IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHARISMA REDDING and NEPHATERIE REDDING,	:	C.A. No. 02C-03-121WCC
Plaintiffs,	:	
v.	:	
VLADIMIR ORTEGA, JR.,	:	
Defendant.	:	

Date Submitted: September 25, 2002
Date Decided: November 12, 2002

ORDER

Upon Plaintiffs' Motion for
Inquisition for Damages.
Granted in Part; Denied in Part.

Gary S. Nitsche, Esquire of Weik Nitsche & Dougherty, Wilmington, Delaware, attorney for the Plaintiffs.

Thomas S. Bouchelle, Esquire of Bouchelle & Palmer, Newark, Delaware, attorneys for the Defendant.

WITHAM, J.

I. Introduction

Before this Court is a bench trial to determine the damages to be awarded to the Plaintiffs. Default judgment has been entered with the Defendant appearing at the inquisition to contest damages. Upon consideration of the evidence presented at trial and a review of the parties' letter responses concerning the issue of admissibility of medical bills, it appears to this Court that Plaintiffs are entitled to $32,000[1] in damages.

II. Facts

This case arises out of an automobile accident involving Charisma and Nephaterie Redding (Plaintiffs), and Vladimir Ortega (Defendant). The accident occurred when Defendant failed to stop at a stop sign and subsequently struck the Plaintiffs' vehicle. There is evidence that this was a significant impact. As a result of the accident, Charisma Redding suffered a neck injury. Charisma has outstanding medical bills in the amount of $14,493.00. Nephaterie Redding suffered neck, back and knee injuries and has had some problems with seizures. Nephaterie has medical bills totaling $9,195.50. Nephaterie borrowed the car that the Plaintiffs were driving at the time of the accident.[2] Unbeknownst to the Plaintiffs, the car that they were driving was uninsured.

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[1] Amount represents an award of $17,000 to be paid to plaintiff Charisma Redding and $15,000 to be paid to plaintiff Nephaterie Redding.

[2] This Court is assuming that the Plaintiffs in this case had the permission of the owner to use the car in question.

The sole issue to be determined by this Court is the amount of damages owed to the Plaintiffs in this case. The Defendant argues that since the Plaintiffs' medical bills were payable, under 21 Del. C. § 2118 the medical bills should be excluded from evidence. Plaintiffs argue that § 2118 only prohibits the introduction of medical records to be used in evaluation of damages to be awarded if the medical bills are personal injury protection (PIP) eligible. Therefore, the Plaintiffs contend that this provision is not applicable to this case because if there is no insurance there can be no "PIP eligible" medical bills.

III. Analysis

21 Del. C. § 2118 (a) provides:

> "No owner of a motor vehicle required to be registered in this State . . . shall operate or authorize any other person to operate such vehicle unless the owner has insurance on such motor vehicle providing the following minimum insurance coverage: (1) Indemnity from legal liability for bodily injury, death or property damage arising out of ownership, maintenance or use of the vehicle to the limit, exclusive of interest and costs, of at least the limits prescribed by the Financial Responsibility Law of this State."

Section 2118 (a)(2)(c) requires that: "The coverage required by this paragraph shall be applicable to each person occupying such motor vehicle and to any other person injured in an accident involving such motor vehicle, other than an occupant of another motor vehicle." This statute further provides:

> "(h) *Any person eligible for benefits* described in paragraph (2) or (3) of subsection (a) of this section, other than an insurer in an action brought pursuant to subsection (g) of this section, *is precluded from pleading or*

> *introducing into evidence in an action for damages against a tortfeasor* those damages for which compensation is available under paragraph (2) or (3) of subsection (a) of this section *without regard* to any elective reductions in such coverage and *whether or not such benefits are actually recoverable*."

According to the plain language of the statute this case turns on whether the Plaintiffs were "eligible*"* for PIP benefits or whether PIP benefits were prescribed for the Plaintiffs but for the lack of coverage regardless of whether the benefits were actually recovered by Plaintiffs. To support the contention that the medical bills should be excluded from evidence under this statute, the Defendant relies upon *Mullins v. Klase*.[3] In *Mullins* the plaintiff was injured in an automobile accident. Although he had insurance, his no-fault carrier was insolvent and did not provide plaintiff with PIP benefits. The court in *Mullins* used a two step process to determine if plaintiff was precluded under § 2118 (h) from entering into evidence the medical bills: first the court must determine whether or not the plaintiff was within the class of persons who are eligible for PIP benefit under the no-fault insurance law, and second the court must determine whether the expenses that the plaintiff is seeking to introduce are the type of benefits for which no-fault coverage is available.

Turning to the first step, there is divergent case law concerning who is a "person eligible" under § 2118 (h). In 1978 the Superior Court in the case of

[3] 2001 Del. Super. Lexis 184.

Santana v. Korup,[4] determined that an uninsured person is not an "eligible" person as described in § 2118 (h).[5] Therefore, the court held that a person who was uninsured was not precluded from pleading PIP expenses under § 2118 (h). The court stated that "'no-fault' insurance laws have been widely held to require strict construction."[6] Furthermore, the court explained that the Legislature already provided a penalty for not complying with the compulsory insurance laws and to not allow the uninsured to recover their medical expenses in a tort action would be creating a penalty that was unanticipated by the Legislature. More recently the Supreme Court in *Reed v. Hoffecker* determined that the class of "eligible persons" should be defined as "any person within the class of persons to whom the statutory required [no fault insurance] coverage extends."[7] Relying on the *Reed* decision, the Superior Court in *Mullins* held that a plaintiff whose insurance carrier went bankrupt was still an "eligible person" under § 2118 (h) and was prevented from pleading his PIP damages.[8] In *Mullins* the court determined that "to satisfy the preclusion statute, it is enough that Mullins was the owner and operator of a vehicle

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[4] 1978 WL 181864 (Del. Super. 1978).

[5] *Id.* at *1.

[6] *Id.*

[7] *Reed v. Hoffecker*, 616 A.2d 835, 837 (Del. 1992) (holding hat a resident of Virginia who was a passenger of a car that was registered and insured in Virginia was not a "eligible person" under § 2118 (h) and thus the trial court erred in not allowing the plaintiff to plead PIP damages).

[8] *Mullins v. Klase*, 2001 Del. Super. Lexis 184, *4-*5. *Mullins v. Klase*, 2001 Del. Super. Lexis 371 * 2 (motion for reargument which was denied).

that was registered in Delaware when it collided."[9] The court stated that:

> The court understands that Mullins basically did what the law requires. Nevertheless, through no apparent fault on his part, Mullins could not recover the PIP benefits to which he was entitled. Even so, the result here is mandated by the no-fault law's plain language. Mullins' poor choice of a PIP carrier does not justify shifting his PIP coverage to the alleged tortfeasor's carrier.

Furthermore, the court explains that one of the policies behind Delaware's no fault insurance law is to limit claims and litigation against tortfeasors in automobile negligence cases.[10] The court further expounds that:

> Every vehicle that is or should be registered in Delaware must be covered by insurance that provides PIP benefits for its occupants. In the event of a personal injury accident, the injured motorist is expected to look to his own insurance for PIP. By the same token, tortfeasors and their carriers are not expected to provide PIP to others. Here, an injured motorist is attempting to hold the tortfeasor accountable for the injured motorist's PIP benefits. That result would be contrary to the no-fault law's purpose. The no-fault statute's preclusion, as presented above, does not care whether the PIP benefits are recoverable.

Although the *Santana* court indicates that if a person is uninsured then they would not be an "eligible person" for purposes of §2118 (h), this conclusion is contrary to the Supreme Court's ruling in *Reed*. According to the Supreme Court in *Reed* and subsequent Superior Court cases, the relevant standard for determining

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[9] *Id.* at *4.

[10] *Id.* at *5.

if a plaintiff is an "eligible person" is whether the plaintiff is in the class legally obligated to obtain PIP coverage, not whether the plaintiff has in fact obtained insurance. According to § 2118 (a) this would include anyone who owns or operates a car that is or should be registered in Delaware. In the case at bar, Plaintiffs were driving a car they had borrowed presumably with the permission of the owner of the car. The car was registered, or should have been registered in Delaware, and as such the owner should have had the statutorily required no-fault insurance. Under § 2118 (a), without such insurance the owner of the car is prohibited from operating or authorizing any other person to operate such vehicle. Therefore, the owner of the vehicle should never have allowed these Plaintiffs to drive this car. Nevertheless, as explained in *Mullins,* the policy behind this statute is to limit claims and liability of tortfeasors. Thus, to allow a plaintiff to hold the tortfeasor accountable for the injured motorist's PIP benefits would lead to a result that would be contrary to the no-fault law's purpose. This Court recognizes that in this case the Plaintiffs' only fault was picking the wrong person from which to borrow a car. Yet, like the *Mullins* case,[11] this is not enough to circumvent the policy behind the statute.

Turning now to step two, there is no controversy in this case that the medical expenses offered by the Plaintiffs are of the type normally covered under no-fault

[11] As noted above in *Mullins* the court stated that it understood that Mullins basically did what the law requires; nevertheless, "Mullins' poor choice of a PIP carrier does not justify shifting his PIP coverage to the alleged tortfeasor's carrier."

insurance. Thus, Plaintiffs' medical bills fall within this provision. The Plaintiffs in this case are eligible under § 2118 (h) and the medical expenses are of the type typically covered by no-fault insurance. Consequently, under the plain statutory language this Court has no choice but to preclude the Plaintiffs from pleading or introducing their medical bills into evidence.

IV. Conclusion

In conclusion, based on a review of the evidence presented, excluding the Plaintiffs' medical expenses, this Court will order Defendant to pay damages totaling $32,000 representing $17,000 to be paid to plaintiff Charisma Redding and $15,000 to be paid to plaintiff Nephaterie Redding.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution