

<p><u>NOTICE</u></p> <p>Decision filed 11/02/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.</p>
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2012 IL App (5th) 110187

NO. 5-11-0187

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

AMY STANTON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Union County.
	)	
v.	)	No. 04-L- 2
	)	
CAROLYN J. REA and ROBERT A. ROE,	)	
	)	
Defendants	)	
	)	
(The Department of Public Aid, Union County	)	Honorable
Hospital, Greg Zimmerman, Roland Barr, and	)	Mark H. Clarke,
Memorial Hospital of Carbondale, Appellees).	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court, with opinion. Presiding Justice Donovan and Justice Welch concurred in the judgment and opinion.

**OPINION**

¶ 1 Plaintiff, Amy Stanton, was injured in an automobile accident in which she was a passenger in a car driven by defendant Carolyn J. Rea (Rea). Rea's car collided with a car driven by defendant Robert A. Roe (Roe). Plaintiff filed a lawsuit in the circuit court of Union County against both defendants for injuries she sustained in the accident. Roe was uninsured, and the case proceeded against Rea only. After a verdict, the circuit court of Union County divided funds among the attorney fees, expenses, and the liens of medical providers and treaters, which include the Illinois Department of Public Aid, Union County Hospital, Dr. Greg Zimmerman, Dr. Roland Barr, and Memorial Hospital of Carbondale, appellees herein. Plaintiff filed a motion to reconsider the adjudication of liens, which the trial court denied. Plaintiff filed a timely notice of appeal. The issue on appeal is whether

the trial court properly adjudicated the liens of appellees. We reverse and remand.

¶ 2

## BACKGROUND

¶ 3 On June 13, 2003, plaintiff was a passenger in a car driven by Rea when Rea's car collided with a car driven by Roe. Plaintiff was hospitalized immediately after the accident and incurred hospital bills in excess of \$4,000. Roe was uninsured, and the case proceeded against Rea only. Rea's insurance carrier provided her with an attorney who, on her behalf, denied negligence, liability, and damages. Throughout the case, Rea's insurance carrier claimed she was not cooperating with her attorney and tried to avoid coverage. Ultimately, that claim was dropped, and the case proceeded to a jury trial on October 23, 2007. Plaintiff waived a jury trial, but Rea's attorney demanded a trial by jury.

¶ 4 At the close of all the evidence, plaintiff filed a motion for directed verdict against Rea on the issue of negligence and liability. The trial court granted the motion, and a directed verdict was entered in favor of plaintiff and against Rea on the issue of liability. The matter was then submitted to the jury on the issue of damages. The jury awarded damages in the amount of \$13,506.80. The trial court entered a judgment on that amount, plus \$3,919.79 in costs.

¶ 5 By the time the judgment was entered, out-of-pocket expenses to bring the case to trial had risen to \$4,501.44, which included, *inter alia*, deposition fees. Ultimately, a garnishment was filed to collect the judgment, and a check was issued in the amount \$14,520.86. On August 20, 2010, plaintiff filed a petition to adjudicate the liens asserted by appellees. Attorney fees were reduced from the agreed-upon one-third contingency fee to 30%. The trial court divided the funds among attorney fees, expenses, and lien payments, applying 40% of the amount of the verdict to the payment of medical liens pursuant to provisions provided by the Health Care Services Lien Act (Act) (770 ILCS 23/1 to 999 (West 2008)), as follows:

1. Union County Ambulance Service	\$ 137.08
2. Union County Hospital	\$ 3,821.89
3. Dr. Roland Barr	\$ 569.22
4. Dr. Greg Zimmerman	\$ 586.64
5. Illinois Department of Public Aid	<u>\$ 691.19</u>
TOTAL	\$5,806.02 <sup>1</sup>

¶ 6 The trial court did not divide the costs in acquiring the verdict but ordered that those be paid solely by plaintiff. As a result, plaintiff received nothing.

¶ 7 Plaintiff filed a motion to reconsider in which she asked that appellees share in the cost of acquiring the verdict. Plaintiff argued that computation of the amounts should begin with the amount available after payment of attorney fees and payment of necessary expenses incurred in acquiring the verdict. In its order denying plaintiff's motion to reconsider, the trial court relied on *Wendling v. Southern Illinois Hospital Services*, 242 Ill. 2d 261, 950 N.E.2d 646 (2011), which holds that the common fund doctrine is not applicable to health care liens under the Act.

¶ 8 A hearing on the motion to reconsider was held on October 20, 2010. The trial court took the matter under advisement. Ultimately, the trial court entered an order denying plaintiff's motion to reconsider. Plaintiff filed a timely notice of appeal. Appellees have not filed a brief in this appeal.

¶ 9 ANALYSIS

¶ 10 The issue we are asked to consider is whether the trial court properly adjudicated the liens of appellees. Plaintiff argues that the trial court did not properly interpret the Act and

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<sup>1</sup>The trial court's order and the appellant's brief erroneously show the total to be \$5,808.24.

erred in making plaintiff pay all the costs of acquiring the verdict. According to plaintiff, the only clear and fair interpretation is to begin computation after expenses have been deducted from the amount of the original verdict. After careful consideration, we agree with plaintiff.

¶ 11 In finding against plaintiff on her motion to reconsider, the trial court relied on *Wendling v. Southern Illinois Hospital Services*, 242 Ill. 2d 261, 950 N.E.2d 646 (2011), which held that the common fund doctrine is not applicable to health care liens under the Act. The common fund doctrine is an exception to the general rule that absent a statutory provision or an agreement between the parties, each party to the litigation bears its own attorney fees and may not recover those fees from an adversary. *Wendling*, 242 Ill. 2d at 265, 950 N.E.2d at 648. That doctrine provides that a litigant or a lawyer who recovers a common fund for the benefit of a person other than himself or his client is entitled to receive reasonable attorney fees from the fund as a whole. *Wendling*, 242 Ill. 2d at 265, 950 N.E.2d at 648.

¶ 12 In *Wendling*, the plaintiffs, Sherry Wendling and Nancy Howell, were injured in separate automobile accidents and treated at hospitals owned by the defendant. The defendant filed statutory liens pursuant to the Act against the proceeds of the plaintiffs' lawsuits against their tortfeasors. Both plaintiffs reached settlement agreements with the individual defendants and filed petitions to adjudicate the defendants' liens. The petitions alleged that, under the common fund doctrine, the plaintiffs' counsel were entitled to additional attorney fees equal to one-third of the amount of the defendants' liens. *Wendling*, 242 Ill. 2d at 264, 950 N.E.2d at 648. The trial court granted the petitions, finding that the plaintiffs' attorneys were entitled to 30% of the total settlement proceeds, plus one-third of the amount of the defendant's liens. *Wendling*, 242 Ill. 2d at 264, 950 N.E.2d at 648. The appellate court affirmed (*Howell v. Dunaway*, 398 Ill. App. 3d 1078, 924 N.E.2d 1190 (2010)), but our supreme court reversed on the basis that the common fund doctrine is not

applicable to health care liens under the Act. *Wendling*, however, is not applicable to the instant case.

¶ 13 First, the instant case is distinguishable from *Wendling* because it deals with costs associated with acquiring a verdict, not attorney fees. As *Wendling* pointed out, the Act "is silent as to whether a health care professional or provider holding a lien under the Act is responsible for attorney fees pursuant to the common fund doctrine." *Wendling*, 242 Ill. 2d at 264, 950 N.E.2d at 647. The *Wendling* court simply determined that lienholders are not responsible for a proportionate share of attorney fees under the common fund doctrine. Second, the issue raised in this appeal is based solely upon the proper interpretation of the Act and its statutorily guided allocation of plaintiff's judgment or settlement. Our analysis is based solely upon statutory interpretation, not the common fund doctrine, which pertains to attorney fees. The construction of a statute presents a question of law that is reviewed *de novo*. *People v. Bonutti*, 212 Ill. 2d 182, 188-89, 817 N.E.2d 489, 493 (2004). It is well established that the primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent by reading the plain language of the statute as a whole and giving the language its practical and liberal interpretation. *In re Estate of Dierkes* 191 Ill. 2d 326, 331, 730 N.E.2d 1101, 1104 (2000).

¶ 14 In the instant case, after a verdict was entered and a check was issued by the insurance company, plaintiff filed a petition to adjudicate liens pursuant to the Act. The Act provides in pertinent part as follows:

"(a) Every health care professional and health care provider that renders any service in the treatment, care, or maintenance of an injured person \*\*\* shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges up to the date of payment of damages to the injured person. The total amount of all liens under this

Act, however, shall not exceed 40% of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action.

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(c) All health care professionals and health care providers holding liens under this Act with respect to a particular injured person shall share proportionate amounts within the statutory limitation set forth in subsection (a). The statutory limitations under this Section may be waived or otherwise reduced only by the lienholder. No individual licensed category of health care professional (such as physicians) or health care provider (such as hospitals) as set forth in Section 5, however, may receive more than one-third of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action. If the total amount of all liens under this Act meets or exceeds 40% of the verdict, judgment, award, settlement, or compromise, then:

(1) all the liens of health care professionals shall not exceed 20% of the verdict, judgment, award, settlement, or compromise; and

(2) all the liens of health care providers shall not exceed 20% of the verdict, judgment, award, settlement, or compromise;

provided, however, that health care services liens shall be satisfied to the extent possible for all health care professionals and health care providers by reallocating the amount unused within the aggregate total limitation of 40% for all health care services liens under this Act; and provided further that the amounts of liens under paragraphs (1) and (2) are subject to the one-third limitation under this subsection." 770 ILCS 23/10(a), (c) (West 2008).

¶ 15 The Act further provides that health care professionals and providers have the right

to seek payment of the amount of their reasonable charges that remain unpaid after the satisfaction of their liens under the Act. 770 ILCS 23/45 (West 2008). Moreover, where the total liens filed under the Act amount to 40% of the judgment or settlement, the total amount of attorneys' liens under the Attorneys Lien Act (770 ILCS 5/0.01, 1 (West 2008)) is limited to 30% of the judgment or settlement. 770 ILCS 23/10(c)(2) (West 2008).

¶ 16 The Act is clear that lienholders are limited to 40% of the judgment or settlement and that if they in fact receive 40% of the judgment or settlement, then any attorney's liens are limited to 30%. Accordingly, the Act specifically limits the liens upon a judgment or settlement to 70%. Under these circumstances, we can deduce that our General Assembly intended that a plaintiff receive 30% of any judgment or settlement.

¶ 17 In the instant case, the attorney's lien was reduced to 30%, down from the one-third contingency fee agreed to by plaintiff, and lienholders under the Act were limited to 40% of the judgment. However, because of the high costs it took to secure a judgment, there was literally no money left for plaintiff. The costs of the litigation simply wiped out plaintiff's 30%. After a careful reading of the Act, we agree this was not the intention of our General Assembly. The intent of the law is clear that plaintiff should receive 30% of the amount of the settlement for her injuries after all liens, expenses, and medical bills have been paid.

¶ 18 In order to ensure that plaintiff receives 30% of the judgment as intended by the Act, it is necessary that computation of the 40% does not begin until costs associated with bringing the case to trial and securing payment of the judgment have been deducted from the amount of the original verdict. In the instant case, the trial court should have begun its calculations of 40% for the lienholders after payment of attorney fees and costs necessary in securing the judgment. While an argument could be made that the attorney's lien should not be calculated until after payment of costs, we point out that the Act allows for health care professionals and providers to seek payment of the amount of their reasonable charges that

remain unpaid after satisfaction of their liens under the Act, whereas an attorney who helped secure the verdict has no such right to seek additional payment. The attorney is required to accept 30%, no matter what his or her original fee arrangement was with the plaintiff. Thus, we believe the proper interpretation of the Act is to begin the 40% calculations after the verdict has been reduced by attorney fees and costs.

¶ 19 For the foregoing reasons, the judgment of the circuit court of Union County is hereby reversed and the cause remanded for further proceedings consistent with this opinion.

¶ 20 Reversed and remanded.



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CAROLYN J. REA and ROBERT A. ROE,	)	
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Defendants	)	
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(The Department of Public Aid, Union County	)	Honorable
Hospital, Greg Zimmerman, Roland Barr, and	)	Mark H. Clarke,
Memorial Hospital of Carbondale, Appellees).	)	Judge, presiding.

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**Opinion Filed:** November 2, 2012

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**Justices:** Honorable Richard P. Goldenhersh, J.  
Honorable James K. Donovan, P.J., and  
Honorable Thomas M. Welch, J.,  
Concur

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**Attorney for Appellant** John Womick, Womick Law Firm, Chtd., 501 Rushing Drive, Herrin, IL 62948

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**Attorneys for Appellees** Illinois Dept. of Public Aid, Technical Recovery Section, 2200 Churchill Road, Bldg. A, Springfield, IL 62704; Union County Hospital, 517 North Main, Anna, IL 62906; Dr. Greg Zimmerman, 119 S. Batavia, Batavia, IL 60510; Dr. Roland Barr, Southern Orthopedic Associates, SC, 510 Lincoln Drive, Herrin, IL 62948; Memorial Hospital of Carbondale, 405 West Jackson, Carbondale, IL 62901; Union County Ambulance, 311 Mississippi St., Jonesboro, IL 62952 (**NO BRIEFS FILED**)

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