



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

DARRIN MERRILL GAMMONS,

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Plaintiff,

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v.

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Civil Action No.: 02-CV-2022-901069

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KENAN ADVANTAGE GROUP, INC.;
KENAN TRANSPORT, LLC; MICHAEL
JIMMY MADRILL, JR.; et al,

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Defendants.

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**PLAINTIFF’S TRIAL BRIEF IN SUPPORT OF EXCLUDING REFERENCE TO
PLAINTIFF’S MEDICAL BILLS AND/OR MEDICAL SUBROGATION**

Plaintiff (“Mr. Gammons”) files this trial brief in support of his previously filed MIL No. 1 and in support of his previously filed opposition to Defendants’ MIL No. 7.

Defendants’ Reliance on *Savoy v. Watson* is Misplaced

1. In support of their argument for the admissibility of Mr. Gammons’ medical bills and medical subrogation, the Kenan defendants cite *Savoy v. Watson*, 852 So. 2d 137 (Ala. Ct. Civ. App. 2002). **Nothing** in the *Savoy* opinion supports the legal conclusion that Mr. Gammons’ medical bills and/or medical subrogation should be admitted into evidence where, as here, he is not claiming medical expenses. In fact, nothing in the *Savoy* opinion supports the legal principle that the Kenan defendants suggest it does when they state “the amount of medical expenses paid also has the potential to assist the jury in determining the nature and extent of Plaintiff’s mental and emotional anguish claims.” (Doc. 282, p. 2).

Sturkie v. Lovvorn Is the Most Analogous Alabama Case Law

2. In *Sturkie v. Lovvorn*, 2017 WL 6945573 (N.D. Ala. Oct. 26, 2017), the Court evaluated motions in limine concerning medical bills and the applicability of the collateral source rule. With respect to Plaintiff's motion in limine concerning medical bills, the Court wrote:

The plaintiff has represented that she does not intend to claim any damages for medical and/or hospital expenses. (Doc. 34 at 2). Accordingly, the court finds that any billing records evidencing the provision of medical or hospital services are due to be excluded. Any other medical records that may be offered to support a pain or suffering claim must be undergirded by medical professional testimony that the plaintiff has the condition claimed, that the existence of the condition is premised on a reasonable degree of medical certainty, and that the condition was proximately caused or exacerbated by the accident involved in this lawsuit. See *Portis v Wal-Mart Stores East, L.P.*, 2008 WL 3929672, *1 (S.D. Ala. Aug. 22, 2008) ("Federal and state authorities are legion for the proposition that medical conclusions must be stated to a reasonable degree of medical certainty to be admissible.") (footnote omitted). This would also apply to any attempt to offer testimony or evidence concerning any future pain and suffering or future medical treatment to the extent such opinions involve medical conclusions. *Id.* at *1-2.

Id. at *1.

3. In evaluating the Plaintiff's motion in limine regarding collateral source evidence, the *Sturkie* court made a consistent finding, noting that:

Regarding the sixth issue – the applicability of the collateral source rule – the court finds that Alabama Code § 12-21-451 is not applicable because the plaintiff has stated that she does not intend to seek recovery for any medical or hospital expenses. Thus, this evidence is irrelevant. The plaintiff's motion is due to be granted in this respect.

Id. at *2.

4. Just as with *Sturkie*, Mr. Gammons is not claiming medical expenses. Just as with *Sturkie*, there is no medical testimony to a reasonable degree of medical certainty that the amount of Mr. Gammons' medical bills have any correlation of any type to his

pain, suffering, mental anguish, or any other element of damages that are relevant and at issue. Just as with *Sturkie*, Mr. Gammons' medical bills and medical subrogation should be excluded because it is not relevant.

5. The medical bills and medical subrogation evidence should also be excluded because any supposed probative value of this evidence is far outweighed by the danger of unfair prejudice and/or confusion of the issues, particularly given that there is no accompanying medical testimony to support the purpose for which the Kenan defendants intend to offer it. Ala. R. Evid 403.

6. Lastly, admission of Mr. Gammons' medical bills and medical subrogation evidence will necessarily force the jury to engage in improper speculation and conjecture. *Clark v. Smith*, 292 Ala. 617, 623, 299 So.2d 226, 231 (1974) ("A verdict cannot be based on conjecture.").

Law from Other Jurisdictions Supports Exclusions

7. Other courts across the country have correctly recognized that where medical expenses are not claimed: (i) the amount of medical bills does not tend to prove or disprove a material issue of fact and is therefore irrelevant; and (ii) there is no logical correlation between the monetary value of medical services required to treat a given injury and the measure of pain and suffering endured as a result of that injury – particularly in the absence of expert medical testimony. *Debower v Spencer*, 2021 U.S. Dist. LEXIS 208267 N.D. Iowa (Court excluded medical bills from evidence where the plaintiff was not seeking to recover for medical bills); *Pinkett v. Leonard's Healthcare Corp.*, No. CV 18-1656 (JEB), 2021 U.S. Dist. LEXIS 80108, 2021 WL 1634565, at *1-2 (D.D.C. Apr. 27, 2021) ("while the scope of Plaintiff's medical treatment is certainly relevant, . . . 'the price

tag of treatment does not tend to prove or disprove anything about the nature and extent of injuries, save what it has cost to treat them.”); *Campbell v. Garcia*, No. 3:13-cv-0627-LRH-WGC, 2016 U.S. Dist. LEXIS 124047, 2016 WL 4769728, at *6-7 (D. Nev. Sept. 13, 2016) (granting plaintiff’s motion to exclude medical bills because “there is no relevance between these costs and [plaintiff’s] purported pain and suffering”); *Payne v. Wyeth Pharms., Inc.*, No. 2:08cv119, 2008 U.S. Dist. LEXIS 91849, 2008 WL 4890760, at *6-7 (E.D. Va. Nov. 12, 2008)(“there is no logical or experiential correlation between the monetary value of medical services required to treat a given injury and the quantum of pain and suffering endured as a result of that injury.” *Id.* at *6 (quoting and adopting the reasoning of *Carlson v. Bubash*, 432 Pa. Super. 514, 639 A.2d 458, 462 (Pa. Super. Ct. 1994))); *Phillips v. Yatsko*, 2021 Colo. Dist. LEXIS 1669 (the Court precluded argument or evidence regarding the plaintiff’s past medical bills where the plaintiff was not seeking to recover for past medical bills); *Wright v. Hixon*, 42 Md. App. 448, 456 (1979) (“We see no relevance in the submission of a bill for services submitted by a physician to the severity of appellant’s pain and suffering.”); *Martin v. Soblotney*, 466 A.2d 1022, 1025 (Pa. 1983) (“It is immediately apparent that there is no logical or experiential correlation between the monetary value of medical services required to treat a given injury and the quantum of pain and suffering endured as a result of that injury. First, the mere dollar amount assigned to medical services masks the difference in severity between various types of injuries. A very painful injury may be untreatable, or, on the other hand, may require simpler and less costly treatment than a less painful one.”); *Lowe v. Difei Transp., LLC* 2022 U.S. Dist. LEXIS 232638 (N.D. Ga. November 10, 2022) (in denying a defendant’s motion in limine to prevent the plaintiff from presenting evidence of some of

the plaintiff's medical treatment, the court observed: "While the dollar amounts charged or owing are not relevant to a claim for pain and suffering, what medical treatment the plaintiff underwent is a concrete element of pain and suffering.").

Conclusion

8. In light of the fact that Mr. Gammons is not claiming damages for any medical expenses or medical subrogation, evidence of the same is (i) irrelevant; (ii) immaterial; (iii) likely to create unfair prejudice; (iv) likely to confuse the issues; (v) inevitably a cause of speculation and conjecture; and (vi) without the requisite medical testimony to a reasonable degree of medical certainty to prove what defendants intend to offer it to prove.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing pleading on all counsel electronically via Alafile, which will automatically forward a copy to all counsel of record in this matter, on this the **19th** day of **MAY**, 2024.

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