IN THE UTAH COURT OF APPEALS

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| Gerald Vaughn,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>Darin Anderson,<br><br>Defendant and Appellee. | ) | MEMORANDUM DECISION<br>(Not For Official Publication)<br><br>Case No. 20040651-CA<br><br>F I L E D<br>(October 6, 2005)<br><br>2005 UT App 423 |

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Third District, Salt Lake Department, 010908321
The Honorable Robert K. Hilder

Attorneys: Matthew H. Raty, Salt Lake City, for Appellant
Kristin A. Van Orman, Salt Lake City, for Appellee

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Before Judges Bench, Greenwood, and McHugh.

BENCH, Associate Presiding Judge:

Gerald Vaughn challenges the trial court's use of a special verdict form requiring that the jury find that he incurred more than $3000 in medical expenses, as a threshold requirement, before his cause of action for personal injury may be maintained. See Utah Code Ann. § 31A-22-309(1)(e) (Supp. 1994).[1] We affirm.

First, Vaughn asserts that Utah Code section 31A-22-307(2)(e) (Supp. 1994)[2] establishes a procedure for impaneling medical professionals to calculate the reasonable value of incurred medical expenses, and that the panel is the exclusive method for determining whether the threshold requirement has been met. He further argues that this medical panel should determine his compliance with the threshold requirement instead of a jury.

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[1]Throughout this opinion, we cite the version of Utah statutes in effect at the time this action arose. In 2001, the Legislature renumbered this subsection to (1)(a)(v). See Utah Code Ann. § 31A-22-309(1)(a)(v) (2001).

[2] In 2001, the Legislature renumbered this subsection to (2)(e)(i). See Utah Code Ann. § 31A-22-303(2)(e)(i) (2001).

We disagree. Section 31A-22-307(2)(e) specifically includes discretionary language that the court "may designate an impartial medical panel . . . to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or expenses." Utah Code Ann. § 31A-22-307(2)(e) (emphasis added). As a result, the trial court is not obligated to utilize a medical panel in determining whether Vaughn meets the threshold requirement.

Furthermore, section 31A-22-307(2)(e) indicates that even if a medical panel were used, the panel would "testify on the issue of reasonable value of the claimant's medical services or expenses," thereby envisioning that a jury would receive testimony from the medical panel at trial. Id. (emphasis added). As the total calculation of medical expenses is a finding of fact, "[i]t is the exclusive province of the jury to determine the credibility of the witnesses, weigh the evidence, and make findings of fact." Gillespie v. S. Utah State Coll., 669 P.2d 861, 864 (Utah 1983) (citing Groen v. Tri-O-Inc., 667 P.2d 598, 601 (Utah 1983)). Therefore, the jury should, as it did in this matter, ultimately determine whether the total amount of Vaughn's medical expenses met the threshold requirement, regardless if a medical panel was utilized.

Vaughn next challenges the use of the special verdict form. Although the threshold requirement does not require the use of a special verdict form, "[t]he use of special verdicts or interrogatories is a matter for the trial court's sound discretion." Cambelt Int'l Corp. v. Dalton, 745 P.2d 1239, 1241 (Utah 1987); see also Utah R. Civ. P. 49(a) (discussing use of special verdicts). A trial court may use a special verdict form as long as the form does not "mislead the jury to the prejudice of the complaining party or insufficiently or erroneously advise[] the jury on the law." Summerill v. Shipley, 890 P.2d 1042, 1044 (Utah Ct. App. 1995) (citation and quotations omitted). As the special verdict form in this matter did not mislead or erroneously advise the jury on the threshold requirement, the use of the special verdict form was proper.

Finally, Vaughn asserts that the threshold requirement was met based on medical expenses in excess of $3000 paid by his own personal injury protection (PIP) insurer. We reject this argument.

> The mere fact that his PIP insurer paid for medical expenses which the jury found were not related to the accident should not be binding on [Anderson] for purposes of establishing the medical expenses threshold and exposing [Anderson] to liability for

> general damages. This is especially so since a PIP carrier has a first party contractual relationship with its insured--in this case [Vaughn]--and owes certain duties to him.

C.T. v. Johnson, 1999 UT 35,¶7 n.3, 977 P.2d 479.

Therefore, the trial court did not err by submitting the special verdict form to the jury and by requiring that the jury find that Vaughn satisfied the threshold requirement in order to maintain his cause of action.

Accordingly, we affirm the judgment.

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Russell W. Bench,
Associate Presiding Judge

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WE CONCUR:

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Pamela T. Greenwood, Judge

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Carolyn B. McHugh, Judge