2018 IL App (2d) 170505-U

Appellate Court of Illinois,
Second District.

ILLINOIS NEUROSPINE INSTITUTE, P.C., Plaintiff–Appellant,
v.
Boguslaw MACZUGA, Defendant–Appellee.

No. 2–17–0505
|
Order filed May 15, 2018

Appeal from the Circuit Court of Du Page County. No. 15–L–1224, Honorable Brian R. McKillip, Judge, Presiding.

ORDER

JUSTICE SPENCE delivered the judgment of the court.

***1** ¶ 1 *Held*: The trial court's award to plaintiff of $41,294 for medical services, as opposed to the $244,267 that plaintiff charged, was not against the manifest weight of the evidence: the court was entitled to credit defendant's expert's methodology for arriving at the lower amount, especially in light of the clear unreasonableness of the amount that plaintiff charged.

¶ 2 Plaintiff, Illinois Neurospine Institute, P.C., a surgery practice operated by neurological surgeon Ronald Michael, appeals the trial court's order reducing its medical charges against defendant, Boguslaw Maczuga. Plaintiff contends that the trial court's determination that the charges it sought were unreasonable was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Michael treated defendant following an automobile accident and subsequently performed surgery. In March 2015, plaintiff filed a complaint against defendant, seeking payment of $244,267.01 under a contract that did not list specific fees but in which defendant agreed to pay all charges incurred. Defendant contended that the charges were unreasonable. In June 2017, a bench trial was held.

¶ 5 Michael testified that his practice did not work with insurance carriers, Medicaid or Medicare, or other public aid programs. He specialized in spine surgery and described his practice as unique. He worked solely with patients with pending personal injury or workers' compensation cases. As the sole officer of his practice, he supervised the coding and billing of medical charges. When procedures were performed, Michael would use a specific code for each item, which would have its own charge. He testified that, when he first started his practice, he obtained a fee schedule from commercial sources and professors from his residency. He then increased the fees periodically over time to account for cost-of-living increases and inflation. He checked that his fees were comparable to those of other physicians by acting as an expert witness, which gave him access to receive itemized lists of charges made to patients in personal injury cases. Michael attended two or three medical meetings per year at which there were seminars on medical coding. He also attended a specific course on spine surgery coding, and he testified that there were various sources on the Internet. He did not specify whether his sources for information on fees were specific to Illinois.

¶ 6 Michael initially provided conservative treatment to defendant and then later recommended surgery. He said that he discussed payment with defendant and that his practice was not to demand payment at the time of surgery. Instead, he would allow patients to let their legal cases run their course first.

¶ 7 Michael performed a posterior-lumbar fusion on each of three discs in defendant's spine. Although the fusions were performed at the same time, each involved a separate incision, and Michael considered them to be separate surgeries. Accordingly, they were coded as such. For the date of surgery, there were 26 total codes, amounting to $210,316. Months before the surgery, there were 12 codes in one day for injections, totaling $16,687. None of the bills reflected hospital or facility charges. They were solely Michael's charges. Michael described the way he did the surgery as less invasive and very innovative. He stated that not many of his colleagues performed it the way

that he did. After defendant's surgery, Michael provided additional treatment for pain, such as steroid injections, and other additional care. He opined that his charges were reasonable.

***2** ¶ 8 Michael participated in litigation connected with defendant's accident and provided copies of defendant's medical bills to defendant's attorney. No one representing defendant ever objected to the reasonableness of the charges. Defendant testified that he objected to his attorney about the amount.

¶ 9 Christine Kraft testified as an expert for the defense. Kraft was an expert in medical billing and operated a company that reviewed medical bills and offered opinions on whether they were reasonable. When reviewing charges, Kraft would look to see if they were coded correctly and compare them to what other providers in the area charged for the same procedure. Kraft reviewed defendant's bills and determined that the amount was unreasonable. Using a computer program dedicated to coding, Kraft determined that $97,848 of the charges were inflated because of unbundling, which is when items are charged separately instead of as a group. She also found $18,895 in incorrect codes. After the billing was corrected, she determined that the total should be $127,493. The data she used for determining the coding included data from Medicare providers, but Kraft testified that everyone bills the same way and that, regardless of who pays, the billing has to be correct. In rebuttal testimony on the subject, Michael testified that the figures Kraft provided were lower because they were for insurance companies, which would guarantee payment in 30 days. However, Michael did not work with insurance companies.

¶ 10 Kraft next looked to see if the charges were usual and customary for the area. Using an analyzer that included the charges for every code in the country, Kraft used the 50th percentile of national charges, geographically adjusted for Illinois. She testified that she had since then started using the 75th percentile for new cases, but applied the 50th percentile to defendant's case based on the year of the surgery. She determined that the customary charges here would be would be $41,294. Kraft testified that, in 12 years of looking at medical bills, she had never seen a physician charge over the median amount to the degree that Michael did.

¶ 11 The court awarded plaintiff $41,294. The court stated that, looking at the bottom line, it could not find any set of circumstances under which plaintiff's charges were reasonable. The court noted that this was a specialized surgery and also noted that it had some difficulty with the fact that Kraft applied the 75th percentile to new cases. However, it also observed that there was very little description of the services performed and noted various amounts that were charged multiple times without explanation. The court found irrelevant plaintiff's arguments about whether other physicians accepted insurance. Plaintiff appeals.

¶ 12 II. ANALYSIS

¶ 13 Plaintiff contends that the trial court's reduction of the charges was against the manifest weight of the evidence. It argues that it met its burden of proof because the charges were consistent with its fee schedule and that Kraft's testimony was not entitled to any weight.

¶ 14 At the outset, we note that defendant has not filed a brief. Under *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), we may consider the merits of an appeal despite the absence of an appellee's brief if "the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief." Here, the record is straightforward, and the issue is simply whether the trial court's factual determination was against the manifest weight of the evidence. Accordingly, we review the merits.

***3** ¶ 15 In Illinois, where there is a contract, express or implied, under which one party supplies goods or services to another and there is no provision setting out the amount the supplier is to be compensated, the law implies that there is an agreement to pay a reasonable price. *Victory Memorial Hospital v. Rice*, 143 Ill. App. 3d 621, 623 (1986); see also *Majid v. Stubblefield*, 226 Ill. App. 3d 637, 642 (1992) (applying the rule to medical providers). "To recover under a contract of this nature, the supplier has the burden of proving that his charges for materials and services rendered are reasonable." *Protestant Hospital Builders Club v. Goedde*, 98 Ill. App. 3d 1028, 1031 (1981). "A statement of account, standing alone, is not proof of the reasonableness of a supplier's charges." *Id.* A medical provider must establish that its charges are reasonable in that they are the usual and customary charges of

that particular provider and are comparable to the billed charges of other area providers. See *Sherman Hospital v. Wingren*, 169 Ill. App. 3d 161, 164 (1988); *Victory Memorial*, 143 Ill. App. 3d at 625. An assessment of the reasonableness of a provider's charges must include consideration of the particular provider's costs, functions, and services. *In re Estate of Albergo*, 275 Ill. App. 3d 439, 451 (1995).

¶ 16 The assessment of the reasonableness of the charges for medical services is strictly a question of fact. *Collection Professionals, Inc. v. Schlosser*, 2012 IL App (3d) 110519, ¶ 20. "In reviewing a bench trial, we defer to the trial court's factual findings unless they are against the manifest weight of the evidence." *M & O Insulation Co. v. Harris Bank Naperville*, 335 Ill. App. 3d 958, 962 (2002). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Id.*

¶ 17 There are few Illinois cases that discuss a determination of the reasonableness of medical charges when both parties presented evidence on the matter. Instead, most cases consider whether the provider's evidence was admissible or sufficient to meet its burden of proof. See, e.g., *Sherman Hospital*, 169 Ill. App. 3d at 164; *Victory Memorial*, 143 Ill. App. 3d at 624–25. However, *Temesvary v. Houdek*, 301 Ill. App. 3d 560 (1998), is instructive.

¶ 18 In *Temesvary*, a private nuclear-medicine physician testified about his fees and opined that they were reasonable. He explained that similar work could be done for less at a hospital but that it would then be done by a technician. Further, the physician's charges included expenses that would not be incurred at the hospital. An expert for the opposing party opined that the fees were unreasonable. However, that expert's testimony was based on only what hospitals charged " 'in his area,' " and he did not specify the area. *Id.* at 569. The trial court reduced the physician's lien. We reversed on appeal, noting that the expert's opinion was entitled to little weight where a factual basis was lacking. *Id.* at 568. Because the expert did not provide information on the fees of private physicians and did not define " 'his area,' " his testimony was vague and unreliable, and the court erred in giving any weight to it. *Id.* at 569. Meanwhile, the physician provided uncontroverted testimony that he charged his usual and customary fee. Accordingly, we found the court's determination to be against the manifest weight of the evidence. *Id.*

¶ 19 Here, the trial court's determination was not against the manifest weight of the evidence. While Michael testified that he charged his usual and customary fee and articulated reasons for why it was higher than others, he did not provide specifics about the usual and customary fee for the same procedures in the same geographic area. Instead, he spoke about his ability to see what others charged from litigation that he was involved with and from conferences, without stating the location of the services, how similar they were, or what the amounts charged were. Meanwhile, Kraft provided information about the median amount charged, adjusted for geographic location. The trial court was entitled to give greater weight to Kraft's testimony than to that of Michael. "The trial judge as fact finder occupies a better position than a reviewing court to weigh the evidence and observe the manner and demeanor of the witnesses." *Majid*, 226 Ill. App. 3d at 643.

***4** ¶ 20 Plaintiff contends that Kraft's opinion was entitled to no weight because she lacked a factual basis for her use of the 50th percentile. However, Kraft explained that it was the applicable benchmark for the relevant time, and the court was entitled to credit her testimony despite its concern about her subsequent change in methodology. Further, and in any event, Kraft's figure was clearly more reasonable than plaintiff's, which, as the court noted, included $210,000 for one day of surgery and thus was "[n]ot reasonable under any definition of reasonable." Faced with these alternatives, we cannot say that an opposite conclusion is apparent or that the court's findings were unreasonable, arbitrary, or not based on evidence. Accordingly, we must affirm the court's judgment.

¶ 21 III. CONCLUSION

¶ 22 The trial court's determination was not against the manifest weight of the evidence. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 23 Affirmed.

Presiding Justice Hudson and Justice Schostok concurred in the judgment.

All Citations

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