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IN THE CIRCUIT COURT OF THE 13TH JUDICIAL
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY,
FLORIDA

CASE NO. 23-CA-000924-C

MILLIE ANN GREEN and JADE MACIAS,

Plaintiffs,

v.

KENNETH ELLIS; DEANDRE RAISHON LAW; and
PERMANENT GENERAL ASSURANCE CORPORATION,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS'
MOTIONS IN LIMINE REGARDING PLAINTIFFS, MILLIE GREEN'S AND JADE
MACIAS' PAST MEDICAL BILLS/EXPENSES TO COMPLY WITH MEDICARE
ALLOWABLE AMOUNTS,**

OR ALTERNATIVELY,

**DEFENDANTS' MOTION IN LIMINE TO LIMIT EVIDENCE OF PAST AND FUTURE
MEDICAL BILLS/EXPENSES TO COMPLY WITH TORT REFORM LAW**


Docket Index 113, 156
Numbers:

THIS CAUSE having come on to be heard on September 24, 2024 on Defendants' Motion in Limine Regarding Plaintiff's, Millie Green's, Past Medical Bills/Expenses to Comply with Medicare Allowable Amounts, or Alternatively, Defendants' Motion in Limine to Limit Evidence of Past and Future Medical Bills/Expenses to Comply with Tort Reform Law AND Defendants' Motion in Limine Regarding Plaintiff's, Jade Macias', Past Medical Bills/Expenses to Comply with Medicare Allowable Amounts, or Alternatively, Defendants' Motion in Limine to Limit Evidence of Past and Future Medical Bills/Expenses to Comply

with Tort Reform Law, and the Court having heard argument of counsel, and being otherwise advised in the premises, it is hereupon,

ORDERED and ADJUDGED that said Motion be, and the same is hereby granted in part and denied in part as follows: The Motion is granted insofar as Defendants seek to limit the Plaintiffs' presentation of evidence of past medical bills which were submitted to and paid by Medicare or Medicaid, which are to be limited to the amounts accepted by those providers as paid by Medicare or Medicaid. The Motion is denied in all other respects, for the reasons stated on the record.

DONE AND ORDERED in Chambers, at Hillsborough County, Florida, this _____ day of _____, 2024.

23-CA-000924 9/30/2024 8:03:18 AM

23-CA-000924 9/30/2024 8:03:18 AM

CIRCUIT COURT JUDGE

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CASE NO.: 23-CA-000924-C

MILLIE ANN GREEN and
JADE MACIAS,

Plaintiffs,

-vs-

KENNETH ELLIS;
DEANDRE RAISHON LAW; and
PERMANENT GENERAL ASSURANCE
CORPORATION

Defendants.

HEARING BEFORE THE HONORABLE MELISSA M. POLO,
CIRCUIT COURT JUDGE

(Motion in Limine Regarding Past Medical Expenses
E-Filed 5/2/24)

Motion in Limine Regarding Plaintiff Jade Macias' Past
Medical Bills/Expenses to Comply with Medicaid Allowable
Amounts E-Filed on 5/16/24)

DATE TAKEN: Tuesday, September 24, 2024
TIME: Commenced at 1:30 P.M.
Concluded at 1:48 P.M.

By Videoconference

REPORTED BY: Brianna Williams, FPR

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APPEARING REMOTELY FROM POLK COUNTY, FLORIDA

1 APPEARANCE FOR THE PLAINTIFFS
(via videoconference)

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. We are here on a
3 couple of motions in limine regarding past medical
4 expenses filed on May 2nd and another one on
5 May 16th. Whoever the movant is may begin.

6 MS. TUTT: Yes. Good afternoon. My name is
7 Diane Tutt. I'm with Conroy Simberg and I represent
8 the defendants in this case.

9 Our motions are -- seek identical relief on
10 slightly different grounds. The first ground for
11 both motions -- and one is as to the Green
12 plaintiff, who is a Medicare recipient; and then the
13 other motion is for Macias, M-A-C-I-A-S, who is a
14 Medicaid recipient. Our first argument relates
15 to --

16 THE COURT: A recipient, are you saying that
17 Medicaid actually paid for some past medical bills?

18 MS. TUTT: Well, that is the case, but when I
19 use the word recipient, I mean that they are
20 registered with Medicaid. They're actually a
21 Medicaid insured, if you will.

22 THE COURT: Okay.

23 MS. TUTT: In both cases, they receive some
24 of -- some of their medical bills were paid by
25 either Medicare or Medicaid and others were not,

1 Your Honor, so we have different arguments with
2 respect to both of those situations.

3 With respect to bills that were actually paid
4 by Medicare or Medicaid, the case law is clear that
5 the plaintiff can only, quote, board or present
6 evidence during trial of the amounts paid by
7 Medicare or Medicaid. There are several cases in
8 Florida including the thyssenkrupp case that we
9 cited that so hold.

10 With regard to Medicaid, there's one federal
11 district court judge -- case, Bordonas (phonetic),
12 that says the same thing with Medicaid. And the
13 reason is that you do -- because statute of --
14 collateral source statute, 768.76, says that neither
15 Medicare nor Medicaid is a collateral source. In
16 that respect, for sums that were paid by those two
17 entities --

18 THE COURT: The real reason is because they
19 don't have any liability for anything other than
20 what was paid.

21 MS. TUTT: Right. Well, that's correct.
22 That's correct. But I guess the point is --

23 THE COURT: Tell me what the point is.

24 MS. TUTT: Well, you have to deal with it at
25 trial. It's not a post-trial reduction.

1 THE COURT: Right.

2 MS. TUTT: With respect to bills that could've
3 been submitted to Medicare or Medicaid, which were
4 not, we have different arguments. They're rather
5 extensive. With regard to the Medicare -- and I
6 guess when I say they're rather extensive is I don't
7 really have time to get into all of them today
8 because I do want to talk about the tort reform act,
9 which is our secondary argument. I'll be very brief
10 on the first argument with respect to bills that
11 were not submitted to Medicare or Medicaid.

12 With regard to Medicare, we cited all the
13 statutes and regulations in our motion, which is the
14 Green motion, that says basically a provider can opt
15 out of submitted bills on a particular case to
16 Medicare, but they have to do an affidavit. And
17 because there was -- there's no evidence of an
18 affidavit here is our argument that even the bills
19 that could've been submitted to Medicare, but were
20 not, must be -- the amount that Medicare would've
21 paid is the amount that must be admitted.

22 Same argument with regard to Medicaid,
23 Medicaid, but there's no statutory discussion in the
24 motion for that. Our grounds for the Medicaid
25 payments that were not submitted to Medicaid,

1 basically that the plaintiff should not get a
2 windfall. Submit the amounts that your medical
3 providers would've gotten paid had they submitted it
4 to Medicaid. So that argument, that's our first
5 point in the motions. That's based on existing law.

6 The secondary argument that we've made, which
7 we've made in the alternative, but this is really
8 the hot issue, if you will, and that is whether the
9 tort reform act is applied to pending cases. I
10 almost said the word retroactive, but I think we all
11 have a tendency to use that word when we're talking
12 about analyzing whether a new statute's applied to
13 pending cases. That is not correct, and let me
14 explain what the case law says about that.

15 If a statute is procedural only, then it is
16 applied to pending cases. Most of the supreme court
17 cases on this subject say that including the
18 Florida -- or FIGA vs. Devon Neighborhood case that
19 the plaintiff decided in their response. Basically,
20 if it's procedural, it's applied to pending cases.
21 You don't have any analysis of, you know,
22 constitutionality or anything like that.

23 When a statute affects a substantive right,
24 meaning it affects its vested rights or changes a
25 cause of action, changes the amount of damages, that

1 kind of thing, a substantive right, then the courts
2 apply this two-pronged approach, which is discussed
3 in that FIGA case. And that is, you first look at
4 what the statute -- the legislature said about the
5 effective date. And if the legislature said it was
6 going to be retroactive, then you have to determine
7 whether that's constitutional. But, Your Honor,
8 courts don't have to make that analysis if the
9 statute is procedural. The case law makes that
10 clear.

11 In this case today, I don't know that you had
12 an opportunity to see it and I apologize for
13 submitting it at the last minute. And maybe you've
14 read it before, but there's a 40-page order --

15 THE COURT: No.

16 MS. TUTT: -- entered -- okay.

17 THE COURT: I haven't read a 40-page order.

18 MS. TUTT: Okay. There's a 40-page order by
19 Judge Moe that was entered in May of last year
20 shortly after the tort reform act came into
21 effect -- or was passed. And she -- I mean, it's
22 really -- I'm an appellate lawyer and I couldn't
23 write an order that detailed and that well. I mean,
24 it's really well written. It was sent to your JA
25 this morning. If you don't rule now, you may want

1 to take a look at it.

2 Anyway, she goes over all of this, what I just
3 said. And she also concludes that because the
4 statute that we're talking about simply talks about
5 what evidence you can put on at trial, but does not
6 change the amount of damages that a plaintiff is
7 going to get, ultimately. This is a procedural
8 statute, the statute that says you only put on
9 Medicare/Medicaid evidence at trial as to what was
10 paid and would be paid, that that is procedural.
11 That's what she concludes.

12 And that is what -- that is the argument that
13 we have made in our motion and our alternative
14 argument that the -- something that either is
15 evidentiary or procedural, you know, like a remedy,
16 like when you file a -- you know, a simple example
17 would be when somebody might have to file an amended
18 complaint and you have pending cases. That is a
19 procedural matter and that is applied to pending
20 cases. It doesn't -- no matter what the legislature
21 says -- and this is how Judge Moe analyzed it. No
22 matter what the legislature says about the date or
23 the effective date, if it's procedural such that --
24 you know, going forward, it's not going to change
25 someone's rights. It's just going to be how you

1 deal with the trial, how you deal with pleadings
2 during the case. It's procedural -- or remedial and
3 it is applied to all pending cases. You do not have
4 any constitutional concerns about retroactivity
5 unless something is substantive.

6 So it is our position that with respect to the
7 way medical bills are introduced into evidence at
8 trial, which the statute, 768.0427, addresses, that
9 that's procedural and must be applied in this case.

10 Thank you.

11 THE COURT: Response?

12 MR. HICKS: Yes, Your Honor. Good afternoon.

13 We, of course, respectfully ask the Court to
14 deny defendants' motion. Course, I have two points
15 to my argument, which first, the collateral source
16 rule to address the first portion of their motion;
17 and then the overall intent of House Bill 837 to
18 address their alternate argument.

19 Going to the first point, that Florida's
20 collateral source rule, plaintiffs can present that
21 that full amount of those medical bills incurred
22 even if portions of those bills may be reduced by
23 Medicare in regards to Ms. Green and Medicaid in
24 regards to Ms. Macias. Under that collateral source
25 rules, the defendants, they really don't get the

1 benefit from discounted rates that Medicare or
2 Medicaid would've offered, especially when providers
3 don't seek that reimbursement. The provider's
4 failure to submit those, it shouldn't reduce
5 Ms. Green and Ms. Macias' right to recover that full
6 amount of medical expenses. Believe the focus here,
7 really, should be on just the reasonable value of
8 the medical services that were provided. And
9 plaintiffs, they are allowed to present evidence of
10 that reasonable value of the services provided
11 regardless of whether Medicaid or Medicare paid or
12 could've paid those amounts.

13 Believe the purpose of the collateral source
14 rule is to, really, prevent the defendants from
15 reaping the benefits of a plaintiff's private or, in
16 the case of Medicare and Medicaid, those government
17 benefits. Allowing reduction based on
18 Medicare/Medicaid's low rates when the providers
19 didn't bill them, I believe it would kind of go
20 against the spirit of the collateral source rule.
21 And I do believe the decision in Joerg v. State Farm
22 does support plaintiffs' protection from those
23 reductions and damages, I just would say,
24 speculative Medicare and Medicaid benefits.

25 Going to the defense's second or alternate

1 argument regarding, then I'm going to say,
2 retroactivity of House Bill 837, this case was filed
3 before House Bill 837 went into effect. The law
4 plainly and very clearly states that they shall,
5 that it shall apply to cause of action filed after
6 the effective date, of course that effective date
7 being March 25th of 2023. This case was filed
8 January of 2023.

9 The supreme court in State Farm v. Laforet, it
10 says that statutes that change the amount of damages
11 that are recoverable are substantive. And, you
12 know, the defense are trying to say that it's
13 procedural. The case law does say that it's
14 substantive and they may not be applied
15 retroactively. Courts in this jurisdiction have
16 consistently ruled that House Bill 837 should not be
17 applied retroactively. The defense, without a
18 doubt, knew this before and we believe improperly
19 asking the Court to do so.

20 We did respectfully ask them to withdraw their
21 motion. Of course, they didn't, which is why we're
22 here today, which is why we filed a motion for
23 sanctions that we will be setting for hearing.
24 Your Honor, it's for this reason, we do respectfully
25 ask the Court to deny the defense's motion, I mean,

1 really just allow Ms. Green and Ms. Macias to
2 present evidence of the full amount of medical
3 expenses they have incurred in this case.

4 THE COURT: Brief rebuttal?

5 MS. TUTT: Yes, Your Honor.

6 Respectfully, Counsel is asking Your Honor to
7 commit reversible error with respect to bills that
8 were already submitted and paid to Medicare and
9 Medicaid. There's no question under Florida law --

10 THE COURT: I agree with you. Let's move on to
11 what I tried to tell you what the real issue is
12 here, right?

13 MS. TUTT: Yes, yes.

14 THE COURT: Like, you're trying to force a
15 medical provider to accept Medicaid and Medicare and
16 to bill those folks even though for their hard work,
17 even though they're not guaranteed to get paid by
18 these folks, which is why they have an option not to
19 bill Medicaid and Medicare for the services that
20 they provide. And that is an infringement on their
21 constitutional rights. And there are --

22 MS. TUTT: In addition -- yes.

23 THE COURT: There are constitutional rights of
24 a plaintiff to collect their full amount of damages
25 that they are liable for. As it stands, they're

1 liable for their outstanding bills that haven't been
2 paid.

3 MS. TUTT: I understand what you're saying,
4 Your Honor. I just want to make a few comments
5 regarding the arguments. The -- it is our position
6 that this does not change the amount of damage. I
7 understand what you're saying about matters that
8 were not billed to Medicare and Medicaid. There's
9 no case law on that. I mean, we've argued it, but
10 there's no case law on that. I understand and
11 respect what Your Honor is saying.

12 I'd really rather talk about the tort reform
13 act. And that -- you know, that does not change the
14 amount of damages because the -- it just says what
15 you can introduce into evidence. And for a long
16 time, the rule has been that if you submit bills in
17 evidence, there's going to be an adjustment
18 afterwards from what the actual provider is
19 accepting. We don't know that.

20 THE COURT: You're not required to do that.

21 MS. TUTT: No. I didn't say that.

22 THE COURT: Because the lawyer does good work
23 on their client's behalf to get them the most amount
24 of money to give them justice is neither here nor
25 there.

1 MS. TUTT: I understand what you're saying, but
2 I think you misunderstood what I was saying. I
3 wasn't referring it back to Medicare, necessarily.
4 But the Florida law has consistently been of the
5 view that whatever the provider does accept -- and
6 it may be Medicare. It may be something else. We
7 don't know what the provider's going to accept on
8 bills that they did not submit to Medicare.

9 But the rule has always been that there's no
10 windfalls here, that it is whatever the provider
11 accepts that is what the plaintiff is entitled to.
12 And that is why I do not believe that the tort
13 reform act is substantive.

14 THE COURT: That's a big leap to say whatever
15 the -- this provider decides to accept on behalf of
16 one patient. That's not -- unless you're going to
17 tell me that in every single case, this is what the
18 amount is that they accept and they're required to
19 accept that, no. That's complete speculation and a
20 far leap to connect those two things together. And
21 the fact that you want to infringe on the right of a
22 medical provider to accept whatever amount for his
23 services that they want to accept and not bill any
24 insurance is a constitutional violation, in my
25 opinion.

1 As far as the medical bills that were paid by
2 Medicare or Medicaid, whatever the amount is -- so
3 let's just say John Doe billed \$100. He submitted
4 those bills. He chose to submit those bills through
5 insurance. Insurance, whether it's Medicaid or
6 Medicare, in this case, agreed their requirement is
7 that you accept \$80. If you're going to submit it
8 to us, you accept our fee schedule. The amount of
9 that service is \$80. Here's your \$80. When you put
10 on your billing summary or the bills that you were
11 submitting for John Doe are only going to include
12 \$80.

13 MS. TUTT: Understood.

14 So is it granted in that respect that
15 defendant --

16 THE COURT: Granted in that respect.

17 MS. TUTT: And denied in other -- all right.

18 THE COURT: As to any future or outstanding
19 billing.

20 MS. TUTT: And so if I --

21 THE COURT: As to the house bill argument that
22 this is procedural in nature.

23 MS. TUTT: Understood.

24 Do you want a full-fledged ruling or should
25 we -- can we say granted in part as to what, denied

1 in part as to what for the reasons stated on the
2 record? Is that fine?

3 THE COURT: Yes, ma'am.

4 MS. TUTT: Okay. I'll prepare the order and
5 I'll show it to Counsel.

6 THE COURT: Thank you.

7 MS. TUTT: Thank you.

8 MR. HICKS: Thank you, everybody. Everyone
9 take care.

10 (Proceedings concluded at 1:48 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF POLK)

I, Brianna Williams, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, Pages 1 through 17, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, not am I financially interested in the action.

DATED this 13TH day of OCTOBER, 2024.



BRIANNA WILLIAMS, Florida Professional Reporter

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