IN THE COURT OF APPEALS OF IOWA

No. 7-874 / 07-0868
Filed December 12, 2007

THE CBE GROUP, INC.,
Plaintiff-Appellee,

vs.

STEVE C. BUBECK,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

Steve Bubeck appeals from judgment entered against him in an action brought by The C.B.E. Group, Inc., for debts incurred involving the provision of medical treatment. **AFFIRMED.**

Steven Drahozal of Iowa Legal Aid, Dubuque, for appellant.

Kevin Ahrenholz of Beecher Law Firm, Waterloo, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

BAKER, J.

Steve Bubeck appeals from a judgment entered against him in an action brought by The C.B.E. Group, Inc., for debts incurred involving the provision of medical treatment. We affirm.

I. Background and Facts

On May 3, 2005, Steve Bubeck admitted himself to the emergency room at Mercy Medical Center in Dubuque. He was eventually admitted to the hospital, and stayed until his discharge on May 9, 2005. Bubeck was billed $398 for his emergency room visit and $8629.25 for his hospital stay, which he has not paid. Mercy and Dubuque Emergency Physicians assigned the debt to C.B.E. Group, Inc. On June 2, 2006, C.B.E. filed a petition demanding judgment against Bubeck for the medical bills.

A bench trial was held on April 12, 2007. C.B.E.'s key witness was Kim Klavitter, the director of patient financial services at Mercy, who testified as to the amounts and the reasonableness of the charges. In response to Bubeck's interrogatories, Klavitter was described as Mercy's director of patient financial services and was listed as a person expected to be called as a witness at the trial to testify as to facts or opinions relative to the proceeding. He was not disclosed in discovery as an expert pursuant to Iowa Rule of Civil Procedure 1.508. The district court entered judgment against Bubeck in favor of C.B.E. for $9027.25, with interest and court costs.

II. Merits

Bubeck appeals. He does not deny liability for the bills nor does he contest the necessity of the services, but contends he should only be liable for

reasonable charges. Specifically, he argues C.B.E. did not meet its burden of proof because it failed to offer evidence of the reasonableness of the charges through a qualified expert witness. He also argues that, because Klavitter was not disclosed in discovery as an expert witness, his testimony should not have been admitted.

Whether C.B.E. met its burden of proving the reasonableness of the charges through a qualified expert witness is a legal question. Our review, therefore, is for correction of errors at law. *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 155 (Iowa 2004). We apply an abuse of discretion standard to review a ruling by the district court on the admissibility of expert witness testimony, giving great deference to the decision of the court. *U.S. Borax & Chem. Corp. v. Archer-Daniels-Midland Co.*, 506 N.W.2d 456, 461 (Iowa Ct. App. 1993); *Oldham v. Shenandoah Cmty. Sch. Dist.*, 461 N.W.2d 207, 209 (Iowa Ct. App. 1990).

A. Burden of Proof

Bubeck contends C.B.E. failed to meet its burden of proof because it did not offer evidence of the reasonableness of the medical charges through a qualified expert witness. To prove an account for medical services, the burden is on the plaintiff to prove that the services provided were medically necessary and the charges were reasonable. *See St. Luke's Med. Ctr. v. Rosengartner*, 231 N.W.2d 601, 602 (Iowa 1975) (noting the parties' stipulation as to the reasonableness of medical expenses); *McIntire v. Muller*, 522 N.W.2d 329, 331 (Iowa Ct. App. 1994) (noting proponent's burden of proving prices charged are fair and reasonable). "The amount charged, standing alone, is not evidence of

the reasonable and fair value of the services rendered." *Pexa*, 686 N.W.2d at 156. Such evidence, in the absence of proof of the reasonableness of the amount charged, will not support recovery of medical expenses. *Id.* Expert testimony is required. *Id.*

Bubeck stipulated that reasonableness was the only issue in this case. Necessity, therefore, is not an issue. While Klavitter may not have been qualified to testify regarding necessity, the issue presented is whether he was qualified to testify as to reasonableness.

Klavitter has been the director of patient financial services for seventeen years. He explained his familiarity with the billing and how the charges were made. He further testified that the charges were fair and reasonable and that Mercy had never been penalized or even told by reviewers or overseers that its charges were excessive. He also testified that the charges were consistent with other charges made by hospitals within Mercy's system. In *Mercy Hosp. v. Hansen, Lind & Meyer, P.C.*, 456 N.W.2d 666, 671 (Iowa 1990), a hospital administrator who had worked in that capacity for many years and had experience in hospital management was properly allowed to give expert testimony about business aspects of hospital administration. In a similar Maryland case, a billing manager was found "competent to establish that a particular bill is fair and reasonable by comparing what other hospitals charge for a particular procedure." *Desua v. Yokim*, 768 A.2d 56, 59 (Md. Ct. Spec. App. 2001). We believe Klavitter was qualified to testify regarding the reasonableness of the charges.

Bubeck, on the other hand, provided no evidence that even a single charge was unreasonable. He cites to studies and reports that indicate problems with hospital billing practices. None of this, however, is in the record. We find there was sufficient evidence for the trial court to find that the charges were fair and reasonable.

B. Admission of Expert Testimony

Iowa Rule of Civil Procedure 1.508(1) provides that "facts known, mental impressions, and opinions held by an expert whom the other party expects to call as a witness at trial, . . . acquired or developed in anticipation of litigation or for trial may be obtained" through interrogatories or by other means. The rule does not, however, "preclude a witness from testifying as to knowledge of the facts obtained by the witness prior to being retained as an expert or mental impressions or opinions formed by the witness which are based on such knowledge." Iowa R. Civ. P. 1.508(1). Bubeck contends the district court abused its discretion in allowing Klavitter to testify because he was not disclosed by C.B.E. as an expert witness during discovery.[1]

While C.B.E. concedes that, pursuant to Rule 1.508(1), an expert witness retained in anticipation of litigation must be disclosed in pretrial discovery, it argues that Klavitter's testimony was not prepared in anticipation of litigation and he is, therefore, not an expert under the rule and need not be disclosed as such. At first blush, this argument seems inconsistent with C.B.E.'s contention that it

[1] Although C.B.E. contends this issue was not preserved for appeal, the record indicates the issue was preserved through timely and specific objection. *See Roberts v. Newville*, 554 N.W.2d 298, 300 (Iowa Ct. App. 1996) ("Error may not be predicated upon a ruling admitting evidence unless a timely and specific objection is made at trial.").

met its burden of proof regarding the reasonableness of the charges by providing expert testimony from Klavitter. C.B.E. explains this seeming inconsistency by distinguishing Rule 1.508 experts, whose opinions and testimony are formulated in anticipation of litigation, from fact or occurrence experts.

Our supreme court has held that Rule 1.508 disclosure procedures do not apply to cases where an expert's knowledge is not acquired or developed in anticipation of litigation or for trial. For example, a treating physician is generally not considered an expert for such purposes. *Day v. McIlrath*, 469 N.W.2d 676, 677 (Iowa 1991). Medical technologists, employed by the hospital who were "called to testify to the procedures employed by the hospital generally in the testing of blood, and to the specific testing," are not subject the rule. *Duncan v. City of Cedar Rapids*, 560 N.W.2d 320, 323 (Iowa 1997). Additionally, the testimony of a city engineer who was not designated as an expert has been allowed. *Graber v. City of Ankeny*, 616 N.W.2d 633, 647 (Iowa 2000). We find Klavitter was "testifying as to facts obtained prior to the litigation and mental impressions and opinions formed upon the basis of such knowledge." *Id.* His testimony was properly allowed.

III. Conclusion

C.B.E. met its burden of proof by providing evidence of the reasonableness of the medical charges through a qualified expert witness. There was, therefore, sufficient evidence for the trial court to find that the charges were fair and reasonable. Further, Klavitter's testimony was properly allowed.

AFFIRMED.