

NOTICE
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2012 IL App (5th) 110109-U

NO. 5-11-0109

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

SHARON HARRIS and JEFF HARRIS,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Union County.
)	
v.)	No. 04-L-19
)	
UNION COUNTY AMBULANCE SERVICE,)	
a Not-For-Profit Corporation, and)	
THE COUNTY OF UNION,)	
)	
Defendants-Appellees,)	
)	
and)	
)	
THE COUNTY OF UNION, a Body Politic and)	
Corporate, and UNION COUNTY)	
AMBULANCE SERVICE, a Not-for-Profit)	
Corporation,)	
)	
Counterplaintiffs-Appellees,)	
)	
v.)	
)	
SHARON HARRIS and JEFF HARRIS,)	Honorable
)	Mark H. Clarke,
Counterdefendants-Appellants.)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Spomer and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The defendants' claim for setoff was not required to be pled prior to the entry of the verdict, as it was more in the nature of an enforcement action. Therefore, the trial court did not err in granting summary judgment in favor of the defendants on their claim for setoff, as the amount by which the defendants

sought to reduce the plaintiffs' monetary judgment related to the same harm or injury.

¶ 2 Plaintiffs Sharon Harris and Jeff Harris, a married couple, sued the defendants Union County Ambulance Service and the County of Union for injuries Sharon sustained from an automobile accident when the vehicle she was driving was hit by a vehicle driven by an employee of the defendants. The case went to trial. The jury found the defendants liable for negligence and awarded damages to the plaintiffs. As part of the monetary award, the jury awarded \$125,000 for Sharon's past incurred medical expenses. The trial court entered judgment on the verdict. However, because the defendants, by way of their insurer, had already paid for a portion of Sharon's medical expenses before trial, they filed a postjudgment motion seeking a setoff of the judgment in the amount paid. The trial court granted summary judgment in the defendants' favor, finding that the amount the defendants had already paid for Sharon's medical expenses should be deducted from the \$125,000 award. The plaintiffs appealed the entry of summary judgment arguing that allowing setoff was inappropriate because the defendants had failed to plead their claim prior to the entry of judgment on the verdict. For the reasons discussed herein, we now affirm the ruling of the trial court.

¶ 3 **BACKGROUND**

¶ 4 On August 27, 2003, Bill Bowen crashed the ambulance he was operating into the rear of Sharon's vehicle, causing her to suffer serious injuries. At the time of the accident, Bowen was employed by the defendants, Union County Ambulance Service and the County of Union. Due to the injuries she sustained, Sharon required immediate and ongoing medical care. By the time the plaintiffs filed the underlying lawsuit, the defendants had already paid a portion of Sharon's medical bills.

¶ 5 This case first went to trial in August 2007. During trial, the defendants filed a motion for setoff, seeking that, in the event that a damages award was entered against them, the trial court find them entitled to a setoff in the amount of monies already paid by their insurer for

Sharon's medical bills. For reasons not pertinent to this appeal, the case ended in a mistrial. It was retried approximately a year later. By this time, the plaintiffs had filed an amended complaint. The jury found the defendants liable for negligence and returned a verdict in favor of the plaintiffs. Among other monetary awards, the jury awarded \$125,000 to Jeff Harris for the medical expenses he paid or incurred on Sharon's behalf. The judgment was entered on the verdict on November 3, 2008.

¶ 6 Two days after the judgment was entered, the defendants filed a supplement to their initial motion for setoff. The supplement sought to state the exact amount of payments made by the defendants towards Sharon's incurred medical expenses. Prior to filing the supplement, despite the plaintiffs' numerous discovery requests, the defendants had never stated the exact amount paid by their insurer towards Sharon's medical expenses, even though their supplement indicated that those expenses had been paid well before the first trial had begun. Several months later, on March 20, 2009, the record shows that the defendants filed a counterclaim for setoff. The plaintiffs answered the counterclaim as well as asserted the affirmative defense that "both Jeff and Sharon had automobile insurance and health insurance which would have paid the bills which these [d]efendants voluntarily paid and that, therefore, Jeff did not receive any unjust enrichment as a result of the voluntary payments" made for a portion of Sharon's medical expenses. Thereafter, the defendants filed a motion for summary judgment on their counterclaim, to which again, the plaintiffs opposed. On February 11, 2011, the trial court granted summary judgment in favor of the defendants and deducted the \$65,163.62 paid by the defendants' insurer for a portion of Sharon's medical expenses from the \$125,000 award made to Jeff to recompense him for Sharon's medical expenses he paid or incurred on her behalf. The plaintiffs now appeal the trial court's granting of summary judgment in favor of the defendants on the issue of setoff.

¶ 7

ANALYSIS

¶ 8 The sole issue before us on appeal is whether the trial court erred in granting the defendants' motion for summary judgment on the issue of setoff when the defendants had failed to file any pleadings regarding setoff prior to the entry of the verdict. An appeal from a summary judgment ruling is reviewed *de novo*. *Maxit, Inc. v. Van Cleve*, 231 Ill. 2d 229, 235-36 (2008). "Summary judgment is appropriate only where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* at 235 (quoting 735 ILCS 5/2-1005(c) (West 2008)). Because we take a fresh look at the record on *de novo* review, we may affirm a trial court's ruling for any reason we find appearing on the record, regardless of whether the trial court applied a similar rationale. *Hess v. Flores*, 408 Ill. App. 3d 631, 636 (2011). Further, determining whether there should be a setoff against a judgment is a question of law subject to *de novo* review. *Thornton v. Garcini*, 237 Ill. 2d 100, 115-16 (2010).

¶ 9 The plaintiffs assert that the defendants' request for a setoff against the judgment was more in the nature of a counterclaim, *i.e.*, where the defendants claim that the plaintiffs have done something that should thereby allow a reduction of the defendants' damages. Such a claim, the plaintiffs further assert, must be raised in the pleadings instead of after the verdict. Conversely, the defendants believe their request for a setoff to be more in the nature of an enforcement action seeking a partial satisfaction of the judgment. The parties each discuss the Illinois Supreme Court's analysis in *Thornton v. Garcini*, 237 Ill. 2d 100 (2010), in support of their respective positions.

¶ 10 In *Thornton*, after the defendant was found liable to the plaintiff for negligent infliction of emotional distress, he moved for a judgment notwithstanding the verdict, asserting, *inter alia*, that he was entitled to a setoff of the judgment against him in the

settlement amount previously paid by a third party. Originally, the supreme court held that the defendant had forfeited his setoff claim for failing to raise it as a cross-claim in his answer, pursuant to section 2-608 of the Code of Civil Procedure. *Id.* at 112 (citing 735 ILCS 5/2-608 (West 2002)). Instead, the defendant raised it for the first time in a posttrial motion. *Id.* However, upon considering the defendant's petition for rehearing, the supreme court modified its opinion. *Id.*

¶ 11 In its modified opinion, the supreme court recognized that the term "setoff" has two distinct applications. *Id.* at 113. In one instance, a setoff could apply to a situation where the "defendant has a distinct cause of action against the same plaintiff who filed suit against him." *Id.* In other words, if the defendant seeks a setoff based on an assertion that "the plaintiff has done something that results in a reduction in the defendant's damages," the claim for setoff must be raised in the pleadings, usually as a counterclaim or cross-claim. (Emphasis omitted.) *Id.*

¶ 12 However, based on its prior ruling in *Star Charters v. Figueroa*, 192 Ill. 2d 47, 48-9 (2000), the supreme court also recognized that the defendant could raise a claim for a setoff at any time, including posttrial, when the nature of the claim was more akin to "an enforcement action rather than a counterclaim." *Thornton*, 237 Ill. 2d at 113. In *Star Charters*, the defendant sought a setoff, or reduction in the plaintiff's damages award, in the amount already paid to the plaintiff by two settling codefendants. *Star Charters*, 192 Ill. 2d at 48. The *Thornton* court thus found that the situation in *Star Charters* illustrated an example of when a setoff claim did not need to be pled because the defendant did not technically have a cause of action against the plaintiff, and was therefore treated as an enforcement action to modify the judgment entered by the trial court. *Thornton*, 237 Ill. 2d at 113; *Star Charters*, 192 Ill. 2d at 48-49 (recognizing that an enforcement action is "within the inherent power of the judgment court").

¶ 13 As in *Star Charters*, the supreme court in *Thornton* found that the defendant's claim for setoff constituted an enforcement action rather than a counterclaim against the plaintiff, because all the defendant actually sought was a reduction in the plaintiff's damages award in the amount of the settlement previously paid by a third party. *Thornton*, 237 Ill. 2d at 113. Thus, it held that the defendant did not forfeit his setoff claim for failing to raise it in the pleadings. *Id.* at 113-14.

¶ 14 Allowing a reduction in damages, whether couched as an enforcement action or a setoff claim, derives from the underlying principle that a plaintiff is only entitled to one recovery for his injury. See, e.g., *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 369 (1995); *Federal Insurance Co. v. Binney & Smith, Inc.*, 393 Ill. App. 3d 277, 296 (2009). Prior to *Thornton*, the appellate courts dealt with the concept of setoff in a similar fashion. In *Federal Insurance*, the First District recognized that although a claim for setoff is technically a counterclaim to be pled " 'when a defendant has a distinct cause of action against the same plaintiff who has filed suit against him,' " a defendant can subsequently seek a setoff, or a reduction in a plaintiff's damages award, in order to prevent the plaintiff from receiving a double recovery for the same injury. *Id.* at 295 (quoting *Hentze v. Unverfehrt*, 237 Ill. App. 3d 606, 612-13 (1992)). The Third District held that a request for a setoff, or rather, a postjudgment request to credit payments previously made by the defendant to the plaintiff for his injury, should be allowed to prevent the plaintiff from "obtain[ing] a windfall recovery by receiving payment twice for the same injuries." *Couch v. State Farm Insurance Co.*, 279 Ill. App. 3d 1050, 1055-56 (1996) (explaining that the credits had not been deducted from the jury's damages calculation and noting that the request for a setoff was more akin to an enforcement action). In *Barkei v. Delnor Hospital*, 207 Ill. App. 3d 255 (1990), the Second District found that a claim for "setoff entered against a judgment to prevent double recovery for the same injury is of a different nature" than a counterclaim or cross-claim for

setoff pled by the defendant against the plaintiff which "aris[es] out of a transaction extrinsic to the plaintiff's cause of action." *Id.* at 264-65 (citing *General Motors Acceptance Corp. v. Vaughn*, 358 Ill. 541, 548 (1934)). Therefore, a setoff request that is merely "elements relating to the satisfaction of a judgment" need not be pled as a claim in the pleadings stage pursuant to section 2-608(a) of the Code of Civil Procedure (735 ILCS 5/2-608(a) (West 2010)). *Id.*

¶ 15 Even in our own district, we have also recognized that the "concept of setoff is now subsumed under the term 'counterclaim.'" *Hentze*, 237 Ill. App. 3d at 612. Therefore, to label a claim seeking a "bare reduction of damages" as a setoff would be "inaccurate." *Id.* at 612-13 (in applying the principle that "a plaintiff's claimed damages are to be reduced by any payments he has received in compensation for the same harm or injury," we found the defendant was not entitled to a reduction of its liability for damages because the amount the plaintiff received from another source in settlement was not compensation for the *same* injury).

¶ 16 In the instant appeal, the plaintiffs argue that this is not akin to the situation in *Thornton* which allowed for a setoff claim pled after the verdict because there was no payment made by a third party to plaintiff by which the damages award may be reduced. Instead, the plaintiffs posit that the defendants should have pled a counterclaim prior to the entry of the verdict. Although the plaintiffs further add that "it is difficult to understand the nature of [the defendants'] claim," they recognize that it appears the defendants are trying to seek a setoff based on the equitable theory of unjust enrichment. In addition, the plaintiffs assert that the defendants should not be entitled to recover under equity due to the fact that they voluntarily paid a portion of Sharon's medical expenses, and equity will not aid a volunteer, and also equitable estoppel should apply due to the defendants' unconscionable use of "guerilla litigation tactics." Lastly, the plaintiffs argue that even should we entertain

a setoff claim based on the theory of unjust enrichment, it should fail because there was no proof introduced at trial to show that the defendants had met the requisite elements.

¶ 17 Naturally, the defendants argue that this is an enforcement action, and as such, they assert that pleading their claim for setoff prior to entry of the verdict was unnecessary. Further, the defendants assert that they are not trying to state an unjust enrichment claim against the plaintiffs. The defendants concede that they, through their insurer, voluntarily paid for a portion of Sharon's medical expenses prior to trial, but that was only because they knew they would ultimately be responsible for these expenses.

¶ 18 Reviewing the parties' arguments on appeal, the record, and the pertinent case law, we find that the defendants' claim for a setoff is more in the nature of an enforcement action, and thus, pleading their claim via counterclaim or cross-claim before entry of the verdict was not required by law. Although this is not a situation where the setoff amount was previously paid by a joint tortfeasor or settling third party, we find that the underlying principle discussed *supra* still applies and, as such, guides our ruling. In other words, the plaintiff shall not be allowed a windfall or double recovery for the same injury. Here, it is clear from the record that the jury awarded money to compensate Sharon's medical expenses incurred by her husband, Jeff, *including* those expenses previously paid by the defendants through their insurer. Allowing the plaintiffs to keep this money as well as the benefit of the money previously paid by the defendants would clearly result in a double or windfall recovery. There is also no question that the money the defendants previously paid was to cover a portion of Sharon's medical expenses arising from the same injury at issue in the plaintiffs' underlying lawsuit, for which the jury awarded compensatory damages. Furthermore, unlike the plaintiffs suggest, we hardly suppose that an insurer would "voluntarily" pay without a good-faith belief that it is obligated to do so, by either policy terms or other circumstances rendering its liability probable. Accordingly, we hold that a setoff in the amount previously

paid by the defendants is appropriate.

¶ 19

CONCLUSION

¶ 20 For the reasons as discussed herein, we affirm the summary judgment of the trial court in the defendants' favor allowing a reduction in the plaintiffs' award in the amount of \$65,163.62.

¶ 21 Affirmed.