STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0167
A09-0500

Laurene Pappas,
Appellant,

vs.

Daniel Cummings,
Respondent.

Filed September 29, 2009
Affirmed
Klaphake, Judge

St. Louis County District Court
File No. 69DU-CV-07-2885

Robin C. Merritt, Scott A. Witty, Hanft Fride, P.A., 1000 U S Bank Place, 130 West Superior Street, Duluth, MN 55802 (for appellant)

Brian R. McCarthy, McCarthy & Barnes Law, PLC, 11 East Superior Street, Suite 546, Duluth, MN 55802-2027; and

Kay N. Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., 2000 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Minge, Presiding Judge; Klaphake, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

In this personal injury action, appellant Laurene Pappas challenges the judgment, which resulted in no recovery of medical costs because the jury's award of damages was

offset by the amount she received from collateral sources pursuant to Minn. Stat. § 548.251 (2008). Appellant asserts that the court erred by refusing to reduce the collateral source offset by the amount of the costs and attorney fees she incurred to obtain judgment.

Because under the statute a collateral source is not reduced by the costs and attorney fees incurred in obtaining it, we affirm.

D E C I S I O N

"Statutory construction is a question of law, which this court reviews de novo." *In re Kleven*, 736 N.W.2d 707, 709 (Minn. App. 2007). The issue before us is whether the district court properly construed Minn. Stat. § 548.251 to exclude an offset against collateral sources of the costs and attorney fees incurred by appellant in securing no-fault benefits from her insurer.

Minn. Stat. § 548.251, subd. 1(2), defines "collateral sources" to include, among other things, "health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage." Once liability has been established by a trier of fact, if the damages include an award of compensation to the plaintiff for pre-verdict losses that have been paid or are "otherwise available" to the plaintiff, the other party may move within 10 days of the entry of the verdict to have the district court determine the amount received from collateral sources. *Id.*, subd. 2(1). If the court finds that the injured party has received payment from collateral sources or that such sources are available to the injured party, it must reduce the jury award by the collateral source amount. *Id.*, subd. 3(a). If the court finds that "amounts . . . have been

paid, contributed, or forfeited by, or on behalf of, the plaintiff . . . for the two-year period immediately before the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of losses," the court must offset any reduction in the award due to the existence of collateral sources by the amounts so paid or forfeited. *Id.*, subds. 2(2), 3(a).

Here, appellant received $11,451.89 in no-fault medical benefits from her no-fault insurer. At trial, the jury determined in its special verdict that appellant's reasonable medical expenses were $10,000. Respondent Daniel Cummings asked the court to offset the jury award by the amount appellant received from her no-fault insurer. The district court offset the medical award, reducing it to zero. Appellant argues that the court erred by refusing to deduct her costs and attorney fees incurred in arbitration with her no-fault insurer from the collateral source amount, citing Minn. Stat. § 548.251, subds. 2(2), 3(a), which permits the court to deduct amounts paid by the plaintiff in the two years before the "accrual of the action." *Id.*, subd. 2(2).

"When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2008). The language of the statute here is clear: if the plaintiff has paid for or purchased, by whatever means, a benefit that becomes a collateral source, the court must deduct the value of the plaintiff's payments from the collateral source before using it to reduce a compensatory award; the court can only reduce the collateral source by the value of payments made within two years before the action accrues. Thus appellant's no-fault insurance premiums paid during the two

years before the accident would reduce the amount counted as a collateral source against the jury award. But the costs and attorney fees that appellant paid after the accident in order to secure her benefits from the no-fault insurer are not deductible under Minn. Stat. § 548.251, subd. 2(2), as an offset to the collateral source.[1]

Appellant raises a related argument, relying on Minn. Stat. § 65B.51, subd. 1 (2008). This section directs the court in a motor vehicle negligence action to reduce any recovery by the "value of basic or optional economic loss benefits paid or payable, or which would be payable but for any applicable deductible." *Id.* "Basic economic loss benefits" include medical expenses, income loss, replacement services loss, funeral expenses, survivor economic loss, and survivor replacement services that are incurred because of an injury arising out of the maintenance or use of a motor vehicle. Minn. Stat. § 65B.44, subd. 1 (2008). Appellant asserts that because Minn. Stat. § 65B.51, subd. 1, uses the word "value," it implies that it is only the net recovery of basic economic loss benefits that is deductible as a collateral source. Appellant argues that "value" means that the costs of obtaining disputed economic loss benefits must be deducted from the gross recovery, because the "value" of those benefits is what the injured party actually receives, or the net recovery.

The statutory language does not support this proposition. In the context of the statute, the word "value" is used because the court can deduct the amount of basic economic benefits "paid or payable" or "which would be payable but for any applicable

[1] The record does not establish that appellant has paid or even been charged for attorney fees; rather, appellant offers her attorney's statement of what the attorney fees would be had she been billed.

deductible." *Id.* The statute provides no framework for deducting costs or fees, except for the deductible paid by the injured party. *See* Minn. Stat. § 645.16.

Affirmed.