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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 08/12/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

MARILYN DENNIS, ) 1 CA-CV 09-0461  
)  
Plaintiff/Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
)  
KATHRYN RYAN, ) (Not for Publication -  
) Rule 28, Arizona Rules of  
Defendant/Appellee. ) Civil Appellate Procedure)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CV2005-018048

The Honorable Jeanne M. Garcia, Judge

**REVERSED AND REMANDED**

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Jack Levine Phoenix  
Attorney for Plaintiff/Appellant

Diane M. Lucas, PC Phoenix  
By Diane M. Lucas  
Michael S. Ferraro  
Attorneys for Defendant/Appellee

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G E M M I L L, Judge

¶1 Plaintiff-Appellant Marilyn Dennis appeals from the judgment entered after a jury trial in her motor vehicle tort claim against Defendant-Appellee Kathryn Ryan. Dennis asserts that the trial court erroneously excluded medical records and

bills after they had been admitted because no medical testimony was presented to establish a connection to the motor vehicle accident. As a consequence of the exclusion, Dennis argues, the damages awarded her by the jury were substantially reduced. We agree with Dennis, and we therefore reverse and remand for a new trial or other appropriate proceedings.

#### **FACTS AND PROCEDURAL HISTORY**

¶12 On January 26, 2005, a vehicle driven by Dennis was involved in a collision with a vehicle driven by Ryan. In November 2005, Dennis filed a complaint against Ryan alleging that Ryan's negligence caused the accident. She alleged that the collision caused her to be sharply jerked in her vehicle resulting in multiple physical, mental, and emotional injuries, some of which were permanent and disabling, for which she sought damages. In answering the complaint, Ryan alleged that Dennis's negligence caused the accident.

¶13 At the beginning of trial, the parties stipulated that certain exhibits could be admitted "without further foundation necessary." Ryan's counsel explained that Ryan was "not conceding the fact that anything that is in there constitutes reasonableness and necessary." The court noted in its minute entry that the exhibits were admitted into evidence "with the limitation of no foundation from the custodians of record." The exhibits that were the subject of the stipulation included bills

and medical records related to Dennis's injuries and care, as well as her prior medical history.

¶14 The court conducted a jury trial over three days. During the trial, Ryan contested whether all of Dennis's medical treatment and charges were reasonable and necessary.

¶15 After both sides had rested, Ryan made a motion for a directed verdict on the issue of the reasonableness and necessity of the bills and medical records Dennis had submitted. She moved the court *to exclude some of the exhibits that had previously been admitted* pursuant to the stipulation. Ryan argued that Dr. Birkholz, Dennis's treating physician, was the only medical provider to testify and had not testified regarding whether the treatment and billings from the other medical providers were reasonable and necessary expenses of medical care attributed to the accident, as arguably required by *Larsen v. Decker*, 196 Ariz. 239, 995 P.2d 281 (App. 2000). Ryan noted that Dennis had been seeing a pain management physician for some time and that she had been receiving treatment for fibromyalgia and chronic neck pain. Ryan argued that many of the medications that Dennis claimed were related to the accident were medications she had been taking for years. Ryan noted that no one had testified as to which treatments and medications were the result of the accident and which were expenses Dennis might have incurred regardless of the accident and further argued

that, without testimony, letting the jury determine which bills and treatments shown in the exhibits were related to the accident and which were not would be prejudicial. Ryan argued that Dennis should be limited to arguing only that Dr. Birkholz's bills were reasonable expenses of necessary care because those expenses were the only ones for which Dennis presented testimony. Ryan asserted that the jury could not determine which treatments and expenses were related to the exacerbation of Dennis's pre-existing condition caused by the accident and which were related only to the pre-existing condition.

¶16 Dennis argued that all of the bills were stipulated into evidence and Ryan was reneging on the stipulation. Dennis contended that the foundation required to admit the bills into evidence was foundation regarding reasonableness and necessity and so the stipulation that no further foundation would be necessary permitted the admission of the exhibits.

¶17 Ryan argued in reply that the stipulation was that the exhibits could be admitted without the need for a custodian of records to lay the foundation, and did not pertain to the reasonableness of care or whether the expenses were related to the accident.

¶18 The court found that the stipulation waived only the requirement that the custodian of records lay foundation for the

bills and treatment notes. Citing *Larsen*, the court noted "there is an extra step necessary to establish that [the treatment and expenses] are reasonable and necessary and causally related to the accident."

¶9 Dennis moved for reconsideration, arguing that the records themselves established that the expense and treatment were reasonable and necessary and that a doctor need not testify to that fact if other evidence demonstrates reasonableness and necessity. Dennis further argued that the records and bills were already in evidence and that Ryan waived the issue by not raising the objection when the doctor was testifying to allow the foundation to be laid.

¶10 The court denied the motion for reconsideration, ruling:

. . . I believe that is the law in Arizona, that the Plaintiff must establish the reasonableness and necessity of all medical treatment. I agree that that has been done with Dr. Birkholz's care, but there has been no testimony to establish that the other medical care was reasonable and necessary. And the specific stipulation made on the record narrowed the purpose of the stipulation.

¶11 After additional argument, that court concluded that the jury could consider only the records and bills of Dr. Birkholz and Dr. Epstein, and so instructed the jury. The court withdrew from the jury's consideration exhibits 9 through 14,

17, 18, 20, 24 and 25.

¶12 The jury found in favor of Dennis in the amount of \$3,000, but found Dennis to be 60 percent at fault and Ryan to be 40 percent at fault, reducing Dennis's recovery to \$1,200. Because Ryan had made a pre-trial offer of judgment that was more favorable to Dennis than the result Dennis achieved at trial, Ryan was awarded \$2,500 in sanctions pursuant to Rule 68, Arizona Rules of Civil Procedure. Dennis was awarded costs in the amount of \$952.17. The court therefore entered judgment in favor of Ryan and against Dennis in the amount of \$348.83. Dennis filed a timely appeal. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

#### ANALYSIS

¶13 We review the trial court's decision on the admission of evidence for an abuse of discretion. *Larsen*, 196 Ariz. at 241, ¶ 6, 995 P.2d at 283. We will affirm unless unfair prejudice resulted or the court applied the law incorrectly. *Id.*

¶14 Dennis argues that the stipulation into which the parties entered, followed by the admission of the exhibits, required the court to permit the jury to consider these medical bills and records. Dennis contends that the stipulation eliminated the requirement that Dennis produce testimony as to the reasonableness and necessity of the medical treatments

reflected in the records and bills although it reserved to Ryan the right to contest the reasonableness and necessity of the treatment and expenses.

¶15 Ryan does not dispute that the stipulation was binding, but asserts that the stipulation was intended to relieve Dennis only of the burden to present testimony from the record custodians and not to relieve Dennis of the plaintiff's burden to show that the bills and records reflected treatment reasonable and necessary and caused by the accident.

¶16 The trial court and the parties expended considerable effort discussing and analyzing the words used in the on-the-record colloquy that constitutes the stipulation, and the parties apparently have differing understandings regarding the stipulation and the admission of these records and bills. But what is abundantly clear is that *these exhibits were admitted into evidence*. Ryan did not object to the admission of these exhibits for lack of foundation or on any other basis, although she made it clear that by stipulating she was not agreeing to the reasonableness or necessity of all the treatment and charges. The record reveals that the exhibits were fully and unconditionally admitted.<sup>1</sup>

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<sup>1</sup> There was no reference by the court or the parties to any concept of conditional admission. Cf. Ariz. R. Evid. 104(b) ("When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court . . . may admit it subject to,

¶17 In addition to authenticity, the traditional foundation required for the admission of medical bills is a showing of reasonableness and necessity. See *Larsen*, 196 Ariz. at 243-44, ¶¶ 20, 26, 995 P.2d at 285-86 (holding that trial court did not abuse its discretion when it found that no foundation had established medical bills were caused by and were reasonable and necessary results of accident); *Gorostieta v. Parkinson*, 17 P.3d 1110, 1117 (Utah 2000) ("It is a general rule that the foundation to establish the reliability of medical expenses is to provide evidence of reasonableness and necessity."); *Patterson v. Horton*, 929 P.2d 1125, 1130 (Wash. Ct. App. 1997) ("[M]edical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and the bills were both necessary and reasonable."). "Reasonableness" relates to the amount charged for the medical services and "necessity" describes a degree of causal connection between the accident in question and the medical services. *Parkinson*, 17 P.3d at 1117-18.

¶18 A defendant in a personal injury action may object on the basis of lack of foundation to the admission of the medical bills in the absence of supporting evidence of reasonableness and necessity. While Ryan asserted that she was not agreeing to

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the introduction of evidence sufficient to support a finding of the fulfillment of the condition.")



the reasonableness and necessity of the bills and records, she did not object to their admission:

MR. FERRARO (Ryan's counsel): We've agreed to the -- to stipulate to the admissibility only of Exhibits 2, 4, 6 through 18, 20, 23, 24 and 25.

THE COURT: And when you say admissibility only, . . . you're saying only these exhibits, right?

MR. FERRARO: I'm saying only those exhibits and only -- we're not conceding the fact that anything that is in there constitutes reasonableness and necessary.

Just the stipulation to the admissibility without further foundation necessary. How about that?

. . . .

THE COURT: So as I understand the stipulation numbers 2, 4, 6 through 18, 20, 23, 24 and 25 are all admissible without laying any foundation.

¶19 Once a party concedes admissibility and the exhibits are admitted, there is no longer any need for showing a proper foundation. *Tyler v. King*, 496 A.2d 16, 22-23 (Pa. Super. Ct. 1985). The admission of the exhibits relieves the plaintiff of the burden she would otherwise have borne as the party offering the exhibits into evidence. *Edwards v. Donley*, 297 A.2d 149, 150 (Pa. Super. Ct. 1972). After the admission of the medical bills and records at issue, Dennis had no obligation to present testimony or evidence of the reasonableness and necessity of the

treatment and charges.<sup>2</sup>

¶20 *Edwards* is instructive. The parties in *Edwards* entered into a stipulation that the trial court restated as follows: "It is stipulated that the bills that are about to be stated were incurred. The right is reserved for the defense counsel to question the completeness of the bills and the reasonableness of the bills." *Id.* at 150. The bills were admitted into evidence without objection. *Id.* At the close of the plaintiff's case, defendant objected to the introduction of the bills on the grounds that the plaintiff had not proved the reasonableness and necessity of the bills as a result of the accident. *Id.* The court overruled the objection, but after the jury rendered a verdict in favor of the plaintiff, the court granted a new trial on the grounds that the admission of the bills was error, and the plaintiff appealed. *Id.* at 151. The appellate court concluded that the stipulation relieved the plaintiff of the burden of proving the foundation for the admission of the bills. *Id.* The court noted that the defendant did not object to the admission of the evidence until after the close of the plaintiff's case and that the court overruled the objection when made and instructed the jury that the bills were admitted pursuant to the stipulation. *Id.* at

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<sup>2</sup> As a matter of trial strategy, of course, a plaintiff may choose to present testimony supporting reasonableness and necessity even if the exhibits are already admitted.

150-51. The appellate court found that the admission of the bills into evidence upon stipulation was proper and binding and that there was no error justifying a new trial. *Id.* at 151. We agree with this analysis and reasoning.

¶21 Foundational evidence of the reasonableness and necessity of medical bills is generally needed before their admission. But once the bills are admitted -- such as by stipulation -- no further foundation is necessary. Ryan remained free to challenge, by evidence and argument, whether the medical treatment was necessitated by the accident and whether the amounts charged were reasonable. But the trial court erred by granting Ryan's motion to, in essence, "un-admit" these exhibits.

¶22 Moreover, the admission of the exhibits at the start of the case followed by the exclusion of the exhibits at the end of the case prejudiced Dennis. She justifiably relied on the exhibits being admitted. If Dennis had known that the bills and records might be "un-admitted" at the end of the case, she could have asked her testifying doctor more questions pertaining to the reasonableness and necessity of the medical treatment and charges. Additionally, the removal of the exhibits resulted in a reduction in the amount of medical bills that Dennis could argue to the jury, thereby probably reducing the overall amount of damages awarded by the jury.

¶23 Dennis additionally argues that, under *Larsen v. Decker*, medical testimony is not necessary to establish that medical bills are reasonable and the medical treatment necessary if the records and bills themselves, either directly or inferentially, establish a causal connection between the accident and the treatment. Because we resolve this appeal by determining that the trial court should not have removed the exhibits at issue from evidence, we need not reach this additional argument by Dennis.

**CONCLUSION**

¶24 For these reasons, we reverse and remand for a new trial or other proceedings consistent with this decision.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
SHELDON H. WEISBERG, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
PHILIP HALL, Judge