

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DONYELL DENNIS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06C-06-262 FSS
)	
STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE CO.,)	
)	
Defendant.)	
)	

Submitted: November 13, 2007
Decided: February 13, 2008

ORDER
Upon Defendant's Motion for Judgment as a Matter of Law – *DENIED*

SILVERMAN, J.

I.
NATURE & STAGE OF THE PROCEEDINGS

At trial, Defendant, State Farm, moved for Judgment as a Matter of Law a the close of Plaintiff's, Dennis's, case. The court reserved consideration/decision. Trial proceeded. This is State Farm's renewed Motion for Judgment as a Matter of Law. As the court's instructed, these post-trial motions were submitted to address two questions: can the jury's verdict stand based on the evidence presented, and if not, what is the next step?

II.
FACTS

In April 27, 2005, Dennis was injured in an automobile accident. Dennis was insured by State Farm at the time of the accident.

YOUR FACTS: Dennis was hurt in a collision on April 23, 2005. The federal Social Security Administration found her disabled, effective April 27, 2005 and, initially, State Farm paid PIP benefits. On March 6, 2006, however, after it had Dennis examined, State Farm stopped paying. Dennis continued receiving treatment, and she sued to recover her medical expenses and lost wages for the 10 1/2 months between when State Farm cutoff her benefits and the two-year benefit period's end.

As the October 17, 2007 trial neared, on September 12, 2007, State Farm filed a motion in limine to keep Dennis from claiming disability after June 1, 2006.

The motion turned on the fact that the last disability slip Dennis received from her treating physician came on May 22, 2006. Thus, according to State Farm, Dennis had no proof of disability after the final doctor's slip expired. The court denied the motion. Basically, State Farm stipulated to records' admission. As discussed below, however, State Farm never conceded that medical records proved Dennis's case by themselves.

Until the day before trial, Dennis assured State Farm and the court that she would call her doctors to testify. In the Pre-Trial Stipulation, for example, Dennis identified two doctors, Drs. Fusco and Bandera, "to be called as witnesses." At the pre-trial conference, Dennis even tried to add a third expert, Dr. Marefat, which prompted the court to caution Dennis not to be cumulative at trial. Despite the runup, Dennis, called no medical experts. Instead of presenting a medical expert, she relied on the initial Social Security disability finding, her testimony that her problems continued throughout the PIP period, her physicians' disability slips and treatment records. Dennis also produced records from her regular health care provider, Christiana Care. Those records, which covered the time after Dennis had stopped receiving disability slips from the doctors treating her back, generally suggested that she was continuing to have problems caused by the collision.

Meanwhile, State Farm presented the testimony of Dr. Archer, a

neurologist. He conceded that Dennis was hurt in the crash. He also reviewed her substantial, pre-existing medical history, which included mild degenerative changes to her spine and other physical and mental conditions. Dr. Archer also explained why the contested medical bills concerned unnecessary treatment.

At the appropriate times, State Farm challenged Dennis's case. That included State Farm's motion for a directed verdict after Dennis rested. At that point, the court reiterated its concern about Dennis's medical evidence. Nevertheless, the court sent the case to the jury. When the jury returned its verdict for Dennis, the court called for post-trial submissions, which were supposed to address two questions: was the medical evidence adequate to support the verdict and, if not, what did that mean procedurally?

Trial was held on October 17, 2007. The jury found in Dennis's favor, awarding her \$15,930 in lost wages and \$3,195 in reasonable and necessary medical bills.

III. STANDARD OF REVIEW

Under Superior Court Rule 50(a), a party may make a Motion for Judgment as a Matter of Law. Specifically, "[i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient basis for a reasonable

jury to find for that party on that issue, the Court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.”¹ The court must view the evidence in the light most favorable to the moving party.² The court must determine if under any reasonable view, the jury could find in favor of the non-moving party.³ A jury’s finding is not disturbed if there is “*any* competent evidence upon which the verdict could reasonably be based.”⁴

IV. ANALYSIS

State Farm argues that Dennis must show that her medical bills and lost wages are reasonable, necessary and related to the April 2005 accident. To do so requires expert testimony, which State Farm claims Dennis failed to provide at trial. The evidence Dennis produced at trial – medical records, billing summary, Dennis’s testimony – does not amount to expert testimony. Specifically, the “office notes,

¹ Super. Ct. R. 50 (a)(1) (2008).

² *Mazda motor Corp. v. Lindahl*, 706 A.2d 526, 530 (Del. 1998).

³ *Id.*

⁴ *Delaware Electric Co-op., Inc. v. Pitts*, 1993 WL 445474 at *1 (Del).

billing statements, and diagnostic reports do not opine in themselves as to whether the bills in question or the period of work disability in dispute were caused by the accident.” Nor, do they show reasonableness. State Farm also argues that Dennis offered no evidence that she was disabled by injury from the 2005 accident. And, Dennis never submitted the requisite information at the benefit cut-off.

In response, Dennis argues that this case is unique, in that the parties “stipulated and agreed to the introduction of certain evidence.” Specifically, the parties agreed to a finding of total disability by the Social Security Administration from the accident’s date.

Dennis also claims that State Farm failed to “honor the terms of the insurance contract when it stopped paying no-fault benefits required by 21 *Del. C.* § 2118 between March 6, 2006 and April 27, 2007.” State Farm paid Dennis’s medical bills and lost wages for 10½ months after the accident, based on medical records and disability statements that the jury accepted. Dennis argues that the Social Security statement and the medical evidence, “. . . which was exactly the same that [State Farm] relied upon in paying the claim initially, was more than enough to establish the reasonable and necessary standard.” The statutory standard is “reasonable and necessary,” which includes “reasonable medical probability.”

In reply State Farm states that it did not stipulate to all records as Dennis

claims. Records from Dennis's doctors, Bandera and Fusco, were produced at trial, not 10 days prior, which would have allowed State Farm to review them. Further, on the day of trial, Dennis's counsel said it would not call any experts at trial. State Farm also maintains that it objected to Dennis's SSA disability letter being admitted at trial, and that this document, like the Dennis's others, was not supported by expert testimony.

State Farm argues that Dennis must prove her injuries were proximately caused by the 2005 accident. State Farm relies on *Rayfield v. Power*,⁵ for its position that a "causal connection between a personal injury and liability of another party for it 'must be proven by the direct testimony of a competent medical expert.'" Dennis's lost wages and medical bills cannot be considered reasonable if they are not shown to be proximately caused by the April 2005 accident through expert testimony at trial. None of Dennis's documents were supported by expert testimony at trial. State farm claims that without expert testimony, the jury ". . . is left to speculate on matters beyond their competency."

Finally, State Farm asserts that the dispute is ". . . whether the specific medical bills and lost wages denied by State Farm were reasonable, necessary and proximately caused by the accident." Here, because Dennis did not present expert

⁵ 840 A.2d 642 (Del. 2003).

testimony at trial, she failed to establish a prima facie case. Therefore, State Farm is entitled to judgment as a matter of law, or alternatively a new trial.

**V.
CONCLUSION**

For the foregoing reasons, Defendant's Motion for Judgment as a Matter of Law is ***GRANTED***.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

Cc: Prothonotary (Civil)
Edward T. Cicone, Esquire
Thomas P. Leff, Esquire