IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---o0o---

SEAGRAM FLORES, Plaintiff-Appellant

vs.

RENEE BARRETTO, Defendant-Appellee

and

JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS, CORPORATIONS, and/or OTHER ENTITIES 1-10, Defendants

---

NO. 23071

APPEAL FROM THE FIFTH CIRCUIT COURT
(CIV. NO. 94-0057)

SEPTEMBER 24, 2002

NAKAYAMA, RAMIL, AND ACOBA, JJ.;
ACOBA, J., CONCURRING SEPARATELY, WITH WHOM RAMIL, J., JOINS;
AND MOON, C.J., DISSENTING, WITH WHOM LEVINSON, J., JOINS

OPINION OF THE COURT BY NAKAYAMA, J.

Plaintiff-appellant Seagram Flores appeals from the judgment of the fifth circuit court, the Honorable George M. Masuoka presiding, ordering Renee Barretto to pay Flores $8,239.15 in special damages and $7,500.00 in general damages, including court costs. On appeal, Flores asserts that the trial court erred when it concluded that a prior related arbitration finding was not binding upon it under the doctrine of collateral estoppel. For the reasons set forth below, we affirm the judgment of the trial court.

I. BACKGROUND

On October 20, 1993, Flores and Dominique Gonsalves

were passengers in an automobile driven by Dennis Barretto (Dennis) when their vehicle was struck by an automobile driven by defendant-appellee Renee Barretto.[1] Both vehicles were insured by AIG Hawai'i Insurance Company (AIG).

On November 2, 1993, Flores submitted a claim for no-fault benefits to AIG, alleging that he suffered neck and back injuries as a result of the October 20, 1993 accident.[2] AIG began paying benefits on Flores's initial claim, which included chiropractic treatment by Scott Basto, D.C. and massage therapy provided by Aloha Island Clinic.

On December 28, 1993, Basto submitted a three-month extended treatment plan [hereinafter, "the December 1993 Plan"] to AIG, recommending exercise, chiropractic adjustments, and massage therapy. The December 1993 Plan proposed treatments from January 1, 1994 through March 31, 1994 at an estimated cost of $5,200.00. AIG challenged the December 1993 Plan, and the

---

[1] Dennis and Renee Barretto were married at the time of this accident. They will be referred to by their first names to decrease any confusion.

[2] Hawai'i Revised Statutes (HRS) § 431:10C-103(6) (1993) provides in relevant part that:

> Maximum limit means the total no-fault benefits payable per person or, on the person's death, to the person's survivor on account of accidental harm sustained by the person in any one motor vehicle accident shall be $20,000, regardless of the number of motor vehicles involved or policies, to be applied as follows:
>
> (A) $10,000 for benefits described in section 431:10C-103(10)(A)(i) and (ii); and
>
> (B) $10,000 for benefits described in section 431:10C-103(10)(A)(iii) and (iv).

See also HRS § 431:10C(11) (1993) (defining no-fault).

challenge was submitted to peer review.[3] Despite AIG's challenge, Flores continued to receive chiropractic adjustments and massage therapy according to the December 1993 Plan.

On April 13, 1994, the peer review report disagreed with the December 1993 Plan, recommending no further chiropractic care be authorized for Flores, but recommended that massage therapy continue. The report further recommended that Flores be examined by an orthopedic surgeon or neurosurgeon for a second opinion regarding Flores's continued lower back pain. Based upon the peer review report, AIG denied coverage for the treatment proposed under the December 1993 Plan.

On May 18, 1994, Flores filed a request for arbitration regarding AIG's denial of coverage for the December 1993 Plan. On April 7, 1995, the arbitrator entered his decision and award. The arbitrator identified four issues:

> 1. Whether the provider's determination that the nature of Claimant's injuries and the process of recovery required a Treatment Plan resulting in fee schedules or treatment guidelines being exceeded was correct.
> 2. Whether the Treatment Plan for chiropractic care, and the proposed expenses for chiropractic care, were appropriate and reasonable.
> 3. Whether the Insurer's denial of no-fault benefits was correct.
> 4. Whether the Insurer may require the challenged Treatment Plan to be resubmitted to a Peer Review Organization.

In his legal analysis and conclusions, the arbitrator stated that "[t]he first two issues concern whether the injuries suffered by the Claimant required services and treatment beyond those nominally allowed in the treatment guidelines." His conclusion

---

[3] HRS § 431:10C-308.6 provides in relevant part that "[i]f an insurer desires to challenge treatment and rehabilitative services in excess of the fee schedules or treatment guidelines, the insurer may do so by filing, . . . a challenge with the commissioner for submission to a peer review organization as provided in this section."

was that Flores met his burden of proof as to the reasonableness and appropriateness of the December 1993 Plan, and that Flores was entitled to have AIG pay for the chiropractic and other treatment specified in the December 1993 Plan. The arbitrator concluded, insofar as the denial of no-fault benefits, the insurer had no grounds for denying coverage. After a lengthy discussion, not applicable to the issues herein, the arbitrator finally concluded that there is no statute or procedure for resubmitting the denial of benefits to a peer review organization. The arbitrator ordered AIG to pay for the treatment prescribed in the December 1993 Plan. No motion to vacate, modify, or correct the arbitration award was made, and neither party moved to confirm the arbitrator's decision as provided by HRS § 658-8 (1993).[4]

On February 22, 1994, Flores and Gonsalves filed a complaint in the circuit court of the fifth circuit, alleging that Renee's negligence was the direct and proximate cause of their injuries. On June 21, 1996, Gonsalves and Renee filed a

---

[4] HRS § 658-8 provides that:

> The award shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and delivered to one of the parties or the party's attorney. A copy of the award shall be served by the arbitrators on each of the other parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court specified in the agreement, or if none is specified, to the circuit court of the judicial circuit in which the arbitration was had, for an order confirming the award. Thereupon the court shall grant such an order, unless the award is vacated, modified, or corrected, as prescribed in sections 658-9 and 658-10. The record shall be filed with the motion as provided by section 658-13, and notice of the motion shall be served upon the adverse party, or the adverse party's attorney, as prescribed for service of notice of a motion in an action in the same court.

stipulated dismissal with prejudice of Gonsalves's complaint. On August 9, 1996, Flores filed a motion for partial summary judgment on liability. Flores requested the circuit court rule that: (1) Flores was not comparatively negligent; and (2) Renee was negligent as a matter of law in causing the collision. Renee, in her memorandum in opposition to Flores's motion for partial summary judgment, did not dispute the issue of liability, but contested the issues of causation, damages, and intent. Renee stated that there were genuine issues of material fact regarding whether Renee's action was intentional, issues not relevant to liability.

In a jury-waived bench trial, Flores argued that he sought compensation for his injuries, including the amount of medical expenses that exceeded the no-fault limits and damages for pain and suffering. Flores asserted that liability had already been established by the arbitrator's decision; therefore, AIG was required to pay the medical expenses previously determined reasonable and necessary and any pain and suffering damages. Conversely, AIG argued that the arbitrator was never called upon to determine the liability of Renee or AIG or the presence of pre-existing conditions. Rather, according to AIG, the arbitrator only determined whether the treatment plan complied with HRS chapter 431:10C (1993) as implemented pursuant to Hawai‘i Administrative Rules (HAR) § 16-23-95.[5]

At the conclusion of the bench trial, the circuit court

[5] HAR § 16-23-95 sets forth, at length, the process by which a treatment provider will develop and present a treatment plan to the insurance carrier. It is fairly lengthy and can be obtained in full at http://www.state.hi.us/dcca/har/index.html. The rules stated at this site were in effect in 1993.

asked for written arguments. The court stated "I already ruled on negligence, so don't cover that at all. . . . It's only legal or proximate cause and substantial (inaudible). Okay? And the amount of damages." The circuit court entered its "Findings of Fact, Conclusions of Law [COL], Decision, and Order" on March 25, 1999. The circuit court's COL number 1, the subject of this appeal, provided that "[t]he arbitration award rendered in Special Proceeding No. 94-27, Flores v. American Int'l Adjustment, et al., by arbitrator Max Graham, Esq., finding that Flores's no-fault benefits of $15,626.21 were reasonably and necessarily incurred, is not binding on this court on the issue of Flores's medical expenses, in the form of special damages, were reasonably and necessarily incurred in this action." Based upon this conclusion, the circuit court also concluded that Flores was to be awarded his expenses for treatment through December 31, 1993 as a matter of law, but not awarded expenses for treatment thereafter. Flores timely appealed.

II. STANDARD OF REVIEW

> We review the trial court's [conclusions of law] de novo under the right/wrong standard. Raines v. State, 79 Hawai'i 219, 222, 900 P.2d 1286, 1289 (1995). "Under this . . . standard, we examine the facts and answer the question without being required to give any weight to the trial court's answer to it." State v. Miller, 4 Haw. App. 603, 606, 671 P.2d 1037, 1040 (1983). See also Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 119, 839 P.2d 10, 28, reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992). Thus, a [conclusion of law] "is not binding upon the appellate court and is freely reviewable for its correctness." State v. Bowe, 77 Hawai'i 51, 53, 881 P.2d 538, 540 (1994) (citation omitted).

Chun v. Board of Trustees of Employees Retirement Sys., 92 Hawai'i 432, 438-39, 992 P.2d 127, 133-34 (2000) (quoting State v. Medeiros, 89 Hawai'i 361, 364, 973 P.2d 736, 739 (1999))(citation omitted).

III. DISCUSSION

Based on the arbitrator's decision that treatment under the December 1993 Plan was compensable, Flores argues that the doctrine of collateral estoppel barred the trial court from subsequently ruling that treatments by Basto and Aloha Island Clinic after December 31, 1993 were not reasonable and necessary expenses. In essence, Flores argues that if an arbitrator in a no-fault proceeding determines that a defendant is liable for no-fault benefits, he or she is precluded from arguing issues of causation and actual damages in subsequent personal injury litigation. Such reasoning, if adopted, would drastically alter the function of no-fault insurance.

Hawaii's no-fault law was initially introduced in 1973. The purpose the no-fault law serves is

> to provide motor vehicle accident victims assured, adequate and prompt reparation for certain economic losses without regard to fault. The clear objectives of the law are to: (1) institute insurance reform in order to (a) expedite the settling of all claims, (b) create a system of reparations for injuries and loss arising from motor vehicle accidents, (c) compensate these damages without regard to fault, and (d) modify tort liability for these accidents; and (2) to reduce the cost of motor vehicle insurance by establishing a uniform system of motor vehicle insurance.
>
> Parker v. Nakaoka, 68 Haw. 557, 559, 722 P.2d 1028, 1030 (1986) (citations omitted).

Hawaiian Ins. & Guar. Co., Ltd. v. Financial Sec. Ins. Co., 72 Haw. 80, 91, 807 P.2d 1256, 1262 (1991); see also Stand. Comm. Rep. No. 187, in 1973 House Journal, at 836; Del Rio v. Crake, 87 Hawai'i 297, 305, 955 P.2d 90, 98 (1998). Representative O'Connor, a co-chairman of the 1973 Conference Committee that reported on the no-fault bill, stated that the bill "provides for speedy payments of medical benefits, hospital benefits, rehabilitative benefits, loss of wages without regard to fault."

HB 637, 17th Leg., Reg. Sess., House Journal, at 697 (1973). He explained that payments would be made "automatically to all of those who are involved in automobile accidents[.]" HB 637, 17th Leg., Reg. Sess., House Journal, at 697 (1973). In the twenty-nine years no-fault insurance has been mandatory in this state, the underlying purpose has never wavered. In 1992, our legislature reiterated its commitment to the no-fault principles when it stated that "the Legislature's intent and commitment to provide immediate relief to consumers and to maintain a persistent regulatory posture on motor vehicle rate increases[,]" continues unabated. Sen. Conf. Comm. Rep. No. 161, in 1992 Senate Journal, at 825-26. Underlying the no-fault principle has been the desire to decrease tort claims resulting from motor vehicle accidents. See HB 637, 17th Leg., Reg. Sess., House Journal, at 415 (1973); Stand. Comm. Rep. No. 187, in 1973 House Journal, at 836; Sen. Conf. Comm. Rep. No. 161, in 1992 Senate Journal, at 825; Stand. Comm. Rep. No. 1271-91, in 1992 House Journal, at 1390-91. This is evidenced by the fact that no-fault coverage is exclusively for bodily, emotional, or mental injuries. Reg. Sess, in 1973 House Journal at 697. The individual injured in a motor vehicle accident will be reimbursed for injury-related expenses without regard to fault. Tort law, on the other hand, "especially in the field of negligence, is to compensate injured parties for the wrongs of others[.]"[6] Kaileha v. Hayes, 56 Haw. 306, 320, 536 P.2d 568, 576 (1975). Flores asks this court to collaterally estop a defendant from litigating

[6] Black's Law Dictionary defines a "wrongdoer" as "[o]ne who commits an injury; a tortfeasor." Black's Law Dictionary (6th ed. 1991) at 1110.

issues of causation and actual damages in the tort context if an arbitrator has rendered a decision in a no-fault arbitration proceeding.

Collateral estoppel has been defined by this court as "an aspect of res judicata which precludes the relitigation of a fact or issue which was previously determined in a prior suit on a different claim between the same parties or their privies." Marsland v. International Soc'y for Krishna Consciousness, 66 Haw. 119, 124, 657 P.2d 1035, 1039 (1983). To successfully establish that AIG was estopped from relitigating issues, Flores had the burden of establishing that:

> (1) the issue decided in the prior adjudication is identical to the one presented in the action in question; (2) there is a final judgment on the merits; (3) the issue decided in the prior adjudication was essential to the final judgment; and (4) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication.

Casumpang v. ILWU, Local 142, 94 Hawai'i 330, 338, 13 P.3d 1235, 1243 (2000).

Flores argues that the

> only issue at the bench trial was Plaintiff's damages. The only item of special damages was Plaintiff's medical expenses. To prove his medical expenses, Plaintiff had to prove that the Defendant caused the injuries, and the medical expenses were appropriate, reasonable, and necessarily incurred. This is the exact same issue Plaintiff had to prove in the arbitration.

Contrary to Flores's argument, the conclusions of the arbitrator did not include a determination of causation and actual damages in the context of tort litigation.

The relevant issues, as identified by the arbitrator, were whether (1) Flores required a treatment plan that would exceed the fee schedule, (2) the recommended treatment was

appropriate and reasonable, and (3) AIG's denial of no-fault benefits was correct. The first issue of exceeding the fee schedule is a determination as to whether the extent of the proposed treatment was appropriate; thus, it was incumbent upon the arbitrator to determine if the proposed treatment was appropriate, considering the diagnosis made by the treating chiropractor. The arbitrator must then determine whether the treatment plan recommended by the provider was the optimum treatment for the given diagnosis.

The relevant inquiry is whether a claimant was in a motor vehicle accident compensable through the no-fault program. If the claimant was in a compensable motor vehicle accident, expenditures for medical treatment are expressly provided. See HRS § 431:10C-103(6). Fees in excess of the medical fee schedules are subject to a determination whether the treatment provider "finds that the nature of the injuries and the process of recovery require a treatment plan resulting in fee schedules or treatment guidelines to be exceeded." HRS § 431:10C-308.6. Dr. Basto found that exceeding the fee schedule for Flores's treatment was necessary. The next inquiry, then, is whether the excess is reasonable and necessary.

Flores argues that the arbitrator's determination that the medical expenses were reasonable and necessary is further evidence of identical issues. Flores states that "[t]o prove his medical expenses, [he] had to prove that [] [Renee] caused the injuries, and the medical expenses were appropriate, reasonable, and necessarily incurred." Whether expenses are reasonable and/or necessarily incurred has no bearing on whether Renee was the cause or that the expenses reflected actual damages from the

motor vehicle accident.

"Reasonableness" is an objective standard. Medical fee schedules for the payment of medical expenses have been formally adopted by the legislature, using the workers' compensation fee schedule as its model. See HRS § 431:10C-308.5(b) (1993).[7] In adopting the workers' compensation fee schedule, the legislature determined that expenses, which fell within the schedule, would be considered appropriate and reasonable. See HAR § 16-23-115 (adopting the workers' compensation medical fee schedule). This means that the "reasonableness" determination is based upon whether the charges for treatment are consistent with the medical fee schedules and if so, they are presumed reasonable. "Reasonableness" bears no relation to whether the defendant in a no-fault action was the legal cause of the injury or even whether the injury as a whole resulted from the accident.

Similarly, the phrase "necessarily incurred" bears no relation to causation or actual damages. The phrase means whether the treatment involved increased the likelihood of recovery following an accident for which no-fault benefits were available. Proof that expenses were "necessarily incurred" may be demonstrated by evidence that the plaintiff improved under the treatment regime, that the regime facilitated pain management, or that as a result of the treatment regime the frequency of the

---

[7] HRS § 431:10C-308.5(b) provides in relevant part that

> effective January 1, 1993, the charges and frequency of treatment for services specified in section 431:10C-103(10)(A)(i) and (ii), except for emergency services provided within seventy-two hours following a motor vehicle accident resulting in injury, shall not exceed the charges and frequency of treatment permissible under the workers' compensation schedules, except as provided in section 431:10C-308.6.

medical intervention decreased. See e.g., Uyeno v. United Servs. Auto./John Mullen & Co., Ltd., MVI-84-24, 86-2 Haw. Leg. Rptr. 86-657, 86-670 (1986) (stating that "a claimant must show some connection between the accidental harm and the treatment received, and between the treatment received and the relief of pain.").

In this case, the arbitrator was simply determining whether: (1) Flores was involved in a motor vehicle accident compensable through the no-fault program; (2) the type of treatment recommended was generally accepted in the medical community as the optimal treatment for the diagnosed condition; (3) the fees and frequency of treatment was consistent with the medical fee schedule; and (4) there was either curative or palliative improvement as a result of the treatment. The circuit court addressed none of these issues.

IV. CONCLUSION

Because the requirements of collateral estoppel are conjunctive, rather than disjunctive, only one element need be disproved to defeat Flores's contention. See State v. Crouser, 81 Hawai'i 5, 11, 911 P.2d 725, 731 (1996); Baehr v. Miike, 80 Hawai'i 341, 345, 910 P.2d 112, 116 (1996) ("Because the requirements of intervention by right are stated in the conjunctive, it is necessary for Applicants to meet all four criteria[.]"). The arbitrator made a determination of whether Flores's injury was compensable and if so to what extent was his treatment reasonable and necessarily incurred. The circuit court determined whether Renee was the legal or proximate cause of the injury and if so, which if any actual damages resulted. The

issues were not identical; therefore, Flores cannot successfully claim that Renee is collaterally estopped from litigating causation. We affirm the judgment of the circuit court.

On the briefs:

Samuel R. Blair and
Waiyee Carmen Wong,
for plaintiff-appellant

Deborah S. Jackson
for defendant-appellee