NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ELAINE DIAL and JOHN DIAL, Appellants/Cross-Appellees, v. CALUSA PALMS MASTER ASSOCIATION, INC., Appellee/Cross-Appellant.	)	Case No. 2D18-4339

Opinion filed December 11, 2020.

Appeal pursuant to Fla. R. App. P. 9.030 from the Circuit Court for Lee County; Michael T. McHugh, Judge.

Alexander Brockmeyer of Boyle, Leonard & Anderson, P.A., Fort Myers for Appellants/Cross-Appellees.

Michael Noone, Scot Goldberg, Elizete Velado and Sheba Abraham of Goldberg Noone, LLC, Fort Myers for Appellants/Cross-Appellees.

Michael R. D'Lugo of Wicker, Smith, O'Hara, McCoy & Ford, P.A., Orlando for Appellee/Cross-Appellant.

LUCAS, Judge.

This is a slip and fall case in which the plaintiffs below, Elaine and John Dial, appeal the entry of a judgment in Ms. Dial's favor following a jury verdict. Of the $109,641.69 verdict, Ms. Dial was awarded $34,641.69 in past medical expenses. The

Dials raise three issues, and the defendant below, Calusa Palms Master Association, Inc. (Calusa Palms), has filed a cross-appeal. We find no merit in the Dials' third issue or Calusa Palms' cross-appeal. With respect to the Dials' first two arguments—both of which revolve around the discrete issue of whether the circuit court erroneously limited Ms. Dials' evidence of her past medical expenses to the Medicare bills that were indisputably tendered and paid—we affirm based upon our decision in Cooperative Leasing, Inc. v. Johnson, 872 So. 2d 956, 960 (Fla. 2d DCA 2004), wherein we held

> that the appropriate measure of compensatory damages for past medical expenses when a plaintiff has received Medicare benefits does not include the difference between the amount that the Medicare providers agreed to accept and the total amount of the plaintiff's medical bills. The trial court should have granted the appellants' motion in limine and prohibited Johnson from introducing the full amount of her medical bills into evidence.

While we recognize that Cooperative Leasing cited to the Florida Supreme Court's decision in Florida Physician's Insurance Reciprocal v. Stanley, 452 So. 2d 514 (Fla. 1984), a decision that was subsequently receded from in Joerg v. State Farm Mutual Automobile Insurance Co., 176 So. 3d 1247 (Fla. 2015), we do not believe the Joerg decision "implicitly abrogated" our evidentiary ruling in Cooperative Leasing, as Ms. Dial suggests. First of all, whatever its analytical underpinnings, the Joerg court very clearly set the scope of its holding to evidence concerning *future* Medicare benefits, which is not in dispute here. See, e.g., Joerg, 176 So. 3d at 1253 ("Whether the exception to the collateral source rule created in Stanley applies to future benefits provided by social legislation such as Medicare is a purely legal question. . . . We conclude that future Medicare benefits are both uncertain and a liability under Stanley, due to the right of reimbursement that Medicare retains."); id. at 1254 (summarizing legislative Medicare liability and observing that "[w]ith such enforcement tools, future

Medicare benefits constitute a serious liability for all beneficiaries" (emphasis omitted)); id. at 1255 ("Moreover, it is absolutely speculative to attempt to calculate damage awards based on benefits that a plaintiff has not yet received and may never receive, should either the plaintiff's eligibility or the benefits themselves become insufficient or cease to continue."); id. at 1257 ("Further, the uncertainty of the future for any social legislation benefits is far too great to permit damage reductions. . . . We conclude that the trial court properly excluded evidence of Luke Joerg's eligibility for future benefits from Medicare, Medicaid, and other social legislation as collateral sources.").

Second, the Joerg opinion includes a citation to Cooperative Leasing for the proposition that there is no risk of a "windfall" to plaintiffs by precluding evidence of future Medicare benefits. Id. at 1254-55. If our evidentiary holding in Cooperative Leasing was so antithetical to Joerg's holding that the latter implicitly reversed the former, we doubt the Florida Supreme Court would have favorably cited our opinion without some kind of caveat or explanation.

Finally, we are not convinced that the foundational concern we raised in Cooperative Leasing—that plaintiffs ought not to receive a windfall to recover the purported value of *past* medical "expenses" that were never paid—was squarely addressed in Joerg. True, as Ms. Dial points out, in the final footnote of the Joerg opinion, the court did state:

> Like Peterson, the Illinois Supreme Court in Wills also considered the admissibility of past Medicare benefits, not the future benefits at issue here. Wills, 323 Ill.Dec. 26, 892 N.E.2d at 1020. Given our agreement with the policy pronouncement in Wills, we do not consider this factual distinction relevant.

Joerg, 176 So. 3d at 1256 n.7. But just because a court observes why a factual distinction in a holding it relies upon is "not relevant" to its analysis, it does not mean

that the court intends its holding to encompass that very distinction. All the more so where the court explicitly and repeatedly confined the extent of its holding in the way the Joerg court did.

However, the evidentiary issue Ms. Dial raises is one that frequently arises in negligence cases. Moreover, we recognize the tension between competing policies this issue implicates—there is a balance between limiting evidence of collateral sources to avoid jury confusion, while ensuring litigants can present relevant evidence to aid the jury in rendering a "reasonable value" for medical expenses. Cf. Fla. Std. Jury Instr. (Civ.) 501.2(b). Therefore, pursuant to Florida Rule of Appellate Procedure 9.125, we certify the following as a question of great public importance:

> DOES THE HOLDING IN JOERG V. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., 176 SO. 3D 1247 (FLA. 2015), PROHIBITING THE INTRODUCTION OF EVIDENCE OF MEDICARE BENEFITS IN A PERSONAL INJURY CASE FOR PURPOSES OF A JURY'S CONSIDERATION OF FUTURE MEDICAL EXPENSES ALSO APPLY TO PAST MEDICAL EXPENSES?

We have answered the certified question in the negative and affirm the judgment below accordingly.

Affirmed.

SILBERMAN, J., Concurs.
ROTHSTEIN-YOUAKIM, J., Concurs specially.

ROTHSTEIN-YOUAKIM, Judge, Specially concurring.

I concur in the result based on our precedent. As the majority points out, Joerg repeatedly cited Cooperative Leasing without reservation and addressed future Medicare benefits rather than past. Nonetheless, I believe that the rationale in Joerg compels the conclusion that our evidentiary holding in Cooperative Leasing was incorrect. Although arising in the context of future benefits, Joerg did not *create* any exception for future benefits; rather, it *negated* the exception for future benefits, created by Stanley, to the rule "that the admission of evidence of social legislation benefits such as those received from Medicare, Medicaid, or Social Security, is considered highly prejudicial and constitutes reversible error." Joerg, 176 So. 3d at 1250. In doing so, the court emphasized that apart from Stanley and "[u]nlike the common law damages aspect of the collateral source rule, the evidentiary collateral source rule remains largely intact." Joerg, 176 So. 3d at 1250 (citing Gormley v. GTE Prods. Corp., 587 So. 2d 455, 459 (Fla. 1991)). In my view, our evidentiary holding in Cooperative Leasing was inconsistent with that rule.

Accordingly, were we writing on a clean slate, I would vote to reverse the decision below. As it stands, however, I concur in the decision to affirm, and I echo the need for guidance on the question certified.