



Oregon Court of Appeals Reminds Litigants That Medical Bills Alone Do Not Prove That Their Treatment was Reasonable

From the desk of Brian S. Driscoll: In order to receive compensation for injuries, plaintiffs in negligent personal injury cases must prove their injuries and associated expenses were causally related to the alleged incident and reasonable in amount and cost. The plaintiff's burden to prove these elements is often the central dispute in personal injury litigation. What if a plaintiff fails to produce any evidence at trial that his medical expenses were reasonable? Can the plaintiff still recover those medical expenses? Read on to find out.

Case Pointer: In this personal injury lawsuit arising from a stabbing, the defendant's motion to strike plaintiff's claim for medical expenses was denied at trial, even though plaintiff failed to produce any evidence that his medical expenses were reasonable. Citing century old case law, the Oregon Court of Appeals determined that the plaintiff's failure to provide evidence of the reasonableness of his medical expenses meant that the trial court should have granted defendant's motion to strike. Further finding that defendant made no judicial admission that plaintiff's medical expenses were reasonable, the appeals court reversed and remanded to the trial court for further consideration.

[Martinez v. Delgado-Galban, 296 Or App 659 \(Mar. 8, 2019\).](#)

In a somewhat unique personal injury lawsuit, plaintiff was "cut by a knife wielded by defendant" and sustained injuries that required medical treatment consisting of three separate visits to an emergency room. Plaintiff filed a lawsuit alleging assault and battery and seeking compensation for pain and suffering as well as the expenses incurred from the three emergency room visits. At trial, plaintiff presented copies of the bills that he had been sent by the emergency room. Additionally, plaintiff called a medical expert witness to the stand who testified that plaintiff's medical treatment was made necessary by the defendant's actions and that the treatment plaintiff received was reasonable. At the close of plaintiff's case, defendant moved to strike plaintiff's claim for medical expenses, arguing that plaintiff "had failed to produce any evidence that the medical expenses incurred by plaintiff were reasonable."

Initially, the trial court granted defendant's motion and struck plaintiff's claim for medical expenses. However, the trial court reversed its ruling, holding that the jury had been provided sufficient evidence to adduce that plaintiff's medical expenses were reasonable because "there [was] reasonable treatment that was rendered and there were not complex medical expenses at issue." After the reversal, plaintiff was awarded both economic and noneconomic damages by the jury.

Defendant appealed the trial court's denial of his motion to strike plaintiff's claims for medical expenses. He argued that the court erred because "a party seeking to recover damages for medical expenses must present some evidence, beyond medical bills themselves, that such expenses are reasonable." (emphasis added). Plaintiff agreed on appeal that he was required to offer evidence that the charges were reasonable, but contended that the trial court did not err in



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Oregon Case Update



denying the motion to strike because (1) his expert's testimony was enough evidence for the jury to conclude that the expenses were reasonable; and/or (2) certain statements by defendant in his closing arguments constituted "judicial admissions" which precluded defendant's argument.

The court first examined plaintiff's argument that his expert's testimony provided enough evidence of the reasonableness of his medical expenses. For guidance, the court looked to *Tuohy v. Columbia Steel Co.*, a 1912 Oregon Supreme Court opinion which held that plaintiffs may recover medical expenses, but only if there is "some evidence that the charges were reasonable." Court opinions in the time since *Tuohy* have consistently required plaintiffs seeking damages for medical expenses to establish that such expenses were reasonable. With this guidance, the court returned to the expert's testimony that "plaintiff's medical treatment was reasonable" (emphasis added) to determine if it provided evidence that plaintiff's medical expenses were reasonable. The court concluded that the testimony was insufficient. Critically, the testimony touched only on whether the treatment was reasonable, not whether the expenses were reasonable. For that reason, the court concluded that the expert testimony did not give sufficient evidence of the reasonableness of plaintiff's medical expenses.

The court then turned to whether defendant made judicial admissions that would preclude his arguments. A judicial admission, according to the court, is a "statement made by a party or his attorney for the purpose of dispensing with proof of fact in issue." In other words, plaintiff argued that defendant admitted that the jury did not need proof of the reasonableness of plaintiff's medical bills. Plaintiff identified two statements in defendant's closing arguments that he argued were judicial admissions of the reasonableness of plaintiff's medical expenses. The court disagreed, finding that neither proffered statement was "a judicial admission that plaintiff's medical expenses were reasonable."

After dispensing with plaintiff's arguments, the court was left only with the fact that plaintiff produced no evidence of the reasonableness of plaintiff's medical expenses. Under the command of *Tuohy*, the court reversed the trial court's denial of defendant's motion to strike based on plaintiff's failure to produce such evidence.

View full opinion at: <https://cdm17027.contentdm.oclc.org/digital/pdf.js/web/viewer.html?file=/digital/api/collection/p17027coll5/id/22321/download#page=1&zoom=auto>



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