

STATE OF MICHIGAN
COURT OF APPEALS

SAHARRA JAMES, a Minor, by LATISHA M.
JAMES, her Guardian,

UNPUBLISHED
July 28, 2009

Plaintiff-Appellee,

v

AAA INSURANCE COMPANY

No. 284277
Wayne Circuit Court
LC No. 07-721450-AV

Defendant-Appellant.

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

In this action to recover no-fault personal injury protection (PIP) benefits, defendant appeals by leave granted a circuit court order reversing a district court's decision granting defendant's motion for a directed verdict. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

This action arises from an automobile accident in which 16-year-old Saharra James (plaintiff), a passenger in the vehicle, was injured. Neither plaintiff nor the driver of the vehicle was insured, and no other applicable no-fault coverage could be identified, so coverage for plaintiff's PIP benefits was assigned to defendant through the assigned claims facility. See MCL 500.3171 *et seq.* Plaintiff filed this action to recover various medical and attendant care expenses that allegedly arose from the automobile accident. The case proceeded to a jury trial in district court. At the close of plaintiff's proofs, the district court granted defendant's motion for a directed verdict. Plaintiff then appealed to the circuit court, which reversed the district court's decision and remanded the case for a new trial before a different judge.

On appeal, defendant argues that the district court properly granted its motion for a directed verdict and, therefore, the circuit court erred in reversing the district court's decision. A trial court's decision on a motion for a directed verdict is reviewed de novo. *Coble v Green*, 271 Mich App 382, 385; 722 NW2d 898 (2006). The evidence and all legitimate inferences arising from the evidence must be viewed in a light most favorable to the nonmoving party to determine if the evidence fails to establish a claim as a matter of law. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003).

In order for an expense to qualify as an "allowable expense" under the no-fault act, (1) the charge must be reasonable, (2) the expense must be reasonably necessary, (3) the expense

must be incurred, and (4) the expense must be for either an injured person's care, recovery, or rehabilitation. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 532 n 8; 697 NW2d 895 (2005); *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 50; 457 NW2d 637 (1990). In addition, the plaintiff must prove that the expense was incurred for bodily injury arising out of the operation of a motor vehicle. *Griffith, supra* at 530.

Defendant argues that the district court properly granted its motion for a directed verdict with respect to the St. John Hospital expense because plaintiff failed to present the actual hospital bill and, therefore, failed to show that the expense involved a reasonable charge for reasonably necessary products, services, and accommodations for plaintiff's care, recovery, or rehabilitation, as required by MCL 500.3107(1)(a). We disagree.

Plaintiff had the burden of proving by a preponderance of the evidence that the St. John Hospital charges were for expenses that were both reasonable and reasonably necessary. *Kallabat v State Farm Mut Automobile Ins Co*, 256 Mich App 146, 152; 662 NW2d 97 (2003). Whether an expense is reasonable and reasonably necessary is generally a question of fact for the jury, which may consider both direct and circumstantial evidence, as well as permissible inferences arising from the evidence. *Id.* at 151-152.

Although plaintiff did not introduce the actual hospital bill into evidence, she presented testimony that she was injured in a serious accident and was hospitalized for three days after the accident, resulting in hospital medical expenses of \$23,000. Plaintiff's hospital records detailing the care she received were also admitted into evidence. Viewed in a light most favorable to plaintiff, this evidence was sufficient to permit a jury to find that plaintiff received care and treatment at St. John Hospital that was reasonable and reasonably necessary for her care, recovery, or rehabilitation.

Nonetheless, we agree with defendant that a directed verdict of this expense was appropriate because the expense was not incurred by plaintiff. An expense is incurred within the meaning of § 3107(1)(a) only if there is a legal responsibility to pay it. *Duckworth v Continental Nat'l Indemnity Co*, 268 Mich App 129, 134; 706 NW2d 215 (2005); *Bombalski v Auto Club Ins Ass'n*, 247 Mich App 536, 543; 637 NW2d 251 (2001). To incur an expense, the plaintiff must be "responsible or answerable in law; legally obligated." *Bombalski, supra* at 543 (quotation omitted). It is undisputed that the St. John Hospital charges were discharged in bankruptcy. Thus, there is no legal obligation to pay the charges and, therefore, they have not been incurred within the meaning of § 3107(1)(a). Accordingly, the district court properly directed a verdict for defendant with respect to the St. John Hospital medical expenses, and the circuit court erred in reversing that portion of the district court's decision.

Defendant also argues that it was entitled to a directed verdict with respect to plaintiff's claims for her treatment with Dr. Allen Cushingberry and for attendant care expenses, because plaintiff failed to present evidence showing that these expenses were attributable to a bodily injury sustained in the automobile accident. We disagree. Plaintiff presented evidence that she injured her head in the automobile accident. She was examined a week later by Dr. Cushingberry, who stated that plaintiff's injury was consistent with a closed head injury and that plaintiff was suffering from post-traumatic stress disorder. Plaintiff's sister testified that plaintiff became depressed and experienced behavioral changes after the accident. Dr. Cushingberry disabled plaintiff from participating in several activities and prescribed 24-hour attendant care.

This evidence, viewed most favorably to plaintiff, was sufficient to establish the bodily injury element of plaintiff's claims. Accordingly, the circuit court did not err in reversing the district court's decision directing a verdict with respect to these claims.

Lastly, defendant argues that the circuit court erred when it ordered that the case be assigned to a different judge on remand. After the trial in this case, the district court judge entered an order disqualifying herself from hearing any cases in which plaintiff's attorney represents a party. Because that order requires that this case be reassigned to a different judge, independent of the circuit court's order, this issue is moot.

Affirmed in part, reversed in part, and remanded to the district court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra