage that it confers." Appellant also cites to comment c of that same section, which provides that Social Security benefits are the type of collateral benefits which cannot be subtracted from the plaintiff's recovery.

Clearly, Appellant is entitled to recover $12,167.40, the amount which was paid on her behalf by Medicare and Blue Cross, the collateral sources. See Restatement (Second) of Torts §920A(2), supra, note 2. But the essential point to recognize is that Appellee is not seeking to diminish Appellant's recovery by this amount. Rather, the issue is whether Appellant is entitled to collect the additional amount of $96,500.91 as an expense. Appellant did not pay $96,500.91, nor did Medicare or Blue Cross pay that amount on her behalf. The collateral source rule does not apply to the illusory "charge" of $96,500.91 since that amount was not paid by any collateral source. See McAmis v. Wallace, 980 F.Supp. 181 (W.D. Va. 1997) (collateral source rule did not require that plaintiff recover the amount of the Medicaid write-off since no one incurred the written-off amount); Bates, supra (collateral source rule did not apply to amount written off pursuant to Medicaid contract).

Accordingly, we affirm the order of the Superior Court, but on different grounds.[4]

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[4] Because of the Superior Court's reliance on Kashner v. Geisinger, 638 A.2d 980 (Pa. Super. 1994), the reasoning of that case warrants further commentary. In Kashner, the plaintiff was treated at Geisinger Medical Center (GMC) and Geisinger Clinic (the Clinic) by Dr. Arthur Colley. The plaintiff brought a medical malpractice action against all three providers; the Clinic and Dr. Colley each were found to be fifty percent negligent. While a portion of the plaintiff's medical bills were paid by the Department of Public Welfare (DPW), the remainder were "written off" by GMC and forgiven by the Clinic. The trial court limited the amount of medical expenses submitted to the jury to the amounts paid by DPW. The Superior Court reversed, finding that the trial court erred in preventing the plaintiff from proving medical expenses in excess of the amounts paid by DPW. The court determined that "the amount actually paid for medical services does not alone determine the reasonable value of those medical services. Nor does it limit the finder of fact in making such a determination." 638 A.2d at 983 (citations omitted).

In support of this proposition, the Kashner court summarized a holding in Brown v. White, 51 A. 962 (Pa. 1902) as "the damages entitled to plaintiff for medical expenses are determined by assessing what would reasonably compensate the physicians providing the services regardless of what the physicians had actually been paid." 638 A.2d at 983. This interpretation in the context of this case is misleading. In Brown, the trial court held that the (continued…)

Mr. Justice Saylor did not participate in the consideration or decision of this matter.

Mr. Justice Zappala concurs in the result.

Mr. Justice Nigro files a dissenting opinion.

(…continued)

plaintiff was entitled to recover damages for expenses incurred for medical service rendered by her physicians, although there was no evidence showing the amount of money expended for the services, nor what the services were reasonably worth. In sustaining this allegation of error, the Brown court held that the plaintiff must "furnish the jury evidence from which they could determine what had been paid for such services, or such amounts as the services were reasonably worth." 51 A. at 965.

Additionally, the Kashner court relied upon D. Dobbs, Handbook on the Law of Remedies, §8.1 at 543 (1973) which stated: "The measure of recovery is not the cost of services . . . but their reasonable value. . . .[R]ecovery does not depend on whether there is any bill at all, and the tortfeasor is liable for the value of medical services even if they are given without charge, since it is their value and not their cost that counts." A more recent version of that same treatise indicates in the very next sentence that: "It has been said, however, that if the provider of medical services charges less than their value without intending a gift, the plaintiff's recovery is limited to the liability incurred." D. Dobbs, Handbook on the Law of Remedies §8.1(3) at 377 (1993) (footnote omitted). Thus, we do not find the quoted language in Kashner to be a complete or final authority on this issue.

Finally, the Kashner court relied on the Restatement (Second) of Torts §924, cmt. f (1979) which states: "The value of medical services made necessary by the tort can ordinarily be recovered although they have created no liability or expense to the injured person, as when a physician donates his services (See §920A)." As noted above, we find another provision, Restatement (Second) of Torts §911, cmt. h, which limits the tortfeasor's liability to the amount paid if it is "less than the exchange rate" unless "the low rate was intended as a gift to [the injured party]", to be more applicable to the instant case.