

2012 IL App. (1st) 102221-U

FIRST DIVISION

March 26, 2012

No. 1-10-2221

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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LINDA JACKSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 L 005112
	)	
STEVEN MATTHEWS,	)	Honorable Susan F. Zwick,
	)	Judge Presiding.
Defendant-Appellant.	)	

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JUSTICE HALL delivered the judgment of the court.

Justices Karnezis and Rochford concurred in the judgment.

**ORDER**

¶ 1 Held: Denial of nonsettling defendant's posttrial motion to set off the proceeds from a settlement between the plaintiff and the other tortfeasor was error.

¶ 2 A collision involving vehicles driven by defendant Steven Matthews and Ethelene

Washington resulted in personal injuries to plaintiff Linda Jackson, Ms. Washington's passenger.

Plaintiff Jackson filed suit against defendant Matthews and Ms. Washington.<sup>1</sup>

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<sup>1</sup>Linda Jackson v. Steven Matthews and Ethelene Washington, No. 08 L 5112.

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¶ 3 Plaintiff Jackson and Ms. Washington entered into a settlement, whereby plaintiff Jackson agreed to release Ms. Washington from all liability for the injuries plaintiff Jackson suffered in the accident for \$25,000. The trial court approved the settlement and dismissed the case with prejudice as to Ms. Washington. The case proceeded to a jury trial only as to defendant Matthews.

¶ 4 The jury returned a verdict for plaintiff Jackson and against defendant Matthews and apportioned responsibility as follows: 98% against Ms. Washington and 2% against defendant Matthews. The jury awarded plaintiff Jackson \$23,308.08, which represented all of her medical expenses, and \$7,000 for pain and suffering for a total award of \$30,308.08.

¶ 5 Defendant Matthews filed a posttrial motion seeking allocation and setoff of the \$25,000 Washington settlement amount to the judgment entered against him, relying on section 2(c) of the Joint Tortfeasor Contribution Act (740 ILCS 100/2(c) (West 2010) (the Act)). The trial court determined that section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117 (West 2010) (the Code)), provided the right to apportion fault for non-medical damages but reserved joint liability between tortfeasors for proven medical damages.

¶ 6 The trial court denied defendant Matthews' posttrial motion for allocation and setoff. Defendant Matthews appeals.

¶ 7 ANALYSIS

¶ 8 I. Failure to Comply with Illinois Supreme Court Rules

¶ 9 At the outset, we address defendant Matthews' failure to comply with our supreme court rules governing appellate procedure. His appellant's brief does not contain a statement of

jurisdiction (Ill. St. Ct. R. (h)(4) (eff. July 1, 2008)), an appendix (Ill. S. Ct. R. 342(a) (eff. July 1, 2008)) and a certificate of compliance (Ill. S. Ct. R. 341 (c) (eff. July 1, 2008)).

¶ 10 Our supreme court rules are not mere suggestions; they are mandatory, and this court possesses the discretion to impose sanctions for violations. *Pickus Construction & Equipment v. American Overhead Door*, 326 Ill. App. 3d 518, 520 (2001). A party's failure to comply with Rules 341 and 342 justifies the dismissal of an appeal. *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51 (2004). However, such a sanction is reserved for those situations in which the alleged violations of the appellate procedural rules interfere with or preclude our review. See *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). Defendant Matthews' violations of the rules do not interfere with our ability to provide meaningful review of the merits of the issue raised in this appeal. Therefore, we will address the merits of his appeal.

¶ 11 II. Right to a Setoff

¶ 12 Initially, it is necessary to comment on an error in connection with the jury verdict in this case, namely, the inclusion of Ms. Washington's name on the verdict form. See *Ready v. United Goedecke Services, Inc.*, 232 Ill.2d 369 (2008) (supreme court construed section 2-1117 as precluding a nonsettling defendant's liability to be assessed in relation to defendants who have entered into good-faith settlements and have been dismissed from the suit). As neither party raised the error and it does not affect our jurisdiction of this case, we may not address this error. See *People v. Givens*, 237 Ill. 2d 311, 323 (except for subject matter jurisdiction, it is normally improper for a reviewing court to search the record for reasons neither argued nor briefed to reverse the judgment of the trial court).

¶ 13

*A. Standard of Review*

¶ 14 "The determination of whether a defendant is entitled to a setoff is a question of law and, therefore, subject to *de novo* review." *Thornton v. Garcini*, 237 Ill. 2d 100, 115-16 (2010).

¶ 15

*B. Discussion*

¶ 16 Section 2-1117 of the Code provides in pertinent part that "in actions on account of bodily injury \*\*\* based on negligence \*\*\* all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically-related expenses." 735 ILCS 5/2-1117 (West 2010). "The common law doctrine of joint and several liability holds joint tortfeasors responsible for the plaintiff's entire injury, allowing plaintiff to pursue all, some, or one of the tortfeasors responsible for his injury for the full amount of the damages." *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 801 (2009) (quoting *Coney v. J.L.G. Industries, Inc.*, 97 Ill. 2d 104, 119-120 (1983)). Section 100/2(c) of the Act provides in pertinent part as follows:

"When a release \*\*\* is given in good faith to one or more persons liable in tort arising out of the same injury \*\*\* it does not discharge any of the other tortfeasors from liability for the injury \*\*\* unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release \*\*\* or in the amount of the consideration actually paid for it, whichever is greater." 740 ILCS 100/2(c) (West 2010).

¶ 17 We agree with the trial court that there is no conflict between section 2-1117 of the Code and section 100/2(c) of the Act. See *Lilly v. Marcal Rope & Rigging, Inc.*, 289 Ill. App. 3d 1105, 1101 (1997) (*abrogated on other grounds in Unzicker v. Kraft Food Ingredients Corp.*,

203 Ill. 2d 64, 71-79 (2002)) (while the joint liability law and the Act share some elements, they are concerned with two different issues and two different time frames). Section 2-1117 apportions liability among multiple defendants for the plaintiff's damages, both medically-related and non-economic. Section 100/2(c) is intended to prevent a double recovery of those damages by the plaintiff. *Thornton*, 237 Ill. 2d at 116. We find nothing in section 2-1117 that bars a nonsettling defendant's right under section 100/2(c) to set off the amount of the judgment rendered against him on any claim by the amount of a good-faith settlement. Therefore, the trial court erred when it relied on section 2-1117 of the Code to determine that defendant Matthews was not entitled to a setoff of the Washington settlement.

¶ 18 Under section 100/2(c) of the Act, a nonsettling defendant may claim as a setoff any amount recovered by the plaintiff in a prior settlement with settling defendants, but the only amounts that may normally be applied are those which compensated for the same injury for which the nonsettling defendant was ultimately found liable. *Lard v. AM/FM Ohio, Inc.*, 387 Ill. App. 3d 915, 926 (2009). "The determination as to which of several claims a settlement award should be attributed to is considered a matter within the trial court's discretion. [Citation.] Generally, the party seeking the setoff bears the burden of proving what portion of a prior settlement was allocated or is attributable to the claim for which he is liable." *Lard*, 387 Ill. App. 3d at 926 (quoting *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 369 (1995)).

¶ 19 In this case, there is only one claim, *i.e.* the injuries suffered by plaintiff Jackson in the accident. The settlement with Ms. Washington compensated plaintiff Jackson for the same injury for which defendant Matthews was ultimately found liable. Thus, no apportionment of the

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settlement is necessary. Defendant Matthews is entitled to a setoff of \$25,000, the full amount of the Washington settlement, towards the jury verdict of \$30,308.08.

¶ 20 The order denying defendant Matthews' posttrial motion is reversed. Pursuant to our authority under Supreme Court Rule 366(a) (eff. Feb. 1, 1994), we order that defendant Mathews be credited with a setoff of \$25,000 against the jury's verdict of \$30,308.08.

¶ 21 Order reversed and modified.