ADVANCE SHEET HEADNOTE
December 20, 2021

2021 CO 82

No. 21SA55, *Ronquillo v. EcoClean*—Collateral Source—Evidence—Medical Finance Liens.

The supreme court reviews whether a medical finance company is a collateral source for purposes of the pre-verdict evidentiary component of Colorado's collateral source rule, codified in section 10-1-135(10)(a), C.R.S. (2021). The court holds that the medical finance company in this case is not a collateral source because it did not confer a "benefit," as defined in section 10-1-135(2)(a), C.R.S. (2021), onto the injured party. The court therefore discharges the rule to show cause and remands the case for further proceedings.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 82

Supreme Court Case No. 21SA55
Original Proceeding Pursuant to C.A.R. 21
Broomfield County District Court Case No. 19CV30332
Honorable Robert W. Kiesnowski, Jr., Judge

In Re
Plaintiffs:

Maribel Ronquillo and Martin Cerda,

v.

Defendants:

EcoClean Home Services, Inc. and Jessie Williams.

Rule Discharged
en banc
December 20, 2021

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JUSTICE MÁRQUEZ delivered the Opinion of the Court.
JUSTICE GABRIEL concurs in part and dissents in part, and **JUSTICE SAMOUR** and **JUSTICE BERKENKOTTER** join in the concurrence in part and dissent in part.

¶1 This interlocutory appeal brought under C.A.R. 21 raises the narrow question of whether a medical finance company is a collateral source for purposes of the pre-verdict evidentiary component of Colorado's collateral source rule. Plaintiffs, Maribel Ronquillo and her husband Martin Cerda, challenge the district court's order finding that Injury Finance, LLC, a medical finance company with whom Plaintiffs have a lien agreement, is not a collateral source, and that therefore, Defendants Jessie Williams and EcoClean Home Services may offer evidence at trial of Ronquillo's and her healthcare providers' relationship with Injury Finance, as well as evidence of the amounts billed and paid for Ronquillo's medical treatment.

¶2 We agree with the district court that Injury Finance is not a collateral source. Collateral sources must confer a "benefit," as defined in section 10-1-135(2)(a), C.R.S. (2021), onto the injured party. Under the terms of the lien agreement here, Injury Finance purchased Ronquillo's accounts receivable from her healthcare providers, thereby allowing Ronquillo to receive prompt medical care for injuries sustained in an automobile collision with Williams. In return, Injury Finance received the right to collect the full amount billed by Ronquillo's healthcare providers and a lien on any settlement or verdict she obtains through litigation regarding the accident. Importantly, Ronquillo remains individually liable to Injury Finance for the full amounts billed by her healthcare providers whether or

not she obtains a favorable verdict. Thus, Ronquillo has not received a benefit from Injury Finance for purposes of the collateral source rule because her arrangement with Injury Finance does not reduce her financial obligations. Our conclusion is unaffected by the recently enacted House Bill 21-1300, codified at section 38-27.5-101 to -108, C.R.S. (2021). Although this statute precludes discovery of certain evidence pertaining to medical finance companies, *see* § 38-27.5-103(2), C.R.S. (2021), it also fundamentally changes the nature of these agreements going forward by requiring companies like Injury Finance, before creating a lien, to notify the injured party that they[1] will not be liable to the lien holder for any portion of the lien beyond any judgment or settlement obtained, *see* § 37-27.5-104(1)(c), C.R.S. (2021). Because Ronquillo's financial obligation to Injury Finance will not necessarily be discharged upon the resolution of the underlying litigation, the lien agreement here falls outside the scope of the new statute.

¶3 Accordingly, we discharge the rule to show cause and remand the case for further proceedings. We express no opinion on whether the disputed evidence may be excluded under other evidentiary rules such as CRE 401 and 403; we hold

[1] We are intentionally using the singular "they" in this opinion.

only that the district court correctly concluded, as a matter of statutory interpretation, that the medical finance company here is not a collateral source.

I. Facts and Procedural History

¶4 In August 2016, Ronquillo was in an automobile collision. According to her complaint, Ronquillo was rear-ended by Williams, who was operating a vehicle owned by an EcoClean employee and towing an EcoClean trailer. Ronquillo suffered serious physical injuries and incurred around $250,000 in medical expenses.

¶5 At the time of the accident, Ronquillo did not have health insurance, so she entered into a medical finance lien agreement with Injury Finance. Under the terms of that agreement, Injury Finance purchased Ronquillo's accounts receivable from her healthcare providers at a predetermined, discounted contractual rate, which allowed Ronquillo to receive prompt medical care. Injury Finance received a lien and security interest in the proceeds of "any settlement or verdict in [Ronquillo's] favor until such sums owed . . . are paid in full." However, Ronquillo remains contractually obligated to repay Injury Finance for "all charges billed by the [medical] [p]roviders"—not merely the discounted rate Injury Finance received—regardless of the result of any litigation.

¶6 Ronquillo and her husband filed suit in Broomfield County District Court, alleging negligence and loss of consortium against Williams and asserting a

respondeat superior claim against EcoClean. As part of discovery, Defendants subpoenaed Injury Finance, seeking information and documents pertaining to Injury Finance's accounts receivable purchase rates, provider contracts, and business operations and methodologies. When Injury Finance did not respond to the subpoena, Defendants filed a motion to compel production, which the district court granted. Defendants also filed a "motion for determination of a question of law pursuant to C.R.C.P. 56(h) that Injury Finance . . . is not a collateral source[]" subject to the pre-verdict evidentiary component of the collateral source rule.

¶7 Injury Finance moved to intervene for the limited purpose of litigating Defendants' Rule 56(h) motion. It also moved to quash the subpoena and sought a protective order. The court granted the motion to intervene and issued a temporary stay on Injury Finance's discovery obligations pending a hearing on whether Injury Finance qualified as a collateral source.

¶8 After briefing and oral argument, the district court determined that "Injury Finance is not a collateral source as defined under C.R.S. § 13-21-111.6." Consequently, the court ruled that Defendants could offer at trial "evidence of the amounts billed and amounts paid." The court further ruled that it would "admit evidence of the relationship, if any, between Injury Finance and plaintiff's medical providers as this evidence may be relevant to the issues of bias, motive, or interest and the reasonable value of the medical services rendered."

¶9 Plaintiffs brought this interlocutory appeal under C.A.R. 21, challenging the district court's order. They contend that the district court (1) erred in determining that Injury Finance is not a collateral source, and (2) "abused its discretion by construing the post-verdict contract exception to § 13-21-111.6 and the Made Whole Doctrine to mean a third-party payor's subrogation rights determine that third-party payor's collateral source status." We issued a rule to show cause.

II. Original Jurisdiction

¶10 Whether to exercise our original jurisdiction pursuant to C.A.R. 21 is within our sole discretion. C.A.R. 21(a)(1). We generally elect to exercise our discretion in "C.A.R. 21 cases that raise issues of first impression . . . that are of significant public importance." *Smith v. Jeppsen*, 2012 CO 32, ¶ 6, 277 P.3d 224, 226. "We have previously exercised our original jurisdiction to review questions of statutory interpretation." *Id.*

¶11 We exercise our original jurisdiction in this case because this court has not yet determined whether medical finance companies are collateral sources under section 10-1-135(10)(a), and this is an issue of significant public importance.

III. Analysis

¶12 This court reviews evidentiary rulings for abuse of discretion. *Wal-Mart Stores, Inc. v. Crossgrove*, 2012 CO 31, ¶ 7, 276 P.3d 562, 564. "A trial court necessarily abuses its discretion if its ruling is based on an incorrect legal standard.

Whether the trial court applied the correct legal standard is a question of law we review de novo." *Id.* (citation omitted). Questions of statutory interpretation are likewise reviewed de novo. *McCoy v. People*, 2019 CO 44, ¶ 37, 442 P.3d 379, 389.

A. Colorado's Collateral Source Rule

¶13 Under Colorado's common law collateral source rule, "[c]ompensation or indemnity received by an injured party from a collateral source, wholly independent of the wrongdoer and to which [the wrongdoer] has not contributed, will not diminish the damages otherwise recoverable from the wrongdoer." *Colo. Permanente Med. Grp., P.C. v. Evans*, 926 P.2d 1218, 1230 (Colo. 1996) (quoting *Kistler v. Halsey*, 481 P.2d 722, 724 (Colo. 1971)). "The policy underlying this rule was that a tortfeasor should not benefit, in the form of reduced damages liability, from an injured party's receipt of collateral source benefits." *Crossgrove*, ¶ 10, 276 P.3d at 565. In other words, because it is solely the tortfeasor's responsibility to make the injured plaintiff whole, any benefits or gifts obtained from third-party "collateral" sources accrue solely to the benefit of the injured plaintiff and are irrelevant in fixing the amount of the tortfeasor's liability. *See Volunteers of Am. Colo. Branch v. Gardenswartz*, 242 P.3d 1080, 1082–83 (Colo. 2010).

¶14 Colorado's collateral source rule has two components: (1) a post-verdict setoff rule, now codified at section 13-21-111.6, C.R.S. (2021), and (2) a pre-verdict evidentiary component, now codified at section 10-1-135(10)(a).

¶15 Under the common law, the collateral source rule applied post-verdict to prevent a trial court from reducing a successful plaintiff's damages where the plaintiff received a collateral source benefit. *Van Waters & Rogers, Inc. v. Keelan*, 840 P.2d 1070, 1074–75 (Colo. 1992). Although the common law rule thus allowed a successful plaintiff to receive a double recovery from both the tortfeasor and the benefits provider, we determined that "[i]f either party is to receive a windfall, the rule awards it to the injured plaintiff . . . and not to the tortfeasor, who has done nothing to provide the compensation and seeks only to take advantage of third-party benefits obtained by the plaintiff." *Gardenswartz*, 242 P.3d at 1083.

¶16 In 1986, the General Assembly partially abrogated the post-verdict setoff component of the common law collateral source rule by enacting section 13-21-111.6. *Crossgrove,* ¶ 18, 276 P.3d at 566; *see also Gardenswartz*, 242 P.3d at 1084. Section 13-21-111.6 prevents double recoveries that were permissible under the common law rule by requiring the trial court to reduce a successful plaintiff's verdict by the amount the plaintiff "has been or will be wholly or partially indemnified or compensated for his loss by any other person, corporation, insurance company or fund." The statute does, however, preserve the common law rule to a limited extent through a contract exception that prohibits trial courts from reducing a plaintiff's verdict "by the amount of indemnification or compensation that the plaintiff has received, or will receive in

the future, from a 'benefit paid as a result of a contract entered into and paid for by or on behalf of' the plaintiff." *Crossgrove*, ¶ 15, 276 P.3d at 566 (quoting § 13-21-111.6).

¶17 The contract exception, like the common law rule, prevents a tortfeasor from benefitting from the plaintiff's purchase of insurance, but does not necessarily result in a plaintiff receiving a double recovery because the plaintiff must often subrogate the party with whom they contracted. *Id.* at ¶ 16, 276 P.3d at 566. In a typical subrogation framework, an insurer pays for the injured plaintiff's medical costs up front, the plaintiff collects the cost of the treatment from the tortfeasor under the contract exception in section 13-21-111.6, and the plaintiff then reimburses the insurer for the cost of the treatment. *Id.* So although the contract exception prevents the trial court from deducting from the plaintiff's damages the amount paid by a party with whom the plaintiff has contracted, the plaintiff's subrogation obligation will generally prevent double recovery. *Id.*

¶18 The pre-verdict evidentiary component of the collateral source rule requires trial courts to exclude evidence of "compensation or indemnity" received from a collateral source. *Id.* at ¶ 10, 276 P.3d at 565 (quoting *Evans*, 926 P.2d at 1230). This component of the rule recognizes that evidence of collateral source benefits may lead a jury to "improperly reduce the plaintiff's damages award on the grounds that the plaintiff already recovered his loss from the collateral source." *Id.* at ¶ 12,

276 P.3d at 565; *see also Gardenswartz*, 242 P.3d at 1083 (citing *Carr v. Boyd*, 229 P.3d 659, 662–63 (Colo. 1951)) ("To ensure that a jury will not be misled by evidence regarding the benefits that a plaintiff received from sources collateral to the tortfeasor, such evidence is inadmissible at trial."). By excluding collateral source information entirely, the rule ensures that tortfeasors will not escape liability simply because the injured party had the foresight to obtain a benefits provider to offset the risk of unexpected medical expenses.

¶19 In 2010, the General Assembly codified the pre-verdict evidentiary component of the common law collateral source rule by enacting section 10-1-135(10)(a), which provides that "[t]he fact or amount of any collateral source payment or benefits shall not be admitted as evidence in any action against an alleged third-party tortfeasor." *See Jeppsen*, ¶ 19, 277 P.3d at 228 (observing that section 10-1-135(10)(a) "unambiguously codifies" the common law pre-verdict evidentiary component of the collateral source rule).

B. Application

¶20 The narrow question before us is whether Injury Finance qualifies as a collateral source for purposes of the pre-verdict evidentiary component of the collateral source rule codified at section 10-1-135(10)(a). As relevant here, that section provides: "The fact or amount of *any collateral source payment or benefits* shall not be admitted as evidence in any action against an alleged third-party tortfeasor

or in an action to recover benefits under section 10-4-609." § 10-1-135(10)(a) (emphasis added). The parties' disagreement centers on whether Injury Finance provided Ronquillo with a "collateral source payment" or "benefit" under this provision.[2]

¶21 Ronquillo contends that Injury Finance provided a benefit by paying for her medical expenses (albeit at a discounted rate), thereby allowing her to receive immediate access to medical care that she otherwise would not have been able to afford. Defendants, by contrast, contend that Ronquillo received no true benefit because she remains liable to Injury Finance for the full amount billed by her healthcare providers regardless of the result of any litigation concerning the car accident. For the following reasons, we agree with Defendants and hold that Injury Finance is not a collateral source.

¶22 Whether medical finance companies, like Injury Finance, are collateral sources under section 10-1-135(10)(a) is a statutory interpretation issue of first

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[2] We note that though Injury Finance now contends that it provided Ronquillo a "benefit" under section 10-1-135(10)(a), its lien agreement with Ronquillo expressly states that "Injury Finance is not a 'Payer of Benefits' as defined by Section 10-1-135(2)(c)(1)" and that because "Injury Finance does not provide . . . insurance or health benefits . . . [it is not] subject to any provisions set forth in Section 10-1-135." We nevertheless choose to address the questions of statutory interpretation presented by Ronquillo's petition.

impression. "When interpreting a statute, we strive to give effect to the legislative purposes by adopting an interpretation that best effectuates those purposes." *Jeppsen*, ¶ 14, 277 P.3d at 227 (quoting *Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1189 (Colo. 2010)). "In order to ascertain the legislative intent, we first look to the plain language of the statute, giving the language its commonly accepted and understood meaning." *Id.* We construe a statute "as a whole to give 'consistent, harmonious and sensible effect to all its parts.'" *Bd. of Cnty. Comm'rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1192 (Colo. 2004) (quoting *People v. Luther*, 58 P.3d 1013, 1015 (Colo. 2002)).

¶23 Section 10-1-135 defines "benefit[]" as the "payment or reimbursement of health care expenses . . . provided to or on behalf of an injured party under a policy of insurance, contract, or benefit plan." § 10-1-135(2)(a). The statute does not explicitly define "collateral source payment." However, section 13-21-111.6, which codified the post-verdict setoff rule and is referenced in section 10-1-135(10)(a), indicates that a collateral source payment must actually indemnify or compensate the injured party:

> [The injured party's] verdict shall not be reduced by the amount by which such person, his estate, or his personal representative has been or will be *wholly or partially indemnified or compensated by a benefit paid* as a result of a contract entered into and paid for by or on behalf of such person. The court shall enter judgment on such reduced amount.

(Emphasis added.)[3]

¶24 In sum, to qualify as a collateral source, a medical finance company must provide a "benefit" or a "collateral source payment." Benefits and collateral source payments must "indemnif[y]," "compensate[]," "reimburse" or be a "payment" for an injured party's medical expenses. §§ 13-21-111.6, 10-1-135(2)(a); *see also Jeppsen*, ¶ 21, 277 P.3d at 228 ("A collateral source is a person or company, wholly independent of an alleged tortfeasor, that compensates an injured party for that person's injuries.").

¶25 As an initial matter, Injury Finance did not indemnify, compensate, or reimburse Ronquillo for her medical expenses. The plain meaning of each of these terms requires that Injury Finance offset at least some of Ronquillo's medical debt. *See Indemnify,* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/indemnify [https://perma.cc/8PHD-L58K] ("to make compensation to for incurred hurt, loss, or damage"); *Compensate,* Black's Law Dictionary (11th ed. 2019) ("To make an amendatory payment to; to recompense (for an injury)"); *Reimburse*, Merriam-Webster Dictionary, https://www.merriam-

[3] Ronquillo contends that the district court construed section 13-21-111.6 to mean that a third-party payor's subrogation rights determine its collateral source status. We disagree with this interpretation of the court's analysis. The district court simply looked to this provision for insight into whether Ronquillo received a benefit, as defined in section 10-1-135(2)(a).

webster.com/dictionary/reimburse [http://perma.cc/PR43-KT77] ("to pay back to someone"). Here, Injury Finance paid the healthcare providers so Ronquillo could receive prompt medical care. However, under the terms of their contract, Ronquillo remains liable to Injury Finance for the full amount billed by her medical providers. Because Injury Finance did not actually offset any of her medical debt, Ronquillo has in no way been indemnified, compensated, or reimbursed.

¶26 True, the plain meaning of the term "payment," as used in section 10-1-135(2)(a), is arguably broader than "indemnif[y]," "compensate[]," or "reimburse." Still, we cannot conclude that Injury Finance paid for Ronquillo's medical expenses simply by purchasing her accounts receivable from her healthcare providers at a discounted rate. Unlike insurance companies or other traditional benefits providers, which actually pay for the injured party's medical expenses and thereby reduce the party's financial obligations, Injury Finance operates like a creditor. After purchasing the injured party's accounts receivable from a healthcare provider, Injury Finance stands in the shoes of the healthcare provider and seeks to recover the *full billed* amount from the injured party without first fully compensating the injured party for their injuries. In so doing, Injury Finance contravenes the express purpose of the statute at issue, which requires that injured parties be "fully compensated for [their] injuries and damages before the payer of benefits may seek repayment." § 10-1-135(1)(d); *see also*

§ 10-1-135(1)(b) ("Reimbursement or repayment of benefits should not be permitted when the injured party would not be fully compensated . . . ."). Because Injury Finance's right to reimbursement is not contingent on Ronquillo first being made whole, as mandated by section 10-1-135(1)(a)–(d), and Injury Finance did not reduce Ronquillo's payment obligations, Injury Finance did not pay for Ronquillo's medical expenses for the purposes of section 10-1-135(2)(a).

¶27 Our interpretation is supported by the purpose of the pre-verdict component of the common law collateral source rule. *Cf. Gardenswartz*, 242 P.3d at 1082 ("An understanding of the common law collateral source rule is essential in interpreting section 13-21-111.6, which codifies the collateral source rule."). As noted, the pre-verdict component of the rule excluded evidence of collateral sources on the grounds that such evidence may cause jurors to improperly lower damage awards because the injured party has already been compensated by their benefits provider. *Crossgrove*, ¶ 12, 276 P.3d at 565; *Gardenswartz*, 242 P.3d at 1083. Ronquillo's contract with Injury Finance does not raise the same risk. The contract specifically provides that Ronquillo remains liable to Injury Finance for the full amount billed by her healthcare providers regardless of the results of any litigation. Thus, assuming the jury is made aware of the terms of the agreement with Injury Finance, there is no reason to suspect that the jury will reduce

Ronquillo's damage award on the grounds that Ronquillo has already been compensated, her debt has been paid, or that she will receive a windfall.

¶28 Ronquillo contends that even though her financial obligations have not been reduced, Injury Finance still provided her with the benefit of receiving prompt medical attention. While this is certainly a benefit in the broad sense of the term, it is not a benefit as defined in section 10-1-135(2)(a) or for the purposes of the collateral source rule. As reasoned above, a "benefit" must in some way reduce the injured party's payment obligation. Because it is undisputed that Ronquillo remains liable to Injury Finance regardless of whether she obtains a judgment in her favor, we conclude that Ronquillo has not been provided with a benefit and that Injury Finance is not a collateral source.

¶29 We take no position on whether evidence of amounts paid by a collateral source for medical expenses is relevant to the reasonable value of those expenses—a question we left open in *Crossgrove*, ¶ 13 n.4, 276 P.3d at 565 n.4—or whether the disputed evidence may be excluded under other evidentiary rules such as CRE 401 or 403. Those issues were not raised in Ronquillo's C.A.R. 21 petition, nor argued in her briefing, and therefore are not properly before us. Ronquillo remains free to pursue such arguments on remand.

¶30 We are also cognizant of the concerns expressed by Ronquillo and amici that our ruling risks unfairly treating individuals who can afford health insurance

differently from individuals who rely on medical finance liens. However, these concerns are immaterial to whether Injury Finance is a collateral source. Additionally, as explained in more detail in the next section, the General Assembly recently passed a bill that changes the structure of medical finance liens and precludes the discovery or admission of certain evidence pertaining to such liens. Thus, the risk of unfair and differential treatment is unlikely to arise going forward.

C. House Bill 21-1300

¶31 Following our grant of this C.A.R. 21 petition, the General Assembly enacted House Bill 21-1300, now codified at section 38-27.5-101 to -108. The statute precludes the discovery or admission of certain evidence pertaining to medical finance liens:

> any amount paid by an assignee of a health-care provider lien for the assignment, the fact of the assignment, and the terms of the assignment are not discoverable or admissible as evidence in any civil action or claim that the injured person asserts against third parties . . . for any purpose, including as evidence of the reasonable value of a health-care provider's services.

§ 38-27.5-103(2).

¶32 Ronquillo contends that this statute reflects the General Assembly's judgment that medical finance liens categorically provide benefits to injured parties and fall under the pre-evidentiary component of the collateral source rule. We are unpersuaded. While this statute certainly changes the legal landscape in

cases involving medical finance liens going forward, it is inapplicable to this case. Contrary to the express terms of Ronquillo's agreement with Injury Finance, House Bill 21-1300 also states that before a health care provider lien is created, the injured person must be notified that "[i]f the injured person does not receive a judgment, settlement, or payment on the injured person's claim against third parties . . . the injured person is not liable to the holder of the health-care provider lien for any portion of the health-care provider lien." § 38-27.5-104(c)(I). It continues, "[i]f the injured person receives a net judgment, settlement, or payment that is less than the full amount of the health-care provider lien, the injured person is not liable to the holder of the health-care provider lien for any amount beyond the net judgment, settlement, or payment." *Id.* at -104(c)(II).

¶33 In short, medical finance liens under section 38-27.5-103(2) are treated similarly to traditional insurance arrangements for purposes of the collateral source rule. Unlike Injury Finance's contract with Ronquillo, liens created under the new statute necessarily provide a benefit to the injured party because, regardless of the outcome of subsequent litigation, the injured party is compensated for their medical expenses. Because Injury Finance does not provide Ronquillo such a benefit under the lien agreement here, the statute does not support concluding that Injury Finance is a collateral source.

IV. Conclusion

¶34 The district court correctly determined that Injury Finance is not a collateral source under section 10-1-135(2)(a) because it did not provide Ronquillo with a benefit. In so doing, it properly looked to section 13-21-111.6 to bolster its conclusion. We therefore discharge the rule and remand the case for further proceedings consistent with this opinion.

JUSTICE GABRIEL concurs in part and dissents in part, and **JUSTICE SAMOUR** and **JUSTICE BERKENKOTTER** join in the concurrence in part and dissent in part.

JUSTICE GABRIEL, concurring in part and dissenting in part.

¶35 I agree with much of the majority's analysis in this case. In particular, for the reasons that the majority articulates, I agree that Injury Finance, LLC, which is a medical finance company, does not meet the definition of a collateral source. I part company with my colleagues in the majority, however, to the extent that they allow to stand (by expressing no opinion on) the district court's ruling that because the collateral source rule does not apply, the defendants will be permitted to introduce at trial evidence of (1) the amounts billed and paid for plaintiff Maribel Ronquillo's medical treatment and (2) the nature of Ronquillo's relationship with Injury Finance. For several reasons, I cannot agree with this conclusion.

¶36 First, I cannot subscribe to the majority's decision to acquiesce in the district court's relevance ruling based on the majority's determination that that issue is not properly before us. Maj. op. ¶ 29. Ronquillo asked the district court to exclude the evidence now at issue under the pre-verdict evidentiary component of the collateral source rule, section 10-1-135(10)(a), C.R.S. (2021). The court rejected this argument, however, concluding, albeit without substantial analysis, that the evidence was relevant and therefore admissible, and Ronquillo sought an order to show cause why that ruling should not be vacated, expressly arguing that the evidence at issue was irrelevant. In these circumstances, and particularly given that the district court expressly ruled on the relevance question, I would conclude

that the issue is properly before us, and I would require the district court to reconsider its ruling and to assess specifically whether the evidence at issue should be admitted under CRE 401–403. *See Brown v. Am. Standard Ins. Co.*, 2019 COA 11, ¶ 23, 436 P.3d 597, 600 (concluding that because the district court had ruled on the issue that the appellant sought to raise on appeal, the issue was preserved for review); *Battle N., LLC v. Sensible Hous. Co.*, 2015 COA 83, ¶ 13, 370 P.3d 238, 244 (concluding that an issue was properly preserved for appeal when, despite ambiguity in the request to the trial court, the trial court had ruled on the issue); *cf. Comm. for Better Health Care for All Colo. Citizens v. Meyer*, 830 P.2d 884, 888 (Colo. 1992) ("It is axiomatic that in any appellate proceeding this court may consider only issues that have actually been determined by another court or agency and have been properly presented for our consideration.").

¶37 I am not persuaded otherwise by the majority's suggestion that Ronquillo is free to pursue her relevance arguments on remand. Maj. op. ¶ 29. In so stating, the majority appears to overlook the fact that Ronquillo has already pursued these arguments, and the district court squarely rejected them, albeit with limited analysis. It is unclear to me why the majority believes that the district court would perceive any reason to reconsider arguments that it has already contemplated and rejected.

¶38 Second, on the merits, it is not at all clear to me that the evidence at issue can properly be admitted under CRE 401–403. Specifically, without more, I am not persuaded that the discounted amounts billed by Ronquillo's treatment providers and paid by Injury Finance evince the reasonable value of the services provided. Indeed, in *Wal-Mart Stores, Inc. v. Crossgrove*, 2012 CO 31, ¶ 13 n.4, 276 P.3d 562, 565 n.4, we expressly left open the related question of whether evidence of amounts paid by a collateral source for medical expenses is relevant to the issue of the reasonable value of those expenses. Unlike the majority, I do not believe that we should allow such evidence to be admitted without adequate consideration of this unresolved and significant question of Colorado law.

¶39 Lastly, I am not convinced that the nature of the contractual relationships between and among Ronquillo, her treatment providers, and Injury Finance establish bias, as amicus Colorado Defense Lawyers Association ("CDLA") suggests and as the district court appears to have determined. The CDLA contends that a treatment provider's relationship with a medical finance company like Injury Finance creates a clear financial incentive for the provider to testify favorably for an injured plaintiff and to maximize medical billings with an extended and inflated course of treatment. The CDLA thus asserts that a factfinder must be permitted to explore such biases. Although, to be sure, the issue of bias is ordinarily a relevant consideration at trial, the admissibility of bias evidence,

like the admissibility of other forms of evidence, is subject to CRE 403. *See United States v. Wilson*, 605 F.3d 985, 1006 (D.C. Cir. 2010) (construing Fed. R. Evid. 403); *United States v. Skelton*, 514 F.3d 433, 442 (5th Cir. 2008) (same). Thus, evidence of bias may be excluded if the probative value of such evidence is substantially outweighed by the dangers of unfair prejudice, confusion of the issues, or misleading the jury. CRE 403.

¶40 Here, I am unwilling to presume, at least at this stage of the proceedings, that Ronquillo's treatment providers harbor the biases that the CDLA attributes to them. At a minimum, the issue deserves detailed consideration, based on the specific facts presented, before the court should allow the factfinder to hear evidence regarding the parties' relationships with one another and with Injury Finance.

¶41 In my view, further review of these relevance questions is particularly appropriate here, given the General Assembly's recent amendments to section 38-27.5-103(2), C.R.S. (2021). Those amendments, which became effective on September 7, 2021 and which presumably would apply as of the time of the trial in this case, make clear that the very evidence that the district court has deemed admissible is now inadmissible as a matter of law. *See id.* Although the majority states that this statute is inapplicable here, maj. op. ¶ 32, I do not perceive why that is so. Nor do I think that we can turn a blind eye to this significant (and, I believe,

applicable) recent legislation, which, as the majority states, "changes the legal landscape in cases involving medical finance liens going forward." *Id.*

¶42 For all of these reasons, I agree that Injury Finance does not satisfy the definition of a collateral source, and I would discharge the rule to show cause to that extent. I would make the rule absolute, however, as to the portion of the district court's order admitting the evidence at issue without a complete analysis under the applicable rules of evidence.

¶43 Accordingly, I respectfully concur in part in and dissent in part from the majority's opinion in this case.

¶44 I am authorized to state that JUSTICE SAMOUR and JUSTICE BERKENKOTTER join in this concurrence in part and dissent in part.