

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

MADÉLIN PEREZ,
Plaintiff,

CASE NO.: 01-2024-CA-493

v.

DIVISION: J

ELENA WINN AND GREGORY WINN,
Defendants.

_____ /

**ORDER DENYING DEFENDANTS' SECOND MOTION IN LIMINE
REGARDING ADMISSIBLE MEDICAL EXPENSE**

THIS CAUSE came before the Court on Defendants' Second Motion in Limine Regarding Admissible Medical Expense, filed on January 17, 2025. Plaintiff filed a Response in Opposition as well as a Notice of Constitutional Question on February 11, 2025. Defendants filed a memorandum of law in reply on February 11, 2025, to which Plaintiff filed a Sur-Reply on March 17, 2025. The Court heard argument from both parties during a Zoom remote hearing held on March 27, 2025. Subsequently, Plaintiff filed supplemental authorities on March 20, 2025, April 22, 2025, May 9, 2025, May 13, 2025, and May 16, 2025¹. Having reviewed the motion and responses, the filings in the court record, and the Court being otherwise duly advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

Defendants' Second Motion in Limine is hereby DENIED. In support of this Court's determination, the Court finds as follows:

1. This is a personal injury lawsuit arising from a motor vehicle accident on or about August 14, 2023.

2. Defendants request an order "precluding Plaintiff from admitting her total unpaid medical bills and future medical expense without regard to F.S. 768.0427". This relief was later rephrased to request that Plaintiff "must present the amount that her health insurance would have

¹ In light of the numerous supplemental filings by Plaintiff, Defendants were offered additional time to file supplemental materials and/or briefs on May 22, 2025. However, Defendants declined to do so.

paid had the claimant obtained medical services or treatment under her health insurance” and “must present the amount that her health insurance would pay for any future treatment,” or alternatively “if the Plaintiff did not have health insurance or does not have health insurance, then the Plaintiff must present that amount that is 120 percent of the applicable Medicare rate or 170 percent of the applicable Medicaid rate.”

Past Medical Treatment or Services

3. Although the parties agree that Florida Statute § 768.0427(2)(b) applies to the unpaid medical bills for incurred medical treatment or services that Plaintiff attributes to the motor vehicle accident, they disagree about how it should be applied by this Court.

4. The Court finds that Fla. Stat. § 768.0427(2)(b) does not limit evidence of unpaid past medical expenses. In fact, the only limitation in the statutory text is in subsection (2)(a) concerning “satisfied” (i.e., paid) medical expenses. Specifically, subsection (2)(a) states: “Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied *is limited* to evidence of the amount actually paid, regardless of the source of payment.” § 768.0427(2)(a), Fla. Stat.²

5. Conversely, 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.”

6. “[W]hen the legislature includes particular language in one section of a statute but not in another section of the same statute, the omitted language is presumed to have been excluded intentionally.” *USAA Cas. Ins. v. Emergency Physicians, Inc.*, 393 So. 3d 257, 261 (Fla. 5th DCA 2024) (citation omitted). Here, the Legislature used different language—“is limited to” for paid medical expenses in subsection (2)(a) and “shall include, but is not limited to” for unpaid past

² All emphasis is by this Court unless otherwise noted.

medical expenses in subsections (2)(b). This indicates that the statute does *not* limit evidence of unpaid past medical expenses.

7. Therefore, it would be inappropriate to preclude Plaintiff from admitting her total unpaid medical bills into evidence.

8. Additionally, the Court finds it would be inappropriate to require Plaintiff to present the amount that her health insurance would have paid had she obtained medical services or treatment under her health insurance.

9. Fla. Stat. § 768.0427(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." § 768.0427(2), Fla. Stat. The Florida Legislature chose to use the phrase "is admissible" rather than the word "required" or otherwise state that a plaintiff must introduce the listed evidence. "If the Legislature had intended such a meaning, it could easily have made such intention clear." *Crews v. State*, 183 So. 3d 329, 335 (Fla. 2015).

10. Defendants suggest Plaintiff has a burden of production due to the use of the word "shall" in the phrase "shall include, but is not limited to." §768.0427(2)(b), Fla. Stat. However, depending on the context in which it is used, the word "shall" can have either a permissive or a mandatory sense. *See Belcher Oil Co v. Dade County*, 271 So. 2d 118, 121 (Fla. 1972) (applying "[a] permissive rather than mandatory construction" to the word "shall" in a Florida statute).

11. An increasing number of trial courts around Florida have held that the word "shall" in Fla. Stat. § 768.0427(2)(b) should be construed in its permissive, not mandatory sense. *See Cheryl A. Beyenka v. Jean Pyle*, No. 2023-CA-009204 (Fla. 4th Cir. Ct. (Duval)); *Carolina Morales v. Jordan Adam Reeb and Lessen, Inc.*, No. 2023-CA-016933 (Fla. 13th Cir. Ct. (Hillsborough)); *Brooke Miner v. Nydia Barardo*, No. 2023-CA-000867 (Fla. 7th Cir. Ct. (Flagler)); *Jiveres Lenoir Lanoir, Jr. v. Omar Vladimir Mota Peguero and Palm Express, Inc.*, No. 2024-CA-001363 (Fla. 17th

Cir. Ct. (Broward)); *Phillip Sledge v. Devin McCabe*, No. 2023-CA-015665 (Fla. 15th Cir. Ct. (Palm Beach)).

12. Since the interpretation of the word “shall” “depends upon the context in which it is found and upon the intent of the legislature as expressed in the statute,” *S.R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977), this Court has determined that Fla. Stat. § 768.0427(2)(b) merely identifies evidence that is admissible, as well as the conditions under which the listed evidence is admissible, without imposing a burden on any party to introduce the listed evidence.

Future Medical Treatment or Services

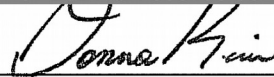
13. The Court’s analysis of Fla. Stat. § 768.0427(2)(b) applies equally to Fla. Stat. § 768.0427(2)(c) due to the use of the same key language in both subsections.

14. Therefore, Plaintiff is not required to present the amount that her health insurance would pay for any future medical expense(s) claimed, nor is Plaintiff required to present the amount that is 120 percent of the applicable Medicare rate or 170 percent of the applicable Medicaid rate for any future medical expense(s) claimed.

For the foregoing reasons, Defendants’ Second Motion in Limine is hereby **DENIED**.

DONE AND ORDERED in Gainesville, Alachua County, Florida on Wednesday, June 11, 2025.

01-2024-CA-000493 06/11/2025 07:24:26 AM



Donna M. Keim, Circuit Judge
01-2024-CA-000493 06/11/2025 07:24:26 AM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Order has been furnished this day by Florida Courts E-Filing Portal to the following:

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A handwritten signature in black ink, appearing to read "Theresa Hall", written over a horizontal line.

Theresa Hall, Judicial Assistant
01-2024-CA-000493 06/11/2025 07:36:55 AM