"922 F.3d 1211

Galawezh SHOWAN, Plaintiff-Appellant,
v.
Patrick PRESSDEE, Krispy Kreme Doughnut Corporation, Defendants-Appellees,

Penske Truck Leasing Co., L.P., Defendant.

No. 17-15547

United States Court of Appeals, Eleventh Circuit.

April 29, 2019..." Showan v. Pressdee, 922 F.3d 1211 (11th Cir. 2019)

III. EVIDENCE OF MEDICAL RATES

A. Defendants' Medical-Rate Experts

On February 9, 2016, as part of her treatment following the accident, Showan had a discectomy—back surgery that involves local anesthetic to remove lumbar disc material. Showan's doctor charged $ 173,213 for the surgery. He also charged a facility fee of $ 80,768.5

Defendants believed those charges were excessive and sought to prove it through the testimony of medical billing experts, Lamar Blount and Jessica Schmor. Showan was uninsured, and Blount and Schmor relied on average rates that included those subsidized by the government or private insurers. Blount testified that, based on databases for doctors in the same area, the 90th percentile charge for the same procedure would be $ 20,688. The 80th percentile for a facility fee would be $ 27,144. Schmor testified that the doctor's billing practices were highly unusual and potentially unethical: "You do not see facility charges being billed on an itemization from a physician's practice. They're completely separate entities, and they're different bills.... [T]o see a facility charge on a physician bill is highly unlikely.... I've only seen it in two practices"—Showan's doctor and that doctor's previous partner. Schmor also expressed skepticism regarding such charges from an ambulatory surgery center like the one where Showan had her surgery.

Showan moved in limine to exclude this testimony. Showan contended the testimony violated the collateral source rule, which prohibits evidence of an insurance company's payments to a tort victim. Showan argues that Blount and Schmor were suggesting that her medical bills were "too high because Medicare, the VA, or Acme Insurance Company thinks so, and/or they do not pay as much for the treatment [she] had." "In other words, Defendants [were] employing a back-door tactic that [sought] to indirectly accomplish what the Collateral Source Rule would never permit them to do directly." Showan further argued that the testimony violated Rule 403 of the Federal Rules of Evidence because it was irrelevant, prejudicial, and confusing in light of the fact that she did not receive any assistance from any government or other health insurer in paying her medical bills.

The district court rejected Showan's arguments, finding the testimony was not offered to show what Showan would have received from an insurer.6 The district

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court explained that "there is a difference between presenting evidence of discounted rates a plaintiff could receive on [ ] medical costs based on the plaintiff's specific access to certain

advantages, and evidence of market rates as a whole." The court found the testimony in question was offered to show whether the medical bills were reasonable and allowed it.

B. Whether the District Court Properly Admitted the Testimony

On appeal, Showan reiterates her motion-in-limine arguments. She contends the district court should not have admitted the testimony. Again, we "review a district court's evidentiary rulings for abuse of discretion." Proctor , 494 F.3d at 1349 n.7.

Under Georgia law, a tort victim is "entitled to recover medical expenses arising from his injuries, including hospital charges, that [are] 'reasonable and necessary.' " MCG Health, Inc. v. Kight , 353, 325 Ga.App. 349, 750 S.E.2d 813, 817 (2013) (quoting Allen v. Spiker , 301 Ga.App. 893, 689 S.E.2d 326, 329 (2009)). "Moreover, under the collateral source rule, [the victim is] entitled to seek full recovery from the tortfeasor of reasonable and necessary hospital charges undiminished by [the victim's] insurance payments or 'write-offs.' " Id . In other words, the "collateral source rule bars the defendant from presenting any evidence as to payments of expenses of a tortious injury paid for by a third party and taking any credit toward the defendant's liability and damages for such payments." Hoeflick v. Bradley , 282 Ga.App. 123, 637 S.E.2d 832, 833 (2006). "This is because a tortfeasor is not allowed to benefit by its wrongful conduct or to mitigate its liability by collateral sources provided by others." Id .

Blount's and Schmor's testimony did not violate the collateral source rule. Their testimony addressed the reasonableness and necessity of what Showan had paid for her discectomy. Whether the expenses were "reasonable and necessary" is a critical inquiry under Georgia law. Kight , 750 S.E.2d at 817.

For that reason, Defendants were properly allowed to argue that medical charges were unreasonably high. They did not try to get any "credit" from the jury based on payments that Showan had received. See Hoeflick , 637 S.E.2d at 833. Indeed, Showan, who is uninsured, says she received no such payments. Showan's argument thus fundamentally misinterprets the collateral source rule. She contends that the district court should have excluded evidence not of what was paid but of what might have been paid had she obtained insurance. Defendants were not trying to introduce such evidence.

Showan's Rule 403 argument also fails. As noted above, Georgia law permits testimony regarding whether medical expenses are reasonable and necessary. And to the extent Showan suggests that the testimony of Blount and Schmor was misleading, she could have offered her own expert testimony to disagree with or supplement their testimony. If Showan believed the "volume discounts," as she describes them, did not apply to her, she could have attempted to convince the jury of that. But the district court did not err in allowing Defendants' experts to give the jury a picture of what most doctors in the area charge for a discectomy.

Accordingly, the district court did not abuse its discretion in admitting the testimony of Blount and Schmor.

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