COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

FRANKLIN MILLER, et al.,	**:**	
Plaintiffs	**:**	**CASE NO. 2012 CVA 01052**
vs.	**:**	**Judge McBride**
H&G NURSING HOMES, INC., et al.,	**:**	**DECISION/ENTRY**
Defendants	**:**	

Slater & Zurz, LLP, Martin S. Delahunty, counsel for the plaintiffs Franklin Miller and Marilyn Miller, One Cascade Plaza, Suite 2210, Akron, Ohio 44308-1135.

Freund, Freeze & Arnold, Susan Blasik-Miller and Shannon K. Bockelman, counsel for defendants H&G Nursing Homes, Inc. and Adams County Manor Nursing Home, Fifth Third Center, 1 South Main Street, Suite 1800, Dayton, Ohio 45402-2017.

This cause is before the court for consideration of a motion in limine filed by the plaintiffs Franklin Miller and Marilyn Miller.

The court scheduled and held a hearing on the motion on June 3, 2013. At the conclusion of that hearing, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE

On May 29, 2012, the plaintiffs Franklin Miller and Marilyn Miller filed their medical malpractice action in this case against the defendants H&G Nursing Homes, Inc. and Adams County Manor Nursing Home. The Department of Health & Human Services was later added as a party due to the fact that Franklin Miller's medical bills, for which the plaintiffs are seeking compensatory damages, were paid by Medicare and, as such, Medicare would have a subrogation interest in any award for the amount of the medical bills.

The plaintiffs now move the court for a preliminary ruling prohibiting the defendants from attempting to introduce evidence of any reductions to the face amount of the medical bills. The plaintiffs argue in their motion that "in order for the Defendant's (*sic*) to attack the reasonability of the charges for the care and services provided to the Plaintiff, it is incumbent upon the Defendants to present expert testimony on the issues of reasonable value."[1]

[1] Plaintiff's Motion in Limine, filed May 6, 2013, pg. 1.

STANDARD OF REVIEW

A motion in limine is a precautionary request, directed to the inherent discretion of the trial judge, to limit the examination of witnesses or the admission of certain evidence.[2] " * * * [A] motion in limine, if granted, is a tentative, interlocutory, precautionary ruling by the trial court reflecting its anticipatory treatment of the evidentiary issue."[3]

LEGAL ANALYSIS

Pursuant to R.C. 2317.421:

> "In an action for damages arising from personal injury or wrongful death, a written bill or statement, or any relevant portion thereof, itemized by date, type of service rendered, and charge, shall, if otherwise admissible, be prima-facie evidence of the reasonableness of any charges and fees stated therein for medication and prosthetic devices furnished, or medical, dental, hospital, and funeral services rendered by the person, firm, or corporation issuing such bill or statement, provided, that such bill or statement shall be prima-facie evidence of reasonableness only if the party offering it delivers a copy of it, or the relevant portion thereof, to the attorney of record for each adverse party not less than five days before trial."

"A plaintiff is entitled to recover reasonable medical expenses incurred for injuries caused by the tortious conduct of a defendant."[4] " 'Proof of the amount paid or the

---

[2] *State v. Grubb* (1986), 28 Ohio St.3d 199, 201, 503 N.E.2d 142, quoting *State v. Spahr*, 47 Ohio App.2d 221, 353 N.E.2d 624 (Ohio App. 2nd Dist., 1976).
[3] Id. at 201-202.
[4] *Jaques v. Manton* (2010), 125 Ohio St.3d 342, 928 N.E.2d 434, 2010-Ohio-1838, ¶ 5, *Robinson v. Bates* (2006), 112 Ohio St.3d 17, 857 N.E.2d 1195, 2006-Ohio-6362, at ¶ 7, citing *Wagner v. McDaniels* (1984), 9 Ohio St.3d 184, 9 OBR 469, 459 N.E.2d 561.

amount of the bill rendered and of the nature of the services performed constitutes prima facie evidence of the necessity and reasonableness of the charges for medical and hospital services.'"[5] " 'Thus, either the bill itself or the amount actually paid can be submitted to prove the value of medical services.'"[6]

The common-law collateral source rule " 'prevents the jury from learning about a plaintiff's income from a source other than the tortfeasor so that a tortfeasor is not given an advantage from third-party payments to the plaintiff.' "[7] In examining that common law rule, the Ohio Supreme Court has held that " '[b]ecause no one pays the write-off, it cannot possibly constitute *payment* of any benefit from a collateral source.'"[8] As such, the court has held that the common-law collateral source rule does not preclude introducing evidence of write-offs.[9] Furthermore, when addressing R.C. 2315.20, a statute which generally provides that evidence of collateral benefits is admissible unless the source of the payment has a contractual, statutory, or federally-mandated subrogation right, the Ohio Supreme Court again held that evidence of write-offs was not precluded and " '[b]oth the original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care.'"[10]

The plaintiffs argue that the defendant cannot present statements containing the amount accepted as full payment without presenting expert testimony to support the conclusion that said amount is reasonable. The plaintiffs rely on the case of *Moretz v.*

[5] Id., quoting *Wagner* at paragraph one of the syllabus.
[6] Id., quoting *Robinson* at ¶ 7.
[7] Id. at ¶ 7, quoting *Robinson* at ¶ 11.
[8] Id. at ¶ 8, quoting *Robinson* at ¶ 16.
[9] Id.
[10] Id. at ¶ 15, quoting *Robinson* at ¶ 17.

Muakkassa (March 21, 2012), 9th Dist. No. 25602, 2012-Ohio-1177, in support of this argument. In the *Moretz* case, the trial court excluded evidence of amounts written off by the medical providers because the defendant failed to offer any expert testimony on the issue of the reasonable value of the medical services rendered.[11] The appellate court affirmed, concluding that "[a]s the reasonable value of medical services is outside the common knowledge of laymen, expert testimony is necessary as a foundation for presentation of this evidence to the jury."[12] The court noted that, while R.C. 2317.421 codifies a rebuttable presumption that the amounts charged are evidence of the reasonable value of medical services rendered, thus obviating the need for plaintiffs to present expert testimony on that issue, there is no corresponding "presumption or shortcut available to allow" evidence of write-offs without a proper foundation.[13]

Currently, the Ninth District Court of Appeals is the only appellate court in Ohio that has chosen to impose this requirement on defendants. In the *Jaques* case, as set forth above, the Ohio Supreme Court held that "either the bill itself or the amount actually paid can be submitted to prove the value of medical services." The court did not state in *Robinson* or *Jaques* that a defendant would be required to present expert testimony supporting the notion that the amount actually paid constitutes the reasonable value of the medical care provided. In fact, in *Robinson*, the court explicitly states that "the original medical bill rendered and the amount accepted as full payment for medical services should have been admitted *pursuant to R.C. 2317.421*." (emphasis added) The *Moretz* holding represents a significant departure from available precedent from the Ohio Supreme Court and this court does not find its reasoning to be persuasive. As

[11] *Moretz v. Muakkassa* (March 21, 2012), 9th Dist. No. 25602, 2012-Ohio-1177, at ¶ 40.
[12] Id. at ¶ 41, citing Evid.R. 702(A).
[13] Id. at ¶¶ 41-42.

such, this court declines to adopt the reasoning set forth in the *Moretz* case and will not require expert testimony to be presented in support of the write-off amounts.

The *Moretz* case is currently on appeal to the Ohio Supreme Court and oral arguments were heard on April 9, 2013. This court continued its decision date in the present case in anticipation of a possible ruling from the court but, as of the date of this decision, the court has yet to issue its ruling on the *Moretz* appeal. Should the Ohio Supreme Court choose to adopt the reasoning of the Ninth District or some modified version thereof, obviously this court's holding in the present decision, which is only an interlocutory ruling, will be vacated and this court will follow the directive of the Ohio Supreme Court.

The plaintiffs' final argument in support of their motion in limine is that the amounts written off in this case are not prima facie evidence of the reasonable value of the medical services rendered because the amount paid under the Medicare program is determined and mandated by the federal government and does not represent an amount negotiated between the provider and the collateral source. The plaintiffs argue that evidence of the write-offs should be excluded under Evidence Rule 403.

"Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[14] Generally, relevant evidence is admissible and evidence that is not relevant is inadmissible.[15]

Evidence Rule 403 provides as follows:

> "(A) Exclusion mandatory

[14] Evid.R. 401.
[15] Evid.R. 402.

> Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.
>
> (B) Exclusion discretionary
>
> Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence."

The court finds that neither subsection of Evidence Rule 403 applies to preclude the introduction of the write-offs as evidence in this case. The write-off amounts do not present any danger of unfair prejudice, confusion of the issues, or of misleading the jury. Furthermore, there is no concern of undue delay or cumulative evidence.

The precise issue raised by the plaintiffs has not been directly addressed by Ohio courts. However, the amounts paid by Medicare have been accepted by providers as payment in full. As set forth above, the amount accepted as payment for medical services is prima facie evidence of the reasonable amount of said services. The question of what is, in fact, a reasonable value for the medical services provided in this case is a question for the trier of fact. The amounts ultimately paid in this case are permitted to be introduced as evidence of reasonable value as are the amounts initially billed. It will be for the jury to determine what amount accurately reflects the reasonable value of the medical services provided to Franklin Miller.

CONCLUSION

The plaintiffs' motion in limine is not well-taken and is hereby overruled.

IT IS SO ORDERED.

DATED:_____ _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 19th day of August 2013 to all counsel of record and unrepresented parties.

_____
Administrative Assistant to Judge McBride