NO. 25763

IN THE SUPREME COURT OF THE STATE OF HAWAI'I



FRANCIS S. DIAS, JR., Plaintiff-Appellant,

vs.

OSWALD STENDER, Defendant-Appellee,

and

JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE NON-PROFIT ENTITIES 1-10; and DOE GOVERNMENTAL ENTITIES 1-10, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 02-1-0091)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Plaintiff-Appellant Francis S. Dias, Jr. ("Dias") appeals from the judgment of the Circuit Court of the First Circuit[1] ("circuit court") filed on March 10, 2003, following the grant of summary judgment in favor of Defendant-Appellee Oswald Stender ("Stender").

On appeal, Dias argues that: (1) the circuit court erred in granting summary judgment due to the existence of genuine issues of material fact as to whether (a) Dias had accumulated medical-rehabilitative expenses for his 1997 motor vehicle accident injuries in excess of $13,900 as required by Hawai'i Revised Statutes ("HRS") § 431:10C-306(b)(2) (1993)[2] and

[1] The Honorable Eden Elizabeth Hifo presided.

[2] HRS § 431:10C-306 (1993), in effect at the time of the instant appeal, provides in pertinent part:

(a) Except as provided in subsection (b), this article abolishes

Hawai'i Administrative Rules ("HAR") § 16-23-10 (1999),[3] and (b)

> tort liability of the following persons with respect to accidental harm arising from motor vehicle accidents occurring in this State:
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> (1) Owner, operator or user of an insured motor vehicle . . . .
>
> . . . .
>
> (b) Tort liability is not abolished as to the following persons, their personal representatives, or their legal guardians in the following circumstances:
>
> (1) . . . .
>
> (B) Injury occurs to such person which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body. . . .
>
> . . . .
>
> (2) Injury occurs to such person in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section 431:10C-308 for expenses provided in section 431:10C-103(10)(A) and (B); provided that the expenses paid shall be presumed to be reasonable and necessary in establishing the medical-rehabilitative limit . . . .

(Emphases added.) HRS § 431:10C-308 (1993) and HRS § 431:10C-103(10) (Supp. 1997) are irrelevant in the present appeal, inasmuch as the first statute merely sets forth policies and procedures for the insurance commissioner to employ in annually revising the medical-rehabilitative expenses threshold, and the second statute merely defines "[n]o-fault benefits" (it is undisputed in the present appeal that the expenses in question are no-fault benefits).

[3] HAR § 16-23-10 (1999) provides in pertinent part:

> (a) The medical-rehabilitative limit established for the purpose of prescribing the tort threshold limit pursuant to section 431:10C-306(b)(2), HRS, is repealed on January 1, 1998 by 1997 SLH, Act 251. It does not preclude the person from receiving no-fault medical-rehabilitative benefits in excess of the amount, subject to the no-fault benefits aggregate limit of $20,000, for policies effective prior to January 1, 1998.
>
> (b) The medical-rehabilitative limits established for previous years shall continue to remain in full force and effect, and shall be applicable to claims for tort recovery for accidental harm sustained in those respective years. The medical-rehabilitative limit set forth in subsection (b) shall not apply to accidental harm sustained prior to its effective date.
>
> (c) The medical-rehabilitative limits for previous years are:
>
> (continued...)

Dias had suffered a "significant permanent loss of use of a part or function of the body" under HRS § 431:10C-306(b)(1)(B),[4] such that in either case Dias had overcome the general abolition against tort liability in motor vehicle accidents; and (2) the circuit court erred in denying Dias' motion for reconsideration as to the grant of summary judgment, in that new evidence presented within the motion met two of the specific exceptions to the general abolition of motor vehicle tort liability, namely (a) the $13,900 medical-rehabilitative expenses threshold set forth in HRS § 431:10C-306(b)(2) and HAR § 16-23-10 (c), and (b) the "significant permanent loss of use of a part or function of the body" exception set forth in HRS § 431:10C-306(b)(1)(B).

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold as follows:

(1) Dias' first argument has merit. In supporting his motion for summary judgment, Stender attached a declaration from Diane Lum ("Lum"), an employee of ACS Healthcare Solutions ("ACS"), the claims administrator for the State of Hawai'i Department of Human Services ("DHS"), and a "medical recap sheet" from ACS showing that both accrued medical bills and actual DHS payments were below the $13,900 threshold. In opposing summary

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[3](...continued)

. . . .

$13,900 for accidents between September 1, 1997 - December 31, 1997.

(Emphasis added.)

[4] See supra note 2.

judgment, Dias attached a "counter-declaration" from Lum and an updated medical recap sheet from ACS which stated that $14,497.10 in medical expenses had been incurred, although only a small portion of those expenses had been paid by DHS. The updated medical recap sheet contained additional medical billings and DHS payments, and no medical billing was more recent than any on the "old version" of the recap sheet. When viewing the evidence in the most favorable light to Dias, there exists a genuine issue of material fact as to whether the $13,900 medical-rehabilitative expense threshold was reached, inasmuch the amount of Dias' medical bills was in excess of that threshold. In Cochran v. Pflueger Autos., Inc., 72 Haw. 460, 821 P.2d 934 (1991), this court addressed this "amount of medical expenses billed versus amount paid by DHS" situation in the context of HRS § 294-6 (1985),[5] the predecessor statute to HRS § 431:10C-306(b)(2). Therein, this court noted that plaintiff-appellant had incurred medical bills in excess of $3,000.00, which was the medical-rehabilitative expense threshold at the time, although only $2,289.65 in DHS benefits had actually been paid, such that she

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[5] Now-repealed HRS § 294-6 (abolition of tort liability), which was recodified as HRS § 431:10C-306 (see 1987 Haw. Sess. Laws Act 347, § 2 at 167-68), reads in pertinent part:

> (a) Tort liability of the owner . . . of an insured motor vehicle . . . is abolished, except . . . in the following circumstances . . . .
>
> . . . .
>
> (2) Injury occurs to such person in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit . . . provided that the expenses paid shall be presumed to be reasonable and necessary in establishing the medical-rehabilitative limit . . . .

had met the exception to the general abolition of tort liability:

> Initially, we conclude that [plaintiff-appellant] reached the [HRS § 294-6(a)(2)] threshold when her medical bills exceeded $3,000.00 despite the fact that DHS ultimately paid a lesser amount. . . . Since HRS § 294-36(b) is a remedial statute aimed at putting welfare recipients on an equal footing with other accident victims, we will not penalize public assistance payments because DHS pays lesser amounts in payment to health care providers. Therefore we hold that, as it applies to public assistance recipients, the "amount paid or accrued" in HRS § 294-6 permits them to initiate suit when the allowable expenses accrued for medical services exceeds the threshold even though DHS may ultimately pay a lesser sum.

See Cochran, 72 Haw. at 461-63, 821 P.2d at 935-936 (emphasis added).[6] The same analysis controls the instant appeal.

Stender's citation of Ho v. Leftwich, 88 Hawai'i 251, 965 P.2d 793 (1998) in support of its contention that Dias was required to present expert testimony proving that the unpaid portion of the his unpaid medical expenses were "reasonable and necessary" is inapposite. Leftwich involved a plaintiff-appellant injured in a motor vehicle accident who appealed from a directed verdict in favor of defendant-appellee at the end of trial. Id., 88 Hawai'i at 255, 965 P.2d at 798 (emphasis added). The trial court granted a directed verdict because, in its words, "there hasn't been sufficient evidence produced to the jury" that the "[medical] expenses [claimed] were reasonably incurred" in excess of the medical-rehabilitative expense threshold. See id (emphasis added). This court ultimately held, inter alia, that in the absence of any "expert testimony establishing that the [unpaid] expenses were reasonable and necessary[,]" the

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[6] This court ultimately held plaintiff-appellant's claim to be time-barred, however. See id., 72 Haw. at 464, 821 P.2d at 936. HRS § 294-36 was recodified as HRS § 431:10C-315. See id., 72 Haw, at 464 n.2, 821 P.2d at 934 n.2.

plaintiff-appellant could not meet the medical-rehabilitative expense threshold under HRS § 431:10C-306. See id. at 259-60, 965 P.2d at 801-02.

Leftwich is readily distinguishable for two reasons. First, in Leftwich, the matter had already proceeded to trial, and the plaintiff-appellant had already fully presented her case and evidence. See id., 88 Hawai'i at 254, 965 P.2d at 796. Second, and more importantly, on a motion for summary judgment, "[t]he evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion." Querubin v. Thronas, 107 Hawai'i 48, 56, 109 P.3d 689, 697 (2005) (emphasis added) (citations omitted) (brackets in original). In other words, Stender confuses the less stringent burden of production that Dias must carry in resisting summary judgment with the more stringent burden of proof that Dias must carry in order to prevail at trial. When viewing the updated medical recap sheet in a light most favorable to Dias, it can certainly be inferred that Dias accrued allowable, albeit unpaid, medical-rehabilitative expenses in excess of $13,900, such that his claims must be allowed to proceed under the principles set forth in Cochran. Thus, we hold that the circuit court erred in granting summary judgment for Stender.

(2) Because we hold that the circuit court erred in granting summary judgment for Stender due to the existence of a

genuine issue of material fact as to whether Dias had accumulated medical-rehabilitative expenses for his 1997 motor vehicle accident injuries in excess of $13,900 as required by HRS § 431:10C-306(b)(2) (1993) and HAR § 16-23-10, we need not address Dias' remaining arguments.

Therefore,

IT IS HEREBY ORDERED that the judgment of the circuit court is vacated, and that the case be remanded to the circuit court for further proceedings.

DATED: Honolulu, Hawai'i, October 11, 2006.

On the briefs:

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Oswald Stender