



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIANE L. STAYTON,

Plaintiff Below,
Appellant,

v.

Delaware Health Corporation, a Delaware Corporation; HARBOR HEALTHCARE CENTER COMPANY, L.L.C., a Limited Liability Company; MARY FRANCIS DRANDORFF, RN, Individually; RUTHANNE ROBERTS JACOBS, RN, Individually; and RENEE L. WOZNICKI EDGE, RN, Individually,

Defendants Below
Appellees,

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No. 601,2014

**Court Below: Superior Court
of the State of Delaware,
C. A. No.: K12C-04-026 RBY**

APPELLANT'S OPENING BRIEF

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Dated: December 1, 2014

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NATURE OF PROCEEDINGS

Plaintiff, Diane L. Stayton, filed a Complaint against Defendants Delaware Health Corporation, et. al., as the operators of a nursing and rehabilitation facility known as Harbor Healthcare of Lewes, Delaware on April 23, 2012. Plaintiff alleged that as a result of the negligent healthcare services provided by Defendants while Plaintiff was in their care, Plaintiff suffered severe burns from a fire which engulfed her while attempting to light a cigarette. Defendants filed an Answer to the Complaint on June 26, 2012 and discovery commenced thereafter. Numerous depositions and written discovery filings have occurred in this matter.

On June 17, 2014, Defendants filed a Motion for Judgment on the Pleadings. This Motion sought to limit Plaintiff's recoverable reasonable medical expenses to the amounts paid by Medicare to Plaintiff's healthcare providers. Plaintiff opposed this Motion by filing of July 10, 2014. The Superior Court, by Order of the Honorable Robert B. Young on September 24, 2014, granted Defendants' Motion to limit the Plaintiff's claim for the recovery of reasonable medical service costs to the amount of \$262,550.17 which is the amount Medicare paid, rather than the full recovery of the reasonable value of these medical services as evidenced by the medical expenses billings of \$3,683,797.11. Thereafter, Plaintiff filed a timely Application for Certification of an Interlocutory Appeal for the Superior Court's consideration on September 30, 2014. Defendants filed their Response in

Opposition to this Application on October 10, 2014. The Superior Court, by Order of October 10, 2014, certified its ruling of September 24, 2014 to the Delaware Supreme Court. This Certification Order was further affirmed by the Superior Court by Order of October 14, 2014.

On October 23, 2014, Plaintiff filed her Notice of Appeal from Interlocutory Order with this Court. By Order of October 29, 2014, this Court accepted Plaintiff's Interlocutory Appeal. This is Appellant's Opening Brief in support of her Interlocutory Appeal of the Superior Court ruling of September 24, 2014.

SUMMARY OF ARGUMENT

1. The proper application of Delaware's common law Collateral Source Rule allows an injured party to recover the full reasonable value of medical services provided her as a result of the negligent conduct of a defendant. Under this Rule, the injured party's recovery would not be limited to the amount paid by Medicare but would include the full reasonable value of said services typically as evidenced by the billing statements of the providers. Failing to allow such a full recovery shifts the benefit of Medicare plan payments from the injured party to the offending tortfeasor without any reasonable or justifiable basis. Further, such a failure is also contrary to the Restatement (Second) of Torts §920A and would create different classes of plaintiffs in personal injury claims. Injured parties covered by Medicare, the elderly and disabled, would not receive a full recovery while injured parties with private medical insurance coverage would receive a full recovery. There is no reasonable or justifiable basis for such different treatment of similarly situated personal injury claimants. For these reasons, the Superior Court decision limiting Plaintiff's recovery to the amounts paid by Medicare is incompatible with Delaware's Collateral Source Rule and should be reversed by this Court.

STATEMENT OF FACTS

On May 29, 2010, Diane L. Stayton was a resident patient at the Harbor Healthcare and Rehabilitation Center at 301 Ocean View Boulevard, Lewes, Delaware. This center was a nursing home/rehabilitation facility operated by the Defendants. (A-28) On this date, Defendants failed to supervise Mrs. Stayton while she was smoking a cigarette and a fire resulted that severely injured her. (A-30, 31) Mrs. Stayton sustained severe burns over twenty-three percent (23%) of her body which required immediate emergency medical and surgical treatment. (A-696) Mrs. Stayton was transported by helicopter from Lewes, Delaware to the Crozer Burn Center in Chester, Pennsylvania. Thereafter, she received institutional care from that facility and others until November 18, 2010.

At the time of Mrs. Stayton's injury, she was a 72 year old stroke victim and was wheelchair bound due to her inability to utilize her left arm and left leg. While unsupervised in the early morning hours of May 29, 2010, Mrs. Stayton, in her wheelchair, attempted to light a cigarette in the facility's outdoor patio with her one functioning arm and her clothing caught fire during this attempt. (A-253)

Mrs. Stayton received extensive care and treatment over her five and on-half month confinement. At Crozer Burn Center, the medical records document treatment by at least 30 physicians and related medical providers (A-691-694).

The State of Delaware's Survey of the Incident made a Finding of Neglect on the part of the Defendants. (A-262).

At the time of her burn injuries, Mrs. Stayton was covered by Medicare. Previously, she had worked many years at a Delaware grocery store, Super Fresh (A-689, 690). As evidenced by the Medicare billing compilation, Medicare received billings of \$3,683,797.11. Of that amount, Medicare paid \$262,550.17. (A-67). Defendants seek to limit their liability for Plaintiff's past medical services to the amount paid by Medicare. Defendants contend that they should not be held liable for the actual reasonable value of Mrs. Stayton's past medical services as evidenced by the billings of her healthcare providers. Stayton contends that she is entitled to recover as damages the full and fair reasonable value of past medical services received from her healthcare providers. This specific issue, as it relates to Medicare, has not been addressed by this Court previously. Lower courts in Delaware has reached conflicting results, see Sweiger v. Delaware Park, LLC, 2013 Del. Super. LEXIS 562 (Dec. 13, 2013) and Stayton v. Delaware Health Corp., et al, C.A. No. K12C-04-026 RBY (Sept. 24, 2014) attached as Exhibit "A" to this Brief.

ARGUMENT I

I. THE SUPERIOR COURT ERRED WHEN IT DENIED APPELLANT THE RIGHT TO RECOVER THE REASONABLE VALUE OF PAST MEDICAL SERVICES PROVIDED TO HER AS PART OF HER DAMAGES CLAIM AGAINST DEFENDANTS.

(1) QUESTION PRESENTED

Under Delaware's common law Collateral Source Rule are all injured parties entitled to seek the recovery of the full reasonable value of their medical expenses from the offending tortfeasor?

(2) SCOPE OF REVIEW

The misapplication of the Collateral Source Rule by the lower court constitutes an error of law which this Court reviews *de novo*. General Motors Corp. v. New Castle County, 701 A.2d 819 (Del. 1997). This issue was raised by Stayton in her Opposition Response to Defendants' Motion on the Pleadings. (A-253 – A-373)

(3) MERITS OF ARGUMENT

Defendants' Motion for Judgment on the Pleadings in this medical negligence personal injury action specifically requested the Superior Court to decide this Collateral Source Rule issue without consideration or application of 18 Del. C. § 6862. Defendants claimed the Medicare "write off" did not implicate §6862 and could be decided on the common law of Delaware as indicated in prior conflicting decisions of the Superior Court, *i.e.*, Sweiger v. Delaware Park, LLC,

2013 Del. Super. LEXIS 562 (Dec. 13, 2013) and Rice v. The Chimes, Inc., 2005 Del. Super. LEXIS 476 (Mar. 10, 2005) (A-70). Plaintiff agreed that neither the parties nor the Court need consider the application of 18 Del. C. §6862 as the issue to be considered does not implicate 18 Del. C. §6862. (A-254). The Superior Court agreed and ruled it would not attempt to apply 18 Del. C. §6862. Instead, this discussion focuses on the distinction that is made between public and private collateral sources. (Exhibit A to Opening Brief at pgs. 6 and 7) The present issue only addresses the correct application of the Collateral Source Rule pursuant to Delaware common law.

Mrs. Stayton was a participant in the Medicare medical coverage plan at the time of her fire-induced burns. While this federally created insurance coverage program is extensive and complex, its fundamental purpose is to provide for the payment of medical services received by the elderly (65 years of age and older) and the disabled. 42 U.S.C. §§1395-1395hhh. Two important features of "ordinary" Medicare involve the payment of medical services on a discounted basis and the agreement of medical care providers receiving such discounted payments that such payment constitutes full and complete satisfaction of the billing and the provider cannot seek the unpaid balance from the Medicare plan participant such as Diane Stayton in the present matter. Thus, a healthcare provider accepting

Medicare payments must "write-off" the remainder of their unpaid charges. See, White v. Jubitz Corp., 219 P.3d 566, 574, 576, (Ore. 2009).

Assuming the medical billings for Mrs. Stayton represent the reasonable value of the medical services she received to treat the injuries allegedly caused by the Defendant tortfeasors, proper application of the Collateral Source Rule allows Stayton to recover said reasonable value and not be limited to the amount actually paid by her Medicare coverage plan.

While this Court has not directly considered this issue, it has considered related issues in the holdings of Mitchell v. Haldar, 883 A.2d 532 (Del. 2005) and Onusko v. Kerr, 880 A.2d 1022 (Del. 2005). In Mitchell, this Court held that an injured party is entitled to recover the full reasonable value of medical services received as part of the injured party's damages claim under Delaware's Collateral Source Rule. This Court ruled an injured party is not limited to the reduced or discounted rate paid by the party's private insurer, Blue Cross. Under Delaware law, the tortfeasor does not receive the benefit of the injured party being a participant in health insurance coverage. This Court stated at page 39 of the Mitchell decision, that:

"The collateral source rule provides that "it is the tortfeasor's responsibility to compensate for the reasonable value of all harm that he [or she] causes [and that responsibility] is not confined to the net loss that the injured party receives".

In Mitchell, this Court applied this cardinal principle of the Collateral Source Rule which allowed the injured party to recover the full reasonable value of medical services provided rather than limiting it to the amount paid for those services by his health insurance coverage. In so ruling, this Court noted that its previous decision in Onusko v. Kerr, *supra*, had a similar result with the proper application of the Collateral Source Rule. Such application allowed for the recovery of the full reasonable value of the medical services necessitated by the tortfeasor's negligence and was not limited to any discounted or gratuitous reduction of the medical service charge by the healthcare provider. Thus, in both Mitchell and Onusko, this Court held that:

"The portions of medical expenses that healthcare providers write off constitute 'compensation or indemnity received by a tort victim from a source collateral to the tortfeasor'".

Further, the Mitchell and Onusko rulings follow the principles of the Restatement (Second) of Torts §920A. In subsection (2) the Restatement provides that:

"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."

The comment section notes that this Rule applies to gratuities and social legislation benefits. Further, in comment (b), the Restatement further provides that:

"... But it is the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor. 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. The law does not differentiate between the nature of the benefits, so long as they did not come from the defendant or a person acting for him."

Contrary to these Collateral Source Rule principles, Defendants in this matter seek to shift a benefit directed to the injured party to becoming a benefit for the tortfeasor. Defendants contend that they are not responsible for compensating Stayton for all harm they caused but should only be confined to the net loss that the injured party sustained. Further, Defendants contend that the elderly and disabled who are participants of the Medicare insurance coverage program should be treated differently from those who participate in private insurance coverage.

The Superior Court decision, Sweiger v. Delaware Park, LLC, Del. Super. LEXIS 562 (Dec. 13, 2013), rejected the Defendants' arguments. Rather, Sweiger held that the defendants would be responsible for the full reasonable value of the plaintiff's medical services necessitated by the tortfeasor's negligence. Sweiger rejected the proposition of shifting the benefit for Medicare coverage from the injured party to the tortfeasor. Sweiger followed the Mitchell and Onusko rationales that prevent a tortfeasor from limiting his liability to the net loss sustained by the injured party. Further, the Sweiger decision noted at page 3, that:

"A reading of *Mitchell* illuminates the Delaware Supreme Court's stance on the Collateral Source Rule as a 'firmly

embedded' principle. Although the *Mitchell* ruling did not explicitly address the doctrine in relation to Medicare write offs, this Court interprets the Rule to be all-inclusive, regardless of any potential windfall that might result."

Defendants further argue they should get the benefit of the Medicare discounting of medical billings rather than the injured party because the injured party did not pay for Medicare coverage. This argument seemed to be accepted by the lower court in its opinion. However, such a claim overlooks significant factors. Many eligible Medicare participants have paid payroll taxes for Medicare during their work lives. Further, some Medicare coverages require the payment of monthly premiums and yearly deductibles, see White v. Jubitz Corp., *supra*, at 574, 575. Moreover, even assuming that Medicare was a cost-free plan to its participants, gratuitous payment by a third party has been recognized as covered by the Collateral Source Rule in Onusko v. Kerr, *supra*, at pgs. 1024, 1025. Thus, whether it is a gratuitous coverage plan or a gratuitous provider, such a benefit belongs to the injured party and should not shift to the benefit of the offending tortfeasor. Payment for Medicare coverage is not a distinguishing feature for the correct application of the Collateral Source Rule under Delaware law.

It is difficult to appreciate the beneficial purpose of discriminating against Medicare coverage participants in the application of the Collateral Source Rule. There does not appear to be any justifiable purpose for permitting a tortfeasor to limit his liability when a Medicare participant is harmed but not limit that liability

when the injured party has private insurance coverage. Further, such an application of the Collateral Source Rule would cause harm to significant segments of the general population. Acceptance of the Defendants' position would treat the elderly and disabled in an unfair manner because they are Medicare participants. While those who have private insurance and perhaps those who have no insurance are entitled to the full recovery of the reasonable value of medical services necessitated by the tortfeasor's negligence, the elderly and disabled will not be so entitled and will be limited to the net loss occasioned by the tortfeasor's negligence. Such a policy and application of the Collateral Source Rule lacks any reasonable justification.

While the Mitchell and Onusko decisions provide a basis for allowing Medicare plan participants the lawful right to recover the full reasonable value of medical services provided them, in accordance with a proper application of the Collateral Source Rule, other Courts have reached the same decision as Plaintiff seeks in this appeal.

Of the other states that have considered this issue, many have chosen to follow the application of the common law Collateral Source Rule as outlined in the Restatement (Second) of Torts §920A. In Baynum v. Magno, 101 P.3d 1149 (Haw. 2004), the Supreme Court of Hawaii refused to limit an injured party's claim for the reasonable value of medical services provided to the amount paid by

Medicare. Rather, this State Supreme Court made an extensive analysis of the issues presented and found the Restatement's position the better rule. Specifically at page 1157, the Court noted that:

"Inasmuch as Medicare/Medicaid are social legislation programs, we conclude that the Collateral Source Rule applies to prevent the reduction of a plaintiff's award of damages to the discounted amount paid by Medicare/Medicaid. [Citations omitted.] Therefore, we hold that the Collateral Source Rule prohibits reducing a plaintiff's award of damages to reflect the discounted amount paid by Medicare/Medicaid."

Further, the Court noted that allowing an injured party to recover the reasonable value of medical services leads to a more just result. In considering recipients of Medicare/Medicaid coverage, the Court noted that a contrary approach would penalize such people vis-à-vis privately insured individuals and that such a practice would lead to a "highly absurd" and "socially undesirable" result. In fact, the Court noted it would create new categories of plaintiffs who are similarly injured but whose recovery would depend upon the type of their insurance coverage and not upon the nature of their injuries. Such factors caused the Supreme Court of Hawaii to allow an injured party to recover the full reasonable value of the medical services provided and not be limited to the "discounted" amounts paid by Medicare to the providers.

A similar result was rendered by the Supreme Court of Illinois in Wills v. Foster, 892 N.E. 2d 1018 (Ill. 2008). At the time of its decision, the Wills Court

noted it previously held that an injured party could submit the entire amount of billed medical expenses to the jury and was not limited to presenting the amount that her private insurance company actually paid to her health-care providers in Arthur v. Catour, 833 N.E. 2d 847 (Ill. 2005), see, Wills at page 1021. In expanding the Collateral Source Rule beyond payments made by private insurance companies to include payments made by Medicare, the Wills Court indicated they would follow the reasonable value approach. Justification for this approach included the notion that:

"The wrong doer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons." Wills at pg. 1030.

The Illinois Supreme Court also noted that the Restatement allows an injured party to recover the reasonable value of the medical expenses without making any distinction between those who have private insurance, those whose expenses are paid by the government, or those who receive their treatment on a gratuitous basis. Rather, one of the purposes of the Collateral Source Rule is to ensure that the liability of similarly situated defendants is not dependent on the relative fortuity of the manner in which each plaintiff's medical expenses are financed, Wills at pg. 1030. Further, the Illinois Court cited many jurisdictions for the proposition that a plaintiff may seek to recover the amount originally billed by the medical provider and not have it reduced as a result of payments made by some third party, Wills at

pg. 1028, 1029. Thus, broadening the ruling in Mitchell v. Haldar, to include Medicare coverage plans is consistent with the decision of the Supreme Court of Illinois and of the Restatement (Second) of Torts §920A. Further, such an expansion of the Mitchell holding is the reasonable and just approach to this issue. The contrary approach seeks to shift the benefit of medical coverage from the injured party to the tortfeasor and creates inequity among injured parties based upon which type of medical coverage applies to them.

For these reasons, Appellant respectfully requests this Court extend the Mitchell and Onusko rationales to injured party claims paid by the Medicare medical coverage program.

CONCLUSION

For the aforementioned reasons, the Superior Court ruling which prohibits Stayton from seeking the recovery of the full reasonable value of medical services provided her due to Defendants' negligent conduct should be reversed. Stayton should not be limited to a recovery of the "discounted" payments made to her medical providers by Medicare. Rather, the Mitchell and Onusko rationales should apply to the present matter for the proper application of the Delaware common law Collateral Source Rule. This matter should be remanded to the Superior Court with instructions that the Collateral Source Rule of Delaware permits an injured party to seek the full recovery of the reasonable value of medical services provided her and is not limited to the payments made by Medicare to the injured party's healthcare providers.

Respectfully submitted,

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