Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of December, 2022** are as follows:

BY Crichton, J.:

2022-CC-01068 *WALTER GEORGE AND JANIE GEORGE VS. PROGRESSIVE WASTE SOLUTIONS OF LA, INC. AND ABC INSURANCE COMPANY* (Parish of Terrebonne)

REVERSED AND REMANDED. SEE OPINION.

Crain, J., concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2022-CC-01068

WALTER GEORGE AND JANIE GEORGE

VS.

PROGRESSIVE WASTE SOLUTIONS OF LA, INC. AND ABC INSURANCE COMPANY

On Supervisory Writ to the 32nd Judicial District Court, Parish of Terrebonne

CRICHTON, J.

We granted the writ application in this matter to determine whether the trial court erred in granting the defendant's Motion in Limine to exclude from evidence the full amount of medical bills charged for plaintiff's injuries in this personal injury lawsuit. For the reasons that follow, we find the trial court erred in granting the Motion in Limine, vacate that ruling, and remand this matter for trial.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of December 29, 2015, plaintiff Walter George was standing at the roadside of his home in Houma, Louisiana, at the same time defendant Progressive Waste Solutions of La., Inc. ("Progressive") was picking up garbage on plaintiff's street. While plaintiff was picking remnants of garbage left behind, he was struck by the hydraulic arm of a garbage truck and sustained injuries. Plaintiff and his wife, Janie George, filed a petition for damages on October 4, 2016, against Progressive and ABC Insurance Company, seeking damages for his injuries and Mrs. George's loss of consortium. Plaintiff underwent back surgery (endoscopic rhizotomy, laminotomies and an L4-5 discectomy) on December 20, 2016, and the total amount charged by Champion Medical Center for that procedure was $192,020.14.

On December 1, 2016, Champion Medical Center entered into a "Professional Service Agreement" ("agreement")[1] with Ascendant Healthcare ("company"), which identified itself in this agreement as being in "the business of arranging for the provision of professional medical services to persons whose health care costs are paid by liability insurance companies and/or attorneys that enter into arrangements with [Ascendant] for the provision of such services…."

The agreement also identified the patient (Mr. George), his physician, the provider (Champion Medical Center and others) and the procedure performed ("3 level rhizotomy & laminectomy"). It further stated:

> FEES AND COMPENSATION – Company will act as a billing agent to collect payment for medical services rendered to Patient. Provider agrees to invoice Company for Services provided pursuant to this Agreement at 100% of Provider's usual and customary billed charges. Provider agrees to provide professional medical services to Patient and to accept fifty percent of billed charges (50%) as full and final reimbursement for services rendered under this agreement. Company shall reimburse provider on the fifteen (15th) day of the following monthly business cycle, or the first business day thereafter.

The agreement also stated that "[p]rovider agrees and hereby appoints Company as its agent for purposes of filing a medical lien for the services rendered by Provider. Provider hereby assigns any and all rights to a medical lien with regard to any proceeds recovered by the injured patient under La. R.S. 9:4752, *et seq.* Provider agrees to cooperate and assist Company as necessary in billing and collection of any amounts due for the services rendered by Provider."[2]

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[1] In a health care context, a medical factoring agreement is typically one in which a factoring company (here, Ascendant) acquires patient accounts receivables from a medical provider (here, Champion Medical Center), often for a negotiated amount. As part of this transaction, the healthcare provider transfers and assigns its rights to collect the receivables from the patient (and/or any other guarantors) to the factoring company. *See Ochoa v. Aldrete*, 21-632 (La. App. 5 Cir. 12/8/21), 335 So.3d 957, 964-66 (holding that the medical factoring agreement in that matter resulted in the assignment of the medical providers' rights to the purchasing entity/factoring company, and plaintiff was liable to the factoring company for the full amount of billed medical charges).

[2] The copy of this Agreement in the record before this Court has spaces for signatures by the Controller of the Medical Provider (Paul Courtney) and for a signatory of Ascendant Healthcare, LLC, although no signatures are present on this document.

On January 17, 2017, plaintiff's former counsel at the law firm of Spagnoletti & Company executed a "Letter of Guaranty and Protection." The document, signed by Mr. Marcus Spagnoletti only, identified "the undersigned attorney and law firm" as the "GUARANTOR," "ASCENDANT HEALTHCARE, LLC" as the "Company," and the patient as Walter George (who received medical treatment resulting from an "ACCIDENT" on December 29, 2015). The guaranty also provided, in pertinent part:

> Guarantor accepts absolute and full responsibility of and agrees to protect the interests, assignments, and privileges of recourse to Company for full payment and performance of any and all of its obligations due and owing to Company.
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> Guarantor, jointly and severally with and on behalf of Patient with full legal authority, grants to Company and/or its assigns irrevocable assignments of right, title, and interest in the net proceeds or any subsequent proceeds that may be recovered on Patient's behalf, regardless of the source, as the result of any compromise, settlement arbitration, mediation, litigation, award, judgment or verdict, or any other collection activities related to Accident.
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> Consistent with La. R.S. 9:4752, *et seq.*, Guarantor acknowledges and accepts that Company retains a privilege on any net proceeds payable to the Patient, his or her heirs, or legal representatives, out of the total amount of any recovery or sum had, collected, or to be collected, whether by judgment or by settlement, or compromised from another person, on account of such injuries, and on the net amount payable by any insurance company under any contract providing for indemnity or compensation to the Injured Person.

On May 23, 2017, the medical receivables assigned to Ascendant Healthcare were sold and assigned to Southern Magnolia Medical, LLC.[3]

After the parties engaged in initial discovery, defendant Progressive filed a Motion in Limine on March 10, 2020, seeking to exclude or strike the medical bills related to plaintiff's surgery and charged to Ascendant Healthcare. Specifically,

[3] Although Ascendant's receivables were sold to Southern Magnolia, because Ascendant was the original medical factoring company involved at the time litigation began, the opinion will refer to "Ascendant" or "Ascendant/Southern Magnolia."

Progressive argued plaintiff incurred $192,020.14 in charges, but the total amount of those charges is irrelevant and inadmissible because there is no evidence that plaintiff himself is personally responsible for any payments to Ascendant/Southern Magnolia Medical. In other words, defendant asserts, the collateral source rule does not apply for these charges because they are simply amounts charged, and plaintiff has not diminished his patrimony in order to receive his medical care. Furthermore, Progressive asserted, plaintiff's former counsel is the sole guarantor of the financing arrangement. In support of their argument, Progressive relied upon *Williams v. IQS Insurance Risk Retention*, 18-2472, 2019 WL 937848 (E.D. La. 2/26/19), urging that under similar facts, the federal court found that because there was no evidence plaintiffs themselves agreed to be responsible to anyone for any medical bills or for the difference should their recovery at trial fall short, the collateral source rule does not apply to the difference between the full billed medical charges and the amount actually paid in satisfaction of the bill. Thus, the *Williams* court concluded, there was no legitimate reason for admitting evidence of the funding mechanism because the plaintiffs could not recover beyond what their medical providers were actually paid.

Plaintiffs opposed the Motion in Limine, asserting they have not received any benefit and Mr. George remains liable to the financing company for the full amount of the medical bills as a result of the assignment of rights agreement between the financing company and his medical providers.[4] Therefore, Mr. George should be entitled to present to the jury the full-billed medical charges. Plaintiffs urge they were not a party to the medical financing contract between Ascendant and Mr. George's medical providers, and there is no evidence that his former counsel was a

[4] Article 2642 of the Civil Code provides in pertinent part that "[a]ll rights may be assigned, with the exception of those pertaining to obligations that are strictly personal." A strictly personal obligation is one "when its performance can be enforced only by the obligee, or only against the obligor." La. C.C. art. 1766. Moreover, a litigious right is transferable by assignment pursuant to La. C.C. art. 2652. *King v. Illinois Nat. Ins. Co.,* 08-1491, p. 7 (La. 4/3/09), 9 So.3d 780, 785.

party to the agreement or that counsel negotiated a discount on his medical bills. The only involvement of his former counsel was to sign a letter of Guaranty in favor of Ascendant and its future assignees, thereby promising repayment of the full sum of the medical bills out of any recover in the personal injury suit.

The trial court deferred ruling on the initial Motion in Limine in order to allow Progressive to conduct limited discovery in connection with plaintiff's medical bills. On August 16, 2021, Progressive filed a renewed Motion in Limine. Following a hearing, the trial court granted the Motion in Limine, ruling that plaintiffs may only present the discounted medical charges at trial and that any evidence of a third-party funding arrangement or the funding mechanism that was used to pay for Mr. George's medical treatment is irrelevant and excluded from evidence. The court of appeal denied plaintiffs' writ application on June 23, 2022, with one dissent. *George v. Progressive Waste Solutions of LA, Inc., and ABC Insurance Company*, 22-0371 (La. App. 1 Cir. 6/23/22), 2022 WL 2303764 (unpub'd). The dissent noted that in the absence of any evidence that Mr. George is not liable for the full amount billed, defendant cannot subtract the discounted price from a theoretical damage award to plaintiff. *Id*. (Guidry, J., dissenting, citing *Ochoa v. Aldrete*, 21-632 (La. App. 5 Cir. 12/8/21), 335 So.3d 957). This Court thereafter granted plaintiff's writ application. *George v. Progressive Waste Solutions of La Inc. and ABC Insurance Company*, 22-1068 (La. 7/15/22), 342 So.3d 304.

DISCUSSION

A trial court is afforded broad discretion in its consideration of evidentiary matters, including motions in limine, which are not to be disturbed on appeal absent a clear abuse of that discretion. *Certain Underwriters at Lloyd's London, et al. v. United States Steel Corp. and United States Tubular Products, Inc.,* 19-1730 (La. 1/28/20), 288 So.3d 120, citing *Heller v. Nobel Ins. Co.*, 00-261 (La. 2/2/00), 753 So.2d 841. On review, the appellate court must consider whether the error

prejudiced the plaintiff's case, otherwise a reversal is not warranted. La. C.E. art. 103(A); *Moonan v. La. Med. Mut. Ins. Co.,* 16-113 (La. App. 5 Cir. 9/22/16), 202 So.3d 529, *writ denied*, 16-2048 (La. 1/9/17), 214 So.3d 869 (internal citations omitted). In reviewing the trial court's ruling in this matter to exclude the full-billed amount of medical charges for plaintiff's medical services, we must first determine whether the plaintiff has been released from his original and separate obligation to pay the medical bills he incurred through his treatment by his health care providers.

The fundamental tort principle underlying all tort action in Louisiana applies here: if the defendants are found at fault, the plaintiff is entitled to be made whole through his recovery. La. C.C. art. 2315.[5] *See Bellard v. American Cen. Ins. Co.,* 07-1335, p. 19 (La. 4/18/08), 980 So.2d 654, 668 ("The purpose of tort damages is to make the victim whole."); *Simmons v. Cornerstone Investments, LLC, et al.,* 18-0735, p. 8 (La. 5/8/19), 282 So.3d 199, 205 (citing La. C.C. art. 2315 and noting that making a plaintiff whole "is an important consideration of both tort recovery and the application of the collateral source rule."). Plaintiff is not entitled to receive more than his loss, nor should he be limited to less than his actual loss.

We are also guided by the principles found in our Civil Code regarding obligations. La. C.C. art. 1821 provides that "[a]n obligor and a third person may agree to an assumption by the latter of an obligation of the former," and that agreement must be in writing. Importantly, art. 1821 also states that "[t]he obligee's consent to the agreement does not effect a release of the obligor." In this instance, the plaintiff as obligor and a third person (Ascendant/Southern Magnolia) have agreed to the assumption of plaintiff's obligation, but that agreement does not release plaintiff from his obligation. Comment (d) to La. C.C. art. 1821 confirms that the law alone does not release plaintiff by the assumption of his debt by Ascendant:

[5] La. C.C. art. 2315 (A) provides: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

"[u]nder this Article, an assumption of obligation does not effect a novation by substitution of a new obligor because the original obligation is not extinguished by the assumption."[6]

The limited record in this matter contains no indicia that plaintiff has been released of his original obligation.[7] Specifically, the medical factoring agreement provides for the financial arrangement between Ascendant Healthcare and plaintiff's medical providers, setting forth the purchase of the providers' "usual and customary" charges at a discounted rate.[8] Plaintiff is not a party to that agreement, nor is there specific language indicating that plaintiff is released from any obligation to pay the medical bills as charged. Similarly, as set forth above, the "Letter of Guaranty and Protection" executed by plaintiff's former counsel evidences no intent to release plaintiff from any obligation related to the charges for his medical services.[9]

The parties dispute the application of the collateral source rule under these circumstances; however, we find it inapplicable. The collateral source rule, a rule of evidence and damages originating from common law but jurisprudentially recognized in this state,[10] provides that "a tortfeasor may not benefit, and an injured

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[6] La. C.C. art 1879 defines novation as "the extinguishment of an existing obligation by the substitution of a new one."

[7] "A civilian obligation may be extinguished by payment, La. Civ. Code Ann. Art. 1854 (West 1987), novation, art. 1879, or remission, art. 1888. The extinction of an obligation may also result from acts of the creditor which, under the factual circumstances in question, evidence intent to release the debtor." *Scott v. Bank of Coushatta*, 512 So.2d 356, 360 (La. 9/9/87), citing *Succession of Foerster*, 9 So. 17 (La. 1891).

[8] Because there has been no allegation of "inflated charges" by Mr. George's medical providers, and although plaintiff's final recovery, if any, is unknown at this point, we also note that disallowing evidence of the full-billed charges could result in a jury award that would make plaintiff less than whole.

[9] *See Whitley v. Pinnacle Entertainment, Inc., of Delaware*, 15-cv-595 (U.S. MDLA 3/20/17) 2017 WL 1051188 (denying a motion in limine seeking to exclude the total amount plaintiff was billed, holding case did not fall under an exception to collateral source rule and plaintiff was entitled to present evidence of the total costs she must pay under a medical factoring agreement between plaintiff and factoring company).

[10] The *Hoffman* court explained that the collateral source rule can be traced back to its common law roots, as found in *The Propeller Monticello v. Mollison*, 58 U.S. (17 How.) 152, 15 L.Ed. 68 (1854). In *Monticello,* two ships (the *Propeller Monticello* and *Northweste*rn) were involved in a wreck, causing the *Northwestern* to sink. The *Northwestern*, however, was insured and the

plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor's procuration or contribution." *Bozeman v. State of La., DOTD*, 03-1016, p. 9 (La. 7/2/04), 879 So.2d 692, 698 (internal citation omitted). Moreover, "the payments received from the independent source are not deducted from the award the aggrieved party would otherwise receive from the wrongdoer, and, a tortfeasor's liability to an injured plaintiff should be the same, regardless of whether or not the plaintiff had the foresight to obtain insurance." *Id.* at 698. The purpose of the collateral source rule is tort deterrence, as the "rule is grounded in the belief that the tortfeasor should not profit from the victim's prudence in obtaining insurance, and that reducing the recovery by the monies paid by a third party would hamper the deterrent effect of the law." *Bellard v. American Cent. Ins. Co.,* 07-1335, p. 19 (La. 4/18/08), 980 So.2d 654, 668.

In determining whether the collateral source rule applies, we must consider whether the "victim has procured the collateral benefits for himself or has in some manner sustained a diminution in his or her patrimony in order to secure the collateral benefits such that he or she is not merely reaping a windfall or double recovery." *Bellard*, 07-1335 at p. 20, 980 So.2d at 669.[11] With these principles in mind, we must also determine (1) whether the application of the rule will further the policy goal of tort deterrence; and (2) whether the victim, by having a collateral source as a means of recovery, either paid for such benefit or suffered some diminution in his patrimony because of the availability of the benefit such that no

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insurance paid for the loss of the ship and its cargo. When presented with the issue of whether the owner of the other ship was released from liability because of the insurance payment, the Supreme Court ultimately held that the insurer's payment "cannot avail" the tortfeasor. *Hoffman v. 21st Century North America Insurance Company*, 14-2279, pp. 2-4 (La. 10/2/15), 209 So.3d 702, 704 (2015), citing *The Propeller Monticello, supra.*

[11] This Court also noted in *Bellard* that the purpose of tort damages is to make the victim whole, and that purpose is thwarted when the victim is allowed to recover the same element of damages twice. Thus, this Court in *Bozeman* determined that no "windfall" occurs when "the injured party's patrimony was diminished to the extent that he was forced to recover against outside sources and the diminution of patrimony was *additional* damage suffered by him." *Bellard,* p. 19, 980 So.2d at 668 (quoting *Bozeman*, p. 10, 879 So.2d at 699) (emphasis in original).

actual double recovery would result from application of the collateral source rule. *Cutsinger v. Redfern*, 08-2607 (La. 5/22/09), 12 So.3d 945, 953, citing *Bellard*, 07-1335 at pp. 20-21, 980 So.2d at 669.

Applying these precepts, we find the collateral source rule does not apply here. Specifically, application of the rule under the particular circumstances of this case will not necessarily support the policy consideration of tort deterrence. Furthermore, plaintiff has not diminished his patrimony to receive medical treatment from his healthcare providers, as he has not procured any separate benefit or negotiated rate at his own expense. Finally, there is no indication that plaintiff would receive a "double recovery" should he receive the full-billed charges as an award of damages.[12]

Thus, from the limited record before this Court,[13] we conclude that defendant has not proven Mr. George has been released from his obligation to pay the full amount billed. In the absence of such evidence, defendant cannot subtract the discounted purchase price from a theoretical damage award to plaintiffs. We

[12] This Court similarly found the collateral source rule inapplicable in the context of attorney-negotiated "write-offs" or discounts in *Hoffman v. 21st Century North America Ins. Co.*, 14-2279 (La. 10/2/15), 209 So.3d 702, although for different reasons. Specifically, this Court reasoned that "such attorney-negotiated discounts do not fall within the ambit of the collateral source rule because to do otherwise would invite a variety of evidentiary and ethical dilemmas for counsel." *Id*. at 707. The *Hoffman* court also found that an evidentiary hearing exploring the details of the attorney-client relationship to discover the "diminution in patrimony" resulting from the discount could infringe upon the privilege surrounding the employment contract and communications regarding fee arrangements, and further, counsel may also run afoul of the Rules of Professional Conduct in trying to recover a full "cost" from defendant where counsel actually negotiated a discount. Thus, the court concluded, an attorney-negotiated medical discount or write-off is not a payment or benefit that falls under the collateral source rule.

[13] In his appellee brief filed in this Court, plaintiff indicated the parties were recently "made aware of an acknowledgment signed by Plaintiff in 2019 that is not in the record because counsel did not know it existed when this matter was pending before the trial court." Defendant characterizes this document differently, noting it instead merely addresses the assignment of Ascendant's medical receivables to Southern Medical and sets forth Southern Magnolia's ability to collect on the medical receivables owed. According to defendants, it does not provide that plaintiff is responsible to pay the full-billed charges. Whether or not this document serves as confirmation of plaintiff's obligation to pay the full-billed charges is of no moment for purposes of this Court's decision, as the present record is devoid of its existence and speculation has no place in our rulings.

therefore reverse the trial court's ruling granting defendant's Motion in Limine and remand this matter for further proceedings.[14]

CONCLUSION

In the absence of any evidence that plaintiff is not liable for the full billed medical charges in this matter, defendant cannot benefit from any reduction as a result of the subject medical factoring agreement. For the reasons set forth herein, the trial court's ruling granting the defendant's Motion in Limine is hereby reversed and the matter is remanded for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

[14] As evidenced by this Court's analysis herein, because this matter is pre-trial, we are constrained by the limited record before us. To that end, remanding the matter for trial will allow for a more fully developed record and any adverse judgment can be adequately addressed on appeal.

SUPREME COURT OF LOUISIANA

No. 2022-CC-01068

WALTER GEORGE AND JANIE GEORGE

VS.

PROGRESSIVE WASTE SOLUTIONS OF LA, INC. AND ABC INSURANCE COMPANY

On Supervisory Writ to the 32nd Judicial District Court, Parish of Terrebonne

CRAIN, J., concurs and assigns reasons.

I write separately only to emphasize that this case does not implicate the collateral source rule. The subject agreement is between the healthcare provider and a third party medical expense financier. On the evidence presented, and critical to my opinion, the victim remains responsible for the entire medical bill.[1] The collateral source rule is triggered when a tort victim's obligation is reduced for reasons unrelated to the tortfeasor. The rule prevents the tortfeasor from taking advantage of that benefit to the victim. The rule, which was created by the court, has been similarly narrowed by the court requiring the victim to have procured, contributed to, or otherwise given consideration for the benefit to avoid a windfall. *Bozeman v. State, DOTD*, 03-1016 (La. 7/2/04), 879 So.2d 692. But before the collateral source rule can be invoked, the victim must have received a benefit, either in money received or a discount obtained.

The majority correctly finds "[t]he limited record in this matter contains no indicia that plaintiff has been released of his original obligation." The plaintiff's medical providers assigned Ascendant Healthcare the right to recover the full amount billed to the plaintiff. On the evidence presented, the plaintiff remains liable

[1] The bill is still subject to a determination that the charges are "reasonable and customary." Such determination has not yet been made.

for the full medical bill. No discount has been negotiated for the plaintiff; thus, the collateral source is not implicated. Any discussion of whether the plaintiff has diminished his patrimony, procured the benefit himself, or advanced the policy goal of tort deterrence is irrelevant. I respectfully concur.