IN THE COURT OF APPEALS OF IOWA

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No. 7-507 / 96-1753

FILED
DEC 29 1997
CLERK SUPREME COURT

PATRICK JOHN VAN NICE,

Plaintiff/Defendant to Counterclaim-Appellee,

vs.

WADE WILLIAM WEISBROD,

Defendant/Counterclaimant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge.

On appeal from an adverse verdict in a personal injury action, the defendant argues the court erred in allowing the admission of medical and vehicle repair bills and in allowing the plaintiff to recover damages for medical and vehicle repair expenses. **REVERSED AND REMANDED.**

Donald L. Carr, II and Jason D. Walke of Sullivan & Ward, Des Moines, and James R. Hellman of Dutton, Braun, Staack, Hellman & Iversen, P.L.C., Waterloo, until withdrawal, for appellant.

Paul D. Gamez of Moyer & Bergman, P.L.C., Cedar Rapids, for appellee.

Considered by Cady, C.J., and Huitink, and Streit, JJ.

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CADY, C.J.

On August 25, 1994, Patrick Van Nice, was operating a pickup which was rear-ended by a pickup and trailer driven by the defendant, Wade Weisbrod. Van Nice filed suit and Weisbrod counterclaimed. In an action tried to the bench, the court found Weisbrod's negligence had been the proximate cause of the collision and of Van Nice's medical and vehicle repair damages. The court found Weisbrod had not proven any of his affirmative defenses or his counterclaim, and it entered judgment in favor of Van Nice for $5,806.85.

On appeal, Weisbrod argues the court erred in allowing the admission of a medical bill and vehicle repair bills which he claims were hearsay. He also claims the court erred in awarding medical expenses and vehicle repair damages because there was no evidence of their reasonableness. Weisbrod requests that the court order a remittitur or reverse the district court's decision. In response, Van Nice claims the bills were properly admitted, and, in any case, were merely corroborative of his testimony. We reverse the damages portion of the court's decision and remand for a new trial on damages.

Our review of a district court's evidentiary rulings is for correction of errors of law. Iowa R. App. P. 4. The decision whether to admit evidence is within the sound discretion of the trial court, and such decisions will not be disturbed on appeal unless the discretion has been abused and a substantial right of a party has been affected. *Stumpf v. Reiss*, 502 N.W.2d 620, 623 (Iowa 1993); *Schuller v. Hy-Vee*

Food Stores, 328 N.W.2d 328, 331 (Iowa 1982). Prejudice is presumed if inadmissible hearsay evidence is admitted at trial, unless the contrary is affirmatively established. *State v. Curry*, 436 N.W.2d 371, 373 (Iowa App. 1988); *State v. Horn*, 282 N.W.2d 717, 724 (Iowa 1979).

The district court improperly admitted the medical bills into evidence. The bills were hearsay, and Van Nice offered no evidence to support their admission into evidence under an exception to the rule against hearsay. *See* Iowa R. Evid. 803(6). Further, there was no foundational evidence the declarant was unavailable. *See* Iowa R. Evid. 804(b)(5).

Nevertheless, Van Nice argues the medical bills were properly admitted because they corroborated his own subsequent testimony about the amount of the medical bills. Corroboration, in the context raised by Van Nice, is not a rule for the admission of evidence. It is simply a factor to determine prejudice. Moreover, the bills were not admitted to corroborate the testimony of Van Nice. Instead, Van Nice was merely asked to state the total amount of the bill as shown on the exhibit which the district court had admitted into evidence. Thus, Van Nice was merely reading from an exhibit.

Even so, there was no evidence the medical bills were reasonable. It is well established that a litigant seeking to recover damages for medical services must show their reasonableness. *See Stanley v. State*, 197 N.W.2d 599, 600 (Iowa 1972). This can be demonstrated by showing payment of the bill or by having an expert testify.

Id. In this case, Van Nice never testified the bill was paid. Instead, at the conclusion of his direct examination, Van Nice merely said he was asking the court to be reimbursed for "the payment made on his medical bills." There was no testimony of the amount of the payment, and no testimony to support the reasonableness of the bill.

We conclude that Weisbrod was prejudiced by the admission of the medical bills. We also conclude the district court erred in awarding damages for medical expenses. It is unnecessary to consider Weisbrod's further claim involving the admission of the repair bills. We remand for a new trial on damages only.

REVERSED AND REMANDED.