2019 IL App (1st) 182413-U

SIXTH DIVISION
September 6, 2019

No. 1-18-2413

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN CASTERTON, Plaintiff-Appellee, v. PUBLIC STORAGE, INC. and MAXX INDUSTRIAL FLOORING INC., Defendants, (Advanced Pain Care M.D., S.C., and Fullerton Kimball Medical & Surgical Center, Lienholders-Appellants).	)	Appeal from the Circuit Court of Cook County. No. 17 L 11675 Honorable Larry G. Axelrood, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court's reduction of healthcare services liens, on the basis that the amounts charged were unreasonable, is affirmed. Lienholders-appellants have not demonstrated that the court's findings were against the manifest weight of the evidence.

¶ 2 Lienholders Advanced Pain Care M.D., S.C. ("APCMD"), and Fullerton Kimball Medical & Surgical Center ("Fullerton Kimball") (collectively, appellants) appeal the trial

court's adjudication of their health care services liens on settlement funds received by plaintiff John Casterton in this personal injury case. For the following reasons, we conclude that the trial court's findings in support of the reduction of these liens were not against the manifest weight of the evidence.

¶ 3 I. BACKGROUND

¶ 4 Mr. Casterton sued defendants Public Storage, Inc. (Public Storage) and Maxx Industrial Flooring Inc. (Maxx) (collectively, defendants) for injuries he sustained to his head, neck, and lower back following a June 22, 2010, slip and fall at a Public Storage facility.

¶ 5 On June 28, 2018, the parties entered into a settlement agreement, pursuant to which defendants agreed to pay Mr. Casterton $85,000 in damages. Various health care service professionals and providers that had treated Mr. Casterton filed liens against this recovery totaling over $87,000. Mr. Casterton, believing that these charges were "well in excess" of amounts that were fair and reasonable for the services rendered, sought an adjudication of the liens under the Health Care Services Lien Act (Act) (770 ILCS 23/1 *et seq.* (West 2016)). Under the Act, the healthcare services lienholders could together have held liens on only 40% of Mr. Casterton's $85,000 recovery. 770 ILCS 23/10(a) (West 2016). Mr. Casterton requested that each lien be adjudicated to zero dollars "in light of the demonstrated unreasonableness of th[e] charges." Mr. Casterton said that he had been in a traffic accident just two weeks before his fall at the storage facility, and his treaters had failed "to correlate [his] treatment to the injuries suffered from his slip and fall" at the Public Storage facility.

¶ 6 Some of the lienholders defaulted and their liens were reduced to zero. APCMD and Fullerton Kimball, the two lienholders that are appellants in this case, requested and were granted an evidentiary hearing, which was held on October 11, 2018. Fullerton Kimball

presented liens totaling $9412.00 and APCMD presented liens totaling $12,203.17. One witness testified for each lienholder. No court reporter was present, so there is no verbatim transcript of that hearing. Instead, the parties' agreed statement of facts, filed pursuant to Illinois Supreme Court Rule 323(d) (eff. July 1, 2017), provides a succinct summary of the witnesses' testimony.

¶ 7 Dr. Barry Ring first testified on behalf of APCMD. Dr. Ring is the owner and sole physician associated with APCMD. Dr. Ring stated that he remembered providing medical care to Mr. Casterton, whom he described as "goofy." When asked what he meant by this, Dr. Ring clarified that Mr. Casterton had simply been memorable because he had complied with all of his treatments and follow-up care.

¶ 8 Dr. Ring stated that APCMD utilizes a single fee schedule for all its cases that is maintained on its billing software. Dr. Ring has not raised his charges in several years, even though he believed he had the power to do so. Dr. Ring testified that his charges are comparable to those of other doctors in the Chicagoland and Northwest Indiana areas but named only two doctors to whom he had in fact compared his charges. Dr. Ring acknowledged that the trigger point injections he gave to Mr. Casterton only took a matter of minutes, but insisted that the time a particular procedure took had no bearing on its cost. Invoices attached to Dr. Ring's lien indicate that he charged $1,033.20 per injection—not including charges for epidurals and X-rays administered in connection with the injections—and that Mr. Casterton received two injections less than a month apart.

¶ 9 The trial court, in its examination of Dr. Ring, asked about his education and work history. Dr. Ring revealed that at the time of the hearing he did not have privileges at any hospital. When asked whether APCMD accepts reductions from medical insurance carriers in personal injury cases, Dr. Ring responded that the company does not bill insurance carriers in

personal injury cases. Noting that Dr. Ring would not directly answer its questions, the court pressed him further on whether APCMD had ever contracted with insurance carriers. Dr. Ring responded that he had done so in the past, and that insurance carriers variws in how much they pais him. According to Dr. Ring, sometimes the insurance companies paid him the amount he billed, sometimes less, and sometimes more.

¶ 10 The trial court then heard from Dr. Xia, Fullerton Kimball's owner, about Mr. Casterton's treatment. Dr. Xia explained that Fullerton Kimball's fee schedule is determined by the Illinois Workers' Compensation Act fee schedule, and that Fullerton Kimball's facility fee is determined by whatever services are provided by a particular medical doctor using the facility. When questioned, however, Dr. Xia had no independent knowledge of which staff assisted with Mr. Casterton's treatments or what those treatments consisted of. Dr. Xia was also unable to identify or explain the costs associated with the medications used in Mr. Casterton's procedures. In short, Dr. Xia's knowledge regarding Mr. Casterton's treatments extended no further than the information appearing in Fullerton Kimball's ledger statement.

¶ 11 At the conclusion of the hearing, the trial court determined that APCMD's lien should be reduced to $2440.63, or twenty percent of its original value, and Fullerton Kimball's to $3764.80, or forty percent of its original value. The trial court stated that it had not found Dr. Ring to be a credible witness because he was evasive and did not directly answer the court's questions. The trial court found Dr. Xia credible, but believed that he lacked the requisite knowledge to establish the reasonableness of the charges in question. Noting that APCMD and Fullerton Kimball did render some services to Mr. Casterton, the trial court decided their liens should be reduced to a reasonable amount, rather than adjudicated to zero.

¶ 12 Appellants moved to reconsider the trial court's rulings, and, on November 6, 2018, the

court heard their arguments regarding why the liens should be restored to the original, full amounts. A transcript of that hearing does appear in the record on appeal.

¶ 13 The trial court stated that even though Mr. Casterton had called no witnesses to rebut the testimony of Dr. Ring and Dr. Xia, appellants had still failed to establish that their health care service charges were reasonable. The trial court reiterated its findings that Dr. Ring's testimony was not credible and Dr. Xia lacked sufficient knowledge of Mr. Casterton's injuries and treatment.

¶ 14 The trial court was quite clear that it did not just question Dr. Ring's testimony, but found him to be a completely incredible witness. Describing Dr. Ring as "unct[u]ous" and a "deplorable, almost despicable witness," the trial court stated that it "wouldn't send anybody to be treated by [Dr. Ring]," because "[h]e's not in the practice of medicine. *** He's churning. He's doing things that [the court] think[s] are worthy of an investigation by [a] licensing group." The trial court noted that Dr. Ring's lack of credibility also affected Dr. Xia's credibility:

> "I want the appellate court to understand and be abundantly clear: He was not credible. ***
>
> *** He is not a treater. He's a biller. That is the view of this Court.
>
> * * *
>
> Let me just make sure the appellate court understands I did not believe Dr. Ring. I thought it damaged the testimony of Dr. Xia, and that doctor's testimony in and of itself was poor.
>
> Having said that, in conjunction with Dr. Ring's I can't put much credibility on Dr. Xia because they're part of an organized effort to run people through medical billing. *** [T]hey had zero credibility with me."

¶ 15 However, the trial court again refused to "zero out" the liens. The court acknowledged that Mr. Casterton was treated, and that the court wanted to "compensate [the providers] for something," but thought that they "should be grateful that they're getting something and not zeroed out based on the testimony that [the Court] heard."

¶ 16 The trial court denied appellants' motion to reconsider, and they now appeal.

¶ 17 II. JURISDICTION

¶ 18 The trial court denied appellants' motion for reconsideration on November 6, 2018, and they timely filed their notice of appeal on November 13, 2018. We have jurisdiction under Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 19 III. ANALYSIS

¶ 20 On appeal, appellants argue that the trial court was bound to accept the uncontroverted testimony of Dr. Ring and Dr. Xia, and, had it done so, would have had no basis on which to reduce their liens.

¶ 21 A trial court's factual determinations are given great deference and may be reversed only if found to be against the manifest weight of the evidence. *Cyclonaire Corp. v. ISG Riverdale, Inc.*, 378 Ill. App. 3d 554, 559 (2007). A finding is against the manifest weight of the evidence only "when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Vancura v. Katris*, 238 Ill. 2d 352, 374 (2010). Under this standard, we "give deference to [the] trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." (Internal quotation marks omitted.) *In re A.W.*, 231 Ill. 2d 92, 102 (2008).

¶ 22 Mr. Casterton presented no witnesses at the lien adjudication hearing. Aside from the bills themselves, which set out what was charged for the various procedures performed on Mr. Casterton, the testimony of the two lienholder doctors in this case was uncontroverted. As the appellants correctly assert, unimpeached and uncontroverted testimony cannot be arbitrarily set aside. *Bucktown Partners v. Johnson*, 119 Ill. App. 3d 346, 353 (1983). As our supreme court held in *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981), testimony must be taken as true unless the witness is impeached, the testimony is contradicted by positive testimony or by circumstances, or it is inherently improbable. Uncontroverted or unimpeached testimony may also be disregarded if it contains so many omissions as to discredit it. *Bucktown Partners*, 119 Ill. App. at 351.

¶ 23 Here, it is appellants' burden to show that the trial court's ruling was against the manifest weight of the evidence, which it can be only if none of these exceptions applies. Appellants have failed to make this showing.

¶ 24 Mr. Casterton cites *People v. Viano*, 139 Ill. App. 3d 560, 567 (1985), for the proposition that uncontroverted testimony need not be taken as true where it is the opinion testimony of an expert witness. Although the doctors in this case were treating physicians and not retained experts, we are concerned less with their status than with the nature of their testimony. Both doctors offered opinion testimony on the reasonableness of their own fees. It is well established that a witness—lay or expert—may give his or her opinion on an ultimate issue precisely because the trier of fact remains free to accept or reject that opinion. *Richardson v. Chapman*, 175 Ill. 2d 98, 107-8 (1997). Thus, even if the trial court in this case was bound to take as true certain underlying facts asserted on the stand by Dr. Ring and Dr. Xia, it was not bound to accept the doctors' views on the reasonableness of their own fees.

¶ 25 And even with respect to the underlying facts, appellants have failed to show that no exception applied permitting the trial court to disbelieve these doctors' testimony. Indeed, the only one of the exceptions noted above that appellants address at any length is the one concerning "inherently improbable" testimony. The court in *Bucktown Partners* noted that the words "inherently improbable" suggest either a "physical impossibility of the evidence being true" or a situation where the falsity of the testimony is "apparent without any resort to inferences or deductions." *Bucktown Partners*, 119 Ill. App. 3d at 350. Testimony may be inherently improbable, for instance, if it is internally inconsistent, *i.e.*, where "facts stated by the witness demonstrate the falsity of the testimony." (Internal quotation marks omitted.) *Id.* at 354.

¶ 26 Although the court did not specifically label Dr. Ring's testimony as "inherently improbable," Dr. Ring's evasiveness with the court and his willingness to make absurd statements certainly would support such a finding. When asked, for example, about how he billed insurance companies, Dr. Ring stated—in a rather flip manner—that sometimes they paid him what he charged, sometimes they paid him less, and sometimes they paid him more. It is certainly "inherently improbable" that insurance companies would pay Dr. Ring more than what he billed them.

¶ 27 Appellants appear to argue that for Dr. Ring's testimony to be inherently improbable, it must have been unbelievable in its entirety. But just because the trial court believed that Dr. Ring provided some sort of treatment to Mr. Casterton does not mean the court was bound to accept *all* of Dr. Ring's assertions. See *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004) (noting that "the trier of fact is free to accept or reject as much or as little as it pleases of a witness'[s] testimony"). It was not against the manifest weight of the evidence for the trial court in this case to find that Dr. Ring did something deserving compensation, while still finding his charges for

those services were unreasonable.

¶ 28 Turning to Dr. Xia, the record makes clear that this witness lacked any firsthand knowledge of Mr. Casterton's treatment and was only capable of repeating the information that appeared on Fullerton Kimball's ledger statement. The trial court was free to reject the doctor's wholly unsupported testimony. *People v. McCarter*, 385 Ill. App. 3d 919, 934 (2008) (the "testimony of a lay witness must be confined to statements of fact of which the witness has personal knowledge" (internal quotation marks omitted)). The doctor's frank admissions that he lacked personal knowledge regarding Mr. Casterton's care certainly made his unsupported assertions regarding the reasonableness of amounts charged for that care "inherently improbable."

¶ 29 Appellants do not even address the other possible exceptions to the rule that uncontroverted witness testimony must be taken as true, such as the presence of omissions that discredit it. On this record, we simply cannot conclude that it was against the manifest weight of the evidence for the trial court—over the unsupported testimony of Dr. Xia and the evasive, unconvincing, and self-serving opinion testimony of Dr. Ring—to conclude that appellants' charges were unreasonable.

¶ 30 Finally, appellants argue that the trial court improperly reduced their liens by a greater percentage than that permitted by the statutory formula. Mr. Casterton is correct, however, that the reductions the trial court made were not pursuant to the statutory formula at all, but in accordance with the court's *initial* determination of what constituted reasonable charges. Section 10(a) of the Act makes clear that a lien only exists for "reasonable charges" relating to the treatment, care, and maintenance of an injured person. 770 ILCS 23/10(a) (West 2016). And the Act provides no limitation on how much a trial court may reduce a lien as part of this initial

determination, before it applies the statutory formula. *Wolf v. Toolie*, 2014 IL App (1st) 132243, ¶ 20, relied on by appellants, is inapplicable because the court in that case was concerned solely with applying the statutory formula to charges that had already been deemed reasonable.

¶ 31 IV. CONCLUSION

¶ 32 Appellants have failed to demonstrate that the trial court's finding that their charges were unreasonable was against the manifest weight of the evidence. We affirm the judgment of the trial court reducing their liens to an amount the court deemed reasonable in light of all the circumstances.

¶ 33 Affirmed.