

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANNA DIEFFENBACH and DONALD DIEFFENBACH,	:	
Plaintiffs	:	DOCKET NO: 10-00016
	:	CIVIL ACTION – LAW
vs.	:	
	:	
PETER B. TREVOULEDES, M.D.,	:	JURY TRIAL DEMANDED
Defendant	:	

OPINION AND ORDER

AND NOW, this 18th day of January, 2012, following oral argument on Plaintiffs’ Motion to Allow Use of Medical Bills Under Section 508(b) of the MCARE Act and Defendant’s Motion in Limine of Defendant Dr. Trevouledes Regarding Production of Plaintiffs’ Medical Expenses Actually Incurred, it is hereby ORDERED and DIRECTED that Plaintiffs’ motion is GRANTED and Defendant’s motion is GRANTED. Plaintiffs may introduce the total amount of the medical expenses paid by Plaintiffs’ insurance provider, and this Court will give a limiting instruction and final charge to the jury concerning these medical expenses.

As previously stated in this Court’s opinions and orders in the above-captioned matter, the admission or exclusion of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Jacobs v. Chatwani*, 922 A.2d 950, 960 (Pa. Super. Ct. 2007). All relevant evidence is generally admissible. Pa. R.E. 402. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pa. R.E. 401.

Prior to trial, a party may file an *in limine* motion to obtain a ruling from the trial court on the admissibility of evidence before the evidence is offered in trial. *Yacoub v. Lehigh Valley Med. Associates, P.C.*, 805 A.2d 579, 588 (Pa. Super.2002). The purposes behind an *in limine*

motion are excluding “anticipated prejudicial evidence, keeping extraneous issues out of the underlying proceeding, precluding reference to prejudicial matters, or preventing encumbering the record with immaterial matter.” *Commonwealth v. Pikur Enterprises, Inc.*, 596 A.2d 1253, 1259 (Pa. Cmwlth. Ct. 1991). The trial court has the discretion to entertain these motions. *Id.*

In their motion, Plaintiffs notified this Court of their intention “to invoke their rights to introduce the full amount of Mrs. Dieffenbach’s medical bills, under Section 508(b), for treatment rendered as a result of Dr. Trevouledes’ [alleged] negligence.” Pl. Motion, 2. Initially, this Court’s analysis of Plaintiffs’ motion must include a discussion of the Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. §§ 1303.501-1303.516. The MCARE Act governs the above-captioned medical malpractice action. In particular, these pending motions concern Section 1303.508, subsections (a) and (b). These sections provide that:

§ 1303.508. Collateral sources

- (a) General rule.** – Except as set forth in subsection (d), a claimant in a medical professional liability action is precluded from recovering damages for past medical expenses or past lost earnings incurred to the time of trial to the extent that the loss is covered by a private or public benefit or gratuity that the claimant has received prior to trial.
- (b) Option.** – The claimant has the option to introduce into evidence at trial the *amount of medical expenses actually incurred*, but the claimant shall not be permitted to recover for such expenses as part of any verdict except to the extent that the claimant remains legally responsible for such payment.

40 P.S. § 1303.508(a)-(b) (emphasis added).¹

Pursuant to 1 Pa. C.S. § 1921(b), this Court must attribute the plain meaning to the words in a statute if these words are “clear and free from all ambiguity.”² Therefore, this Court believes that there is no doubt that Plaintiffs may introduce into evidence the amount of medical expenses that they incurred. However, the next issue that this Court faces is the interpretation of

¹ Both parties agree that the exception set forth in subsection (a) is not applicable in this case.

² 1 Pa. C.S. § 1921(b) provides that “[u]nambiguous words control construction. – When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”

the word “incurred” within the context of 40 P.S. § 1303.508. Plaintiffs argue that they should be able to introduce the amount of medical expenses billed, while Defendant argues that Plaintiffs should be limited to introducing only the medical expenses paid by Plaintiffs’ insurance provider.

This Court holds that Plaintiffs shall be limited to introducing the medical expenses paid by Plaintiffs’ insurance provider. In deciding that the medical expenses shall be limited in this case, this Court looks to the declaration of policy in Chapter 5 of the MCARE Act. Specifically, Section 502 provides that “the General Assembly finds and declares that it is the purpose of this chapter to ensure a *fair* legal process and *reasonable compensation* for person injured due to medical negligence in this Commonwealth.” 40 P.S. § 1303.502. This Court does not believe that submitting to the jury the medical expenses billed, as opposed to the medical expenses paid, would ensure reasonable compensation for the claimant; this Court believes that the submission of the medical expenses billed to the jury could lead to a windfall for the claimant. *See also Moorhead v. Crozer Chester Medical Center*, 765 A.2d 786 (Pa. 2001) (limiting plaintiff to recovering the medical expenses paid as opposed to the value of the services rendered).

Plaintiffs desire to introduce these medical expenses as an evaluation of the pain and suffering endured by Ms. Dieffenbach. It is clear to this Court that the legislature wanted the claimant to have the option to introduce these medical expenses into evidence at trial; the statute expressly grants the claimant this option. Although the legislature did not state the relevance of these expenses, this Court agrees with Plaintiffs in concluding that these expenses must be relevant to show the claimant’s non-economic damages. This Court does not believe that the legislature would permit the introduction of evidence at trial that was not relevant for some purpose. Due to the fact that these expenses cannot be recovered, as expressed in subsection (a)

of Section 1303.508, this Court believes that the legislature intended for these expenses to clarify for the fact-finder the claimant's non-economic damages.³

In order to comply with 40 P.S. § 1303.508(a), this Court will give the jury a limiting instruction both when these expenses are initially introduced to the jury and in its final jury charge. Although Plaintiffs have the option to introduce these medical expenses under subsection (b) of the statute, this Court believes that the inclusion of these bills very well could confuse the jury if it decides to award damages to Plaintiffs. Therefore, in order to ensure that the MCARE Act is fully complied with in the upcoming jury trial, this Court will instruct the jury, in the form of both a limiting instruction⁴ and a final jury charge⁵, that the jury cannot award these medical expenses to Plaintiffs.

Additionally, this Court will not disclose that Plaintiffs are insured in any of its instructions to the jury. In *Paxton Nat'l Ins. Co. v. Brickajlik*, 522 A.2d 531 (Pa. 1987), our Supreme Court stated that "[t]he general rule in Pennsylvania is that evidence of insurance is irrelevant and prejudicial and justifies grant of a mistrial. The reason is obvious: fact-finders should not be tempted to render decisions based upon the extraneous consideration that an insurance company will actually pay the bill." *Id.* at 533. Therefore, this Court will not disclose the fact that Plaintiffs are insured, as requested by Defendant's suggested jury instruction.

³ Our Supreme Court's ruling in *Martin v. Soblotney*, 466 A.2d 1022 (Pa. 1983) does not apply in this case. In *Martin*, the Supreme Court held that "medical bills are inadmissible in a No-fault action to establish non-economic loss for pain and suffering." *Id.* at 1026-27. However, in that case, the issue pertained to the interpretation of the language of the No-fault Act, 40 P.S. § 1009.301(a) (5); that Act did not provide for the admissibility of evidence of medical bills. *Id.* at 1025. In the case at hand, the MCARE Act expressly provides for the admissibility of evidence of medical bills in medical malpractice suits without additional guidance. See 40 P.S. § 1303.508(b).

⁴ Limiting instructions are used "to clarify for the jury the proper purpose" of evidence. *Lewis v. CRC Industries, Inc.*, 7 A.3d 841, 848 (Pa. Super. Ct. 2010)

⁵ Within the Commonwealth, it is well settled that "the purpose of a jury charge is to clarify the legal principles at issue." *Machado v. Kunkel*, 804 A.2d 1238, 1244 (Pa. Super. Ct. 2002) (citing *Rittenhouse v. Hanks*, 777 A.2d 1113, 1118 (Pa. Super. Ct. 2001)); see also *Pringle v. Rapaport*, 980 A.2d 159, 173 (Pa. Super. Ct. 2009).

Each party shall submit to this Court not later than five days prior to trial a proposed limiting instruction and final jury charge concerning these medical expenses.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Clifford A. Rieders, Esquire
C. Edward S. Mitchell, Esquire
Gary L. Weber, Esquire, Lycoming County Reporter