STATE OF MICHIGAN

COURT OF APPEALS

MAKENZIE GREER, Minor, KENNETH GREER, Individually and as Conservator, and ELIZABETH GREER,

Plaintiff-Appellees,

v

ADVANTAGE HEALTH and ANITA R. AVERY, M.D.,

Defendant-Appellants,

and

TRINITY HEALTH MICHIGAN d/b/a ST. MARY'S HOSPITAL and KRISTINA MIXER, M.D.

Defendants.

FOR PUBLICATION
May 13, 2014

No. 312655
Kent Circuit Court
LC No. 10-009033-NH

Before: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J., *(concurring)*.

I agree that the trial court erroneously set off only one-third of the settlement amount and correctly excluded the entirety of plaintiffs' insurance discounts under the collateral source statute. As to the latter, I agree with the majority's conclusion that a plain reading of MCL 600.6303 compels that result. As to the former, I disagree with the majority's conclusion that the trial court's error was a violation of the important and long-standing principle that plaintiffs should be compensated fully but only once for a given injury. Nonetheless, I agree with the result reached by the majority.

It appears to me that, in fact, the trial court made a valiant but necessarily doomed attempt to *fulfill* the principle of compensating fully but only once for an injury. Unfortunately, I concur that the trial court was not permitted to do so, for the simple reason that in making the attempt, the trial court essentially rewrote the parties' settlement agreement. Because the agreement did not itself allocate the settlement among the injuries, it would be impossible for any court to do so without drafting into the parties' contract something that the parties themselves did not include. Absent extreme and unusual circumstances, courts may not do so;

the parties are of necessity bound to their contract. Had the contract specified a percentage or dollar value allocated to Makenzie's injuries, it would have been proper for the court to set off only that amount. Because the contract did not do so, the courts cannot rescue parties from their own voluntary agreements. Consequently, I conclude that the court had no choice but to set off the entire amount, and it erred by failing to do so.

I concur in the majority's result.

/s/ Amy Ronayne Krause