

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

CASE NUMBER: 53-2024-CA-000054-0000-00

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SHELLEY MARR, INDIVIDUALLY, AND ON BEHALF OF HER MINOR CHILDREN, R.J., M.J. AND I.M.,

Plaintiff,

-vs-

ORTIZ ALFONSO ORTEGA
AQUA GULF XPRESS, INC.,

Defendant.

ORDER DENYING DEFENDANT’S MOTION IN LIMINE REGARDING ADMISSIBLE EVIDENCE OF PAST AND FUTURE EXPENSES FOR MEDICAL TREATMENT OR SERVICES (DOCKET ENTRY 208)

The Court having reviewed the Defendant’s Motion in Limine, Regarding Admissible Evidence of Past and Future Expenses for Medical Treatment or Services, Docket Entry 208, filed on May 22, 2025, the Plaintiff’s Response, and having heard argument of counsel at a scheduled hearing on October 1, 2025, and being fully advised, finds that the Motion, Response and argument presented set forth the parties’ requests seeking an interpretation from the Court of Section 768.0427(2), Fla Stat.

“In interpreting a statute, [a court’s] task is to give effect to the words that the legislature has employed in the statutory text.” *Laby Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022). Subsection (2) states: “Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action *is admissible* as provided in this subsection.” Section 768.0427(2), Fla. Stat. (emphasis added). As shown above, subsection (2) uses the word “admissible.” The law does not state that a plaintiff must introduce a specific item.

The Plaintiff argues that the Legislature did not write: “A party *must prove* the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action as provided in this subsection.” The legislature wrote: “Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action *is admissible* as provided in this subsection.” Section 768.0427(2), Fla. Stat. (emphasis added).

As an example, Florida’s transitory-substance statute expressly states that “[i]f a person slips

and falls on a transitory foreign substance in a business establishment, the injured person *must prove* that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it.” Section 768.0755, Fla. Stat. (2024)(emphasis added). Thus, when the Legislature wants to set forth what exactly a plaintiff must prove, it does so clearly within the statute.

Subsection 768.0427(2) includes several subdivisions, but none provides that a plaintiff is required to introduce any particular evidence to prove unpaid medical bills or future medical bills. As shown below, subsection (2)(a) limits the evidence that may be admitted only for *satisfied* medical bills. For unpaid medical bills or future medical bills, there is no limitation. Instead, subsections (2)(b) and (2)(c) authorize certain types of evidence for unpaid medical bills or future medical bills, but do not require a plaintiff to introduce every item on the list.

Subsection (2)(b) governs unpaid medical bills and unlike subsection (2)(a), subsection 2(b) does not limit the evidence that may be admitted. Subsection (2)(b) states: “Evidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services shall include, but *is not limited to*, evidence as provided in this paragraph.” Section 768.0427(2)(b) (emphasis added). Subsection (2)(b) then lists five categories of evidence that may be admitted depending on the facts of the case. Section 768.0427(2)(b)(1-5).

Further, the Court recognizes that the legislature included a provision that could reasonably be called a “catchall provision.” The fifth category allows a party to admit, “*Any evidence* of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.” Section 768.0427(2)(b)(5)(emphasis added).

Subsection (2)(c) governs future medical bills and like subsection (2)(b) does not limit the evidence that may be admitted, as it states: “Evidence offered to prove the amount of damages for any future medical treatment or services the claimant will receive shall include, but is *not limited to*, evidence as provided in this paragraph.” Section 768.0427(2)(c) (emphasis added). Subsection (2)(c) then lists three categories of evidence that may be admitted depending on the facts of the case. Section 768.0427(2)(c)(1-3) (emphasis added). Like in subsection (2)(b), the third category in subsection (2)(c) is a catchall provision that allows a party to admit “*Any evidence* of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.” Section 768.0427(2)(c)(3)(emphasis added).

The Court accepts and extrapolates from reading Section 768.0427(2), Fla. Stat. and further accepts that the statute addresses the practical effects of the collateral source rule and makes admissible certain evidence that historically had been excluded by the rule. This Court is mindful of the fact that the Legislature did not write subsections (2)(b) and (2)(c) on a blank slate. The Florida Supreme Court has recognized “the importance of reading statutes with an awareness of and sensitivity to background common law rules,” and it has explained that “[c]ommon law rules might also inform the correct interpretation and application of statutory provisions themselves.” *Ripple v.*

CBS Corp., 385 So. 3d 1021, 1028 (Fla. 2024).

The evidentiary collateral-source rule provides that “payments from collateral source benefits are not admissible because such evidence may confuse the jury with respect to both liability and damages.” *Joerg v. State Farm Mat. Auto Ins.*, 176 So. 3d 1247, 1249 (Fla. 2015). Courts have applied the collateral-source rule to exclude evidence of insurance benefits. *Id.* at 1249. Courts have also applied the collateral-source rule to exclude “evidence of social legislation benefits such as those received from Medicare, Medicaid, or Social Security.” *Id.* at 1250.

The legislature acted in enacting subsections (2)(b) and (2)(c) to allow evidence of insurance. Subsections (2)(b) and (2)(c) now authorize the admission of evidence of what insurance is obligated to pay for medical bills. Subsections (2)(b) and (2)(c) render admissible certain evidence that would have otherwise been excluded by the collateral source rule. This understanding further demonstrates that subsections (2)(b) and (2)(c) do not set forth lists of evidence that a plaintiff is required to introduce or else suffer a directed verdict.

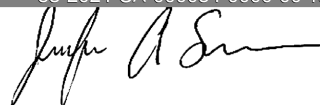
In conclusion, the title of subsection (2) uses the word “admissible” regarding evidence of medical treatment or service expenses. It does not incorporate a burden of proof or condition precedent element. Section 768.0427(2), Fla. Stat. does limit evidence as to the amount actually paid regardless of the source of payment according to Section 768.0427(2)(a), Fla. Stat. A fair reading of subsections (2)(b) and (2)(c) establishes that these subsections do not require all types of evidence listed in the subsection. Subsections (2)(b) and (2)(c) employ the language “shall include, but is not limited to” which means the evidence of the unpaid past and future medical expenses is not limited as it is in subsection (2)(a) for satisfied medical bills. Each subsection contains the catchall provision to allow any evidence of reasonable amounts billed for medically necessary treatment or services. Subsections (2)(b)5. and (2)(c)3. Consequently, the Court must and does deny the Defendant’s requested relief.

For the reasons stated in this Order, it is

ORDERED AND ADJUDGED that Defendant’s Motion in Limine Regarding Admissible Evidence of Past and Future Expenses for Medical Treatment or Services is **DENIED**.

ORDERED on Wednesday, October 1, 2025.

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Jennifer Swenson, Circuit Judge
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