

NOTICE

Decision filed 05/06/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0625

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JAMES HARRIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee and Cross-Appellant,)	Massac County.
)	
and)	
)	
VASHI R. HARRIS and CHELSEA HARRIS,)	
)	
Plaintiffs,)	
)	
v.)	No. 05-L-1
)	
STEVEN W. THOMPSON and)	
MASSAC COUNTY HOSPITAL DISTRICT,)	Honorable
)	James R. Williamson,
Defendants-Appellants and Cross-Appellees.)	Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Donovan and Welch concurred in the judgment.

R U L E 2 3 O R D E R

Held: Where the trial court held that the specific statutory requirement contained within the Illinois Vehicle Code superseded the more general statutory language within the Local Governmental and Governmental Employees Tort Immunity Act and that therefore negligence was the appropriate standard by which to measure the actions of the defendants in this case, we affirm the judgment. Additionally, the trial court did not err in allowing the introduction of documentary evidence related to the plaintiff's unpaid medical bills, where the defendants waived the plaintiff's burden of establishing reasonableness. In light of our order affirming the court's judgment, the plaintiff's cross-appeal is rendered moot.

The defendants, Steven W. Thompson and Massac County Hospital District, appeal from the October 2, 2009, final judgment entered on the jury's verdict finding the defendants responsible for injuries and damages resulting from a motor vehicle accident between a vehicle occupied by the plaintiffs and a Massac County Hospital District ambulance driven

by Steven W. Thompson. The claim was based in negligence, and the amount of the verdict was \$667,216.30. Defendants contend that governmental immunity should have shielded them from this negligence claim.

FACTS

Defendant Steven W. Thompson was employed by the Massac County Hospital as an ambulance driver. On January 26, 2004, Thompson was operating an ambulance in Metropolis in response to an emergency call from Southgate Nursing Home. Thompson was en route to pick up and transport a nursing home resident to a hospital in Paducah, Kentucky, for further care.

Plaintiff James Harris was driving his van at approximately 6:15 to 6:30 p.m. along Butler Road towards Ninth Street in Metropolis. In addition to the driver, James, the van was also occupied by his wife, Vashi, and his daughter, Chelsea. Thompson was driving the ambulance on Ninth Street.

The intersection at Butler Road and Ninth Street is controlled by a stop sign on Ninth Street. Drivers on Ninth Street are required to make a stop at the street's intersection with Butler Road, whereas drivers on Butler Road are not required to make a stop at its intersection with Ninth Street.

Thompson used both his sirens and his lights until approximately one block before the intersection at Butler Road and Ninth Street, at which time Thompson turned off the sirens. According to Thompson's trial testimony, he turned the sirens off in order to not upset the other residents at the Southgate Nursing Home. He also slowed the ambulance as he was entering the intersection, but he did not make a full and complete stop at the stop sign. He had to go past the point of the stop sign due to a visual obstruction to his left at the corner. Thompson stated that, in slowing, he looked both ways and saw no oncoming vehicles. Thompson contends that he blasted the siren quickly twice at about the same time as he was

driving up to the intersection. He testified that, with his foot on the ambulance brake, he eased into the intersection without stopping, at a speed estimated at 10 miles per hour.

The two vehicles collided in the intersection. Plaintiff Harris claimed that he never saw the ambulance prior to the impact, because he was looking to his left (away from the direction that the ambulance was traveling) upon entering the intersection. Harris's wife, Vashi, did see the ambulance prior to the impact. Vashi testified that the ambulance was moving at a high rate of speed—more than 40 miles per hour.

The impact rolled the ambulance. Julie Worthen, a hospital EMT, was in the back of the ambulance and sustained injuries in the rollover. She did not witness anything prior to the collision because the back of the ambulance lacked windows. All the Harrises sustained injuries.

Plaintiff James Harris, his wife, and his daughter filed suit against the defendants on January 24, 2005, seeking damages for personal injuries sustained in this collision. The initial complaint was in four counts. Each plaintiff alleged negligence on the part of the defendants, and the fourth count was that of Vashi R. Harris for a loss of consortium. The complaint was amended three times before the trial.

The first amended complaint was filed on January 28, 2005, and added demands for a jury trial on all four counts. An appearance and a motion to dismiss on behalf of the defendants was filed in June 2006. The defendants filed a motion to dismiss, pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2002)), alleging that the negligence claims against the defendants were barred by affirmative matter which defeated the plaintiffs' claims—specifically, that the hospital district was a municipal corporation in possession of ambulances and was immune from negligence liability pursuant to the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et seq.* (West 2002)). As the defendants pointed out, liability could be established

for willful and wanton conduct, but no such conduct was alleged. The trial court denied this motion on December 8, 2006. The plaintiffs filed a second amended complaint on May 1, 2009, adding willful-and-wanton-conduct allegations and counts to the negligence counts.

On June 18, 2009, the plaintiffs filed a third amended complaint that expanded upon the allegations made against the defendants.

On September 11, 2009, the claims of Vashi R. Harris and Chelsea Harris were settled and dismissed with prejudice pursuant to the parties' stipulation. The remaining plaintiff, James Harris, took his case to trial on September 28, 2009. He sought a dismissal of his own loss-of-consortium claim on September 30, 2009, which the trial court obliged, dismissing that count with prejudice. The trial court directed a verdict on the willful-and-wanton count. James Harris's case went to the jury on the negligence count only. The jury's verdict was against the defendants.

The defendants' posttrial motion was timely filed and denied by the court on October 30, 2009. The defendants appeal. Harris cross-appeals the trial court's decision to direct a verdict in favor of the defendants on the willful-and-wanton-conduct count of his third amended complaint.

ISSUES, LAW, AND ANALYSIS

Conflict Between Local Governmental and Governmental Employees Tort Immunity Act and Illinois Vehicle Code

At issue is a conflict between two Illinois statutory acts. The standard of review for a case involving statutory review and application is *de novo*. *Miller v. Rosenberg*, 196 Ill. 2d 50, 57-58, 749 N.E.2d 946, 951 (2001); *LAS, Inc. v. Mini-Tankers, USA, Inc.*, 342 Ill. App. 3d 997, 1000, 796 N.E.2d 633, 636 (2003). We set forth the relevant portions of each act below.

The Local Governmental and Governmental Employees Tort Immunity Act

(Governmental Immunity Act) is designed to protect public entities and their employees from claims that arise out of the operation of government. 745 ILCS 10/1-101.1(a) (West 2002). The parties do not dispute that the Massac County Hospital District is a public entity as contemplated by the act (745 ILCS 10/1-206 (West 2002)) and further do not dispute that Steven W. Thompson is an employee of a public entity (745 ILCS 10/1-207 (West 2002)). Furthermore, it is clear that the complaint alleged injuries of a type contemplated by the act (745 ILCS 10/1-204 (West 2002)).

The defendants contend that they could not be held accountable for the injuries and damages sustained by Harris unless the actions of its employee Thompson amounted to willful and wanton conduct. The Governmental Immunity Act states as follows: "Except for willful and wanton conduct, neither a local public entity, nor a public employee acting within the scope of his employment, is liable for an injury caused by the negligent operation of a motor vehicle or firefighting or rescue equipment, when responding to an emergency call, including transportation of a person to a medical facility." 745 ILCS 10/5-106 (West 2002).

We have previously held that the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/1-100 *et seq.* (West 2002)) is in conflict with the Governmental Immunity Act on the specific issue of the negligence of a driver of an emergency vehicle. *Bradshaw v. City of Metropolis*, 293 Ill. App. 3d 389, 393, 688 N.E.2d 332, 334 (1997). The Vehicle Code defines an authorized emergency vehicle to include the following: "Emergency vehicles of municipal departments or public service corporations as are designated or authorized by proper local authorities." 625 ILCS 5/1-105 (West 2002). The Vehicle Code sections relative to authorized emergency vehicles have been interpreted to apply equally to both public and private employees. *Carter v. Du Page County Sheriff*, 304 Ill. App. 3d 443, 450, 710 N.E.2d 1263, 1268 (1999). Section 11-205(b) of the Vehicle Code provides, "The driver of an authorized emergency vehicle, when responding to an emergency call ***, may exercise the

privileges set forth in this Section, but subject to the conditions herein stated." 625 ILCS 5/11-205(b) (West 2002). Specifically, the statute allows the driver of such an authorized emergency vehicle to proceed past a stop sign, "but only after slowing down as may be required and necessary for safe operation," and the driver can only exceed the maximum speed limits "so long as he does not endanger life or property." 625 ILCS 5/11-205(c)(2), (c)(3) (West 2002). The statute most importantly provides that these exceptions to the usual rules for the operation of a motor vehicle are only granted to an authorized emergency vehicle "when the vehicle is making use of either an audible signal when in motion or visual signals." 625 ILCS 5/11-205(d) (West 2002). Additionally, "[these exceptions to the rules] do not relieve the driver from the duty of driving with due regard for the safety of all persons, nor do such provisions protect the driver from the consequences of his reckless disregard for the safety of others." 625 ILCS 5/11-205(e) (West 2002). Elsewhere in the Vehicle Code, in a section dealing with the operation of vehicles upon the approach of an authorized emergency vehicle, the legislative language is clear that the driver of an authorized emergency vehicle is not relieved of the "duty to drive with due regard for the safety of all persons using the highway." 625 ILCS 5/11-907(b) (West 2002).

The primary rule with statutory construction is to determine and follow the intent of the legislature. *Moore v. Green*, 219 Ill. 2d 470, 479, 848 N.E.2d 1015, 1020 (2006). Initially, courts should look at the statutory language for evidence of intent. *Id.* If the language is unambiguous, then the statute must be applied as it is written. *Id.* at 479, 848 N.E.2d at 1021. If the language conflicts with other statutory language, then courts must use alternate methods to determine the intent of the legislature. *Id.* "Where two statutes conflict, we will attempt to construe them together, *in pari materia*, where such an interpretation is reasonable." *Id.*

This court addressed the conflict between these exact two legislative acts in *Bradshaw*

v. City of Metropolis, 293 Ill. App. 3d 389, 688 N.E.2d 332 (1997). In *Bradshaw*, the trial court granted a summary judgment in favor of the City of Metropolis on the basis that the city was immunized from liability for its employee's alleged negligent operation of a police vehicle. *Id.* at 390, 688 N.E.2d at 332. Officer Neihoff was en route to a residence in response to a 9-1-1 call, with the police vehicle lights activated. *Id.* at 390, 688 N.E.2d 332-33. The only other vehicle on the road at the time was ahead of the police vehicle and was operated by Bradshaw. *Id.* at 390, 688 N.E.2d at 333. When Officer Neihoff was approximately two blocks from the rear of the Bradshaw vehicle, he reached down to activate his vehicle siren and took his eyes off of the road and off of the Bradshaw vehicle. *Id.* at 391, 688 N.E.2d at 333. While Officer Neihoff's eyes were momentarily looking away from the rear of the Bradshaw vehicle, Bradshaw moved into the left-turn lane in order to make a left turn. *Id.* Officer Neihoff was traveling in the left-turn lane with the intent of passing the Bradshaw vehicle. *Id.* When Officer Neihoff looked up, he realized that he was going to collide with the Bradshaw vehicle and unsuccessfully attempted evasive action. *Id.*

On appeal, after concluding that both the Governmental Immunity Act and the Vehicle Code could apply to the case, the court had to analyze the nature of the acts and use a method of resolving the statutory conflict between the two acts. *Id.* at 393, 688 N.E.2d at 334. The court then applied a rule of statutory construction analyzing each provision to determine which one was general in nature and which was specific in nature. *Id.* We concluded that the Governmental Immunity Act was more general in nature, dealing "with many general potential liabilities of a public entity for the negligent acts or omissions of its employees." *Id.* at 393, 688 N.E.2d at 334 (citing *Emulsicoat, Inc. v. City of Hoopston*, 99 Ill. App. 3d 835, 838, 425 N.E.2d 1349, 1352 (1981)). The court determined that the Vehicle Code provisions were more specific, requiring "the driver of an authorized emergency vehicle 'to drive with due regard for the safety of all persons using the highway.' "

Bradshaw, 293 Ill. App. 3d at 393, 688 N.E.2d at 334 (quoting 625 ILCS 5/11-907(b) (West 1992)). Citing to several cases decided before *Bradshaw*, this court concluded that the sections of the Governmental Immunity Act had already been construed as general. See *Cleaver v. Marrese*, 253 Ill. App. 3d 778, 780, 625 N.E.2d 1129, 1131 (1993) (holding that the two-year statute of limitation for medical malpractice claims was more specific and thus controlled over the more general one-year statute of limitation for claims against a government entity—a township hospital); *Emulsicoat, Inc.*, 99 Ill. App. 3d at 838, 425 N.E.2d at 1352 (holding that a general liability section for municipalities was inapplicable when in conflict with the more specific Bond Act mandating that all entities secure a contractor's bond for liability purposes).

In concluding that the Vehicle Code proscribed "a duty and standard of care governing the operation of emergency vehicles by police officers" and that the Vehicle Code did "not absolve a driver of such vehicles from the duty to use due regard for the safety of all persons on the public highways," this court held that a driver of an emergency vehicle can be held liable for negligent operation of the vehicle despite the existence of the Governmental Immunity Act. *Bradshaw*, 293 Ill. App. 3d at 395, 688 N.E.2d at 335.

Defendants urge us to disagree with our decision in *Bradshaw*, in light of the decisions of other districts of this appellate court that disagreed with this court's analysis of the two statutory enactments. The first court to weigh in on this issue was the Second District with *Carter v. Du Page County Sheriff*.

Carter involved an intersectional collision between a car operated by Carter and a police vehicle operated by a Du Page County sheriff's deputy. *Carter*, 304 Ill. App. 3d at 446, 710 N.E.2d at 1264-65. On appeal, the court examined the *Bradshaw* opinion before disagreeing with the analysis. The *Carter* court instead relied upon the reasoning of the Illinois Supreme Court in *Henrich v. Libertyville High School*, decided one year after

Bradshaw. Carter, 304 Ill. App. 3d at 449, 710 N.E.2d at 1267 (citing *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 387-89, 712 N.E.2d 298, 302-03 (1998)).

In *Henrich v. Libertyville High School*, the supreme court reiterated the primary rule of statutory interpretation—"[to] ascertain and give effect to the intent of the legislature." *Henrich*, 186 Ill. 2d at 387, 712 N.E.2d at 302. The *Henrich* court applied this basic rule when reviewing the language of both immunity statutes. *Id.*

At issue in the *Henrich* case was whether the Governmental Immunity Act controlled over the School Code. *Henrich*, 186 Ill. 2d at 391-92, 712 N.E.2d at 302-03. The Governmental Immunity Act provided school districts with immunity from both negligent conduct and willful and wanton conduct, while the School Code only provided immunity for negligent conduct. *Id.* The court reasoned that because the Governmental Immunity Act applied to public school districts, while the School Code applied to both public and private schools, the legislature intended to provide public school districts with greater protection. *Id.* at 392, 712 N.E.2d at 304. The court determined that it was not necessary in that case to decide which act was more specific, because the legislature intended that each act stand "in its own sphere" with the immunities provided by each act serving different purposes. *Id.*

In similar fashion, the *Carter* court applied the *Henrich* reasoning to the Governmental Immunity Act and the Vehicle Code, thereby rejecting the analysis of whether one statute was more specific. The *Carter* court also concluded that each statute operated in its own sphere, with the Vehicle Code applying to both public and private entities and their employees, while the Governmental Immunity Act only applied to public entities and their employees. *Carter*, 304 Ill. App. 3d at 450, 710 N.E.2d at 1267. The court concluded that the legislature intended to provide broader immunity to a public employee than to a private employee. *Id.*

What distinguishes *Henrich* from the conflict between the two statutes in this case is

that, in *Henrich*, neither statutory act prescribed a specific duty to use due regard for the safety of others. In contrast, the Vehicle Code specifically spelled out a duty owed by drivers of authorized emergency vehicles to other drivers on the same roadways. 625 ILCS 5/11-907(b) (West 2002). Unlike *Henrich*, the *Bradshaw* analysis was not comparing two different immunity statutes. The court in *Bradshaw* compared a statute setting forth a specific duty of due care owed by those operating both governmental and private authorized emergency vehicles with a statute providing immunity in general for governmental employees.

Other courts in this state have chosen to follow the *Carter* analysis. *Sanders v. City of Chicago*, 306 Ill. App. 3d 356, 363, 714 N.E.2d 547, 553 (1st Dist. 1999); *Young v. Forgas*, 308 Ill. App. 3d 553, 560, 720 N.E.2d 360, 364 (4th Dist. 1999); *Lanning v. Harris*, 342 Ill. App. 3d 965, 968, 796 N.E.2d 667, 669 (3rd Dist. 2003).

We respectfully disagree with the analysis of the *Carter* case and conclude that its reliance upon *Henrich* was misplaced. In *Henrich*, the "sphere" analysis made sense because the court was construing two competing immunity statutes. In contrast, construing the Vehicle Code with the Governmental Immunity Act requires the interpretation of a statute containing a specific duty to act or refrain from acting with a statute providing certain immunities.

In further support of our analysis of this conflict, we find that the statutory enactment dates are relevant. The legislature enacted the Vehicle Code several years after the Governmental Immunity Act was enacted. The Illinois Supreme Court provides guidance on this matter in *Moore v. Green*, 219 Ill. 2d 470, 848 N.E.2d 1015 (2006). If the statutory conflict requires the court to engage in interpretation beyond the express wording used (unlike in *Henrich*), the more recent statutory enactment should also be considered as indicative of control. *Id.* at 480, 848 N.E.2d at 1021 (partial immunity under the Illinois

Domestic Violence Act of 1986 (750 ILCS 60/305 (West 2002))); see also *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 327, 898 N.E.2d 631, 634 (2008) (partial immunity under the Emergency Medical Services Systems Act (210 ILCS 50/3.150(a) (West 2004))).

Looking at the two statutory enactments, then, we note that the Vehicle Code provisions are more recent in origin than the Governmental Immunity Act. The Governmental Immunity Act was adopted in 1965 in response to the Illinois Supreme Court's abolition of sovereign immunity of municipalities for tort-based claims. See *Molitor v. Kaneland Community Unit District No. 302*, 18 Ill. 2d 11, 163 N.E.2d 89 (1959). The Vehicle Code section at issue—section 11-907(b)—took effect on July 1, 1970. Subsection (b) of section 11-907 was last amended approximately 17 years ago, and the amendment took effect on January 1, 1984. Pub. Act 83-781, §1, eff. Jan. 1, 1984.

While *Carter* reaches a conclusion different than this court did in *Bradshaw*, the Illinois Supreme Court has yet to address this conflict.

Admission of Hospital Bill

The defendants next argue that the trial court improperly admitted into evidence the unpaid portion of the plaintiff's Barnes-Jewish Hospital bill without the plaintiff first establishing the reasonableness of the bill.

A brief review of the application of the collateral source rule in Illinois is helpful to our analysis of the issue before us. "Under the collateral source rule, benefits received by the injured party from a source wholly independent of, and collateral to, the tortfeasor will not diminish damages otherwise recoverable from the tortfeasor." *Wilson v. The Hoffman Group, Inc.*, 131 Ill. 2d 308, 320, 546 N.E.2d 524, 530 (1989) (citing *Bernier v. Burris*, 131 Ill. 2d 219, 242, 497 N.E.2d 763, 774-75 (1986), and Restatement (Second) of Torts §920A (1982)).

In *Peterson v. Lou Bachrodt Chevrolet Co.*, decided more than 30 years ago, the

supreme court limited the application of the rule by holding that a plaintiff could not recover the reasonable value of free medical services. *Peterson v. Lou Bachrodt Chevrolet Co.*, 76 Ill. 2d 353, 362-63, 392 N.E.2d 1, 5 (1979). Omitting gratuitous medical services from the collateral source rule placed Illinois in the minority of jurisdictions on this issue and at odds with the Restatement [Second] of Torts. *Wills v. Foster*, 229 Ill. 2d 393, 401-02, 892 N.E.1018, 1023-24 (2008) (citing Restatement (Second) of Torts §920A, Comment c(3), at 515 (1979)). In *Arthur v. Catour*, decided 26 years after *Peterson*, the supreme court departed from the *Peterson* court's view that a benefit intended for the plaintiff could become a windfall for the defendant, and by doing so, the *Arthur* court endorsed section 920A of the Restatement (Second) of Torts. *Wills*, 229 Ill. 2d at 402-03, 892 N.E.2d at 1024 (citing *Arthur v. Catour*, 216 Ill. 2d 72, 78-79, 833 N.E.2d 847, 851-52 (2005)).

The *Arthur* court also reaffirmed the rule that evidence that a medical bill has been paid makes it *prima facie* reasonable. *Arthur*, 216 Ill. 2d at 81-82, 833 N.E.2d 853 (citing *Flynn v. Cusentino*, 59 Ill. App. 3d 262, 266, 375 N.E.2d 433, 436 (1978)). The Reasonableness of any portion of an unpaid bill, however, must be established through testimony of a person having knowledge of the services rendered and of the usual and customary charges for those services. *Arthur*, 216 Ill. 2d at 82, 833 N.E.2d at 853-54 (citing *Diaz v. Chicago Transit Authority*, 174 Ill. App. 3d 396, 528 N.E.2d 398 (1988)).

The supreme court's most recent pronouncement on the collateral source rule is *Wills v. Foster*. In *Wills*, the court overruled *Peterson* outright and held that Illinois follows the reasonable-value approach to the collateral source rule, allowing a plaintiff to recover the reasonable value of the full amount of the billed medical expenses. *Wills*, 229 Ill. 2d at 412-13, 892 N.E.2d at 1030.

Here, the defendants claim that the court improperly ruled at a pretrial conference that the full amount of the unpaid bill would be allowed into evidence based on the deposition

testimony of a hospital employee who, the defendants claim, could not satisfy the foundational requirements to establish that the bill was fair and reasonable.

The defendants correctly note that without a proper foundation, the hospital employee's testimony is inadmissible evidence with regard to the reasonableness of the unpaid portion of the medical bill. See *Wills*, 229 Ill. 2d at 419-20, 892 N.E.2d at 1033-34. This argument, however, has been effectively waived by a curious sequence of events we glean from reading the record and briefs and hearing argument. The record itself does not contain any objection by the defendants regarding their claim of the lack of a foundational requirement. The defendants state in their briefs that the objection was an "oral objection" at a pretrial conference. The record reflects that there was a pretrial conference held on September 28, 2009, on the first day of the trial. The record does not contain any written pretrial motions by any parties that raise issues related to the admission of medical bills. There is no transcript of the September 28, 2009, hearing. Furthermore, the court's docket entry makes no mention of an objection by the defendants. The entry does make the following reference to this issue: "Regarding amount owed Barnes Jewish Hospital, St. Louis, Mo., court finds that 'reasonable value' of medical services rendered to Plaintiff was \$110,000 as per the discovery deposition taken prior to trial. See *Wills v. Foster*, 229 Ill.2d 393 (2008)—reasonable value approach." The record also reflects that during the plaintiff's direct examination the plaintiff introduced an itemized list of his medical bills by provider, without objection by the defendants. This exhibit, No. 4, was then admitted into evidence and published to the jury—again without objection by the defendants. This case is not unlike the factual scenario in *Wills v. Foster*. In *Wills*, the defendant moved *in limine* to limit the plaintiff to the introduction of only the portion of medical bills paid by Medicaid and Medicare in full settlement of the bills. *Wills*, 229 Ill. 2d at 396, 892 N.E.2d at 1020. The court denied the defendant's motion, allowing the full amount of the bills into evidence, but

it reduced the plaintiff's recovery posttrial to the amount paid by Medicaid and Medicare. *Id.* As previously discussed, in reversing the trial court, the supreme court established the reasonable-value approach to the collateral source rule in Illinois. *Id.* at 412-13, 892 N.E.2d at 1030. The court found that the fact that the collateral source was governmental in *Wills* versus a private insurer in *Arthur* was a distinction without a difference. *Id.* at 418-19, 892 N.E.2d at 1033. In turning to the issue of whether the plaintiff had proved the reasonableness of the unpaid portion of the medical bills, the court stated, "The reasonableness requirement discussed in *Arthur* is part of the foundational requirement that a plaintiff must satisfy for admission of an unpaid bill into evidence." *Id.* at 420, 892 N.E.2d at 1034 (citing *Arthur*, 216 Ill. 2d at 82, 833 N.E.2d at 853-54). In *Wills*, the plaintiff did not produce a witness to testify that the amount of medical bills was reasonable. *Wills*, 229 Ill. 2d at 419, 892 N.E.2d at 1033. The court, however, found that the plaintiff was relieved of the burden of establishing reasonableness because the defendant stipulated to the amounts billed and failed to offer any objection. *Id.* at 419, 892 N.E.2d at 1033-34. Once the bills were admitted, it was for the jury to decide what amount, if any, of the medical bills was to be awarded to the plaintiff. *Id.* at 420, 892 N.E.2d at 1034.

We, too, find that the plaintiff was relieved of his burden of establishing reasonableness. Here, like in *Wills*, no witness testified at the trial regarding the reasonableness of the medical bills. In our case, the discovery deposition of a hospital employee testifying regarding the reasonableness of the charges was the basis for the trial court's pretrial determination that the full amount of the plaintiff's medical bills could come into evidence. The defendants state they made an "oral objection" at the pretrial hearing and, like the defendant in *Wills*, did not elect to make an objection at the trial. We have no transcript or bystander report of this pretrial proceeding. However, even if we did and an objection was duly noted, a court's pretrial ruling does not relieve the defendant from

preserving the record by objecting when the offending material is offered into evidence. *In re L.M.*, 205 Ill. App. 3d 497, 505, 563 N.E.2d 999, 1003-04 (1990). We further comment that a discovery deposition, without more, is not a substitute for an evidence deposition or live testimony. Ill. S. Ct. R. 212 (eff. Jan. 1, 2011). By failing to object on the record to the nature of the plaintiff's presentation of medical bills, the defendants have not preserved any error for review.

Cross-Appeal–Direction of Verdict on Willful and Wanton Count

Harris pled willful and wanton conduct as an alternative to his negligence claim. Because we affirm the judgment on the negligence verdict, Harris's cross-appeal is moot.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Massac County is hereby affirmed.

Affirmed.