FILED
Apr 14 2022, 8:03 am
CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

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IN THE COURT OF APPEALS OF INDIANA

Parkview Hospital, Inc.,
Appellant-Cross-Appellee,

v.

American Family Insurance Company,
Appellee-Cross-Appellant.

April 14, 2022

Court of Appeals Case No. 21A-PL-1369

Appeal from the Allen Superior Court

The Honorable Jennifer L. DeGroote, Judge

Trial Court Cause No. 02D03-1807-PL-254

Najam, Judge.

Statement of the Case

[1] This is the second appeal in this case. In an interlocutory appeal following the trial court's denial of cross-motions for summary judgment, we held: (1) that an Ohio trial court lacked subject matter jurisdiction over an Indiana hospital lien perfected by Parkview Hospital, Inc. ("Parkview") and, therefore, that the Ohio

trial court's order that purported to extinguish the lien was void *ab initio* and not entitled to full faith and credit; and (2) that American Family Insurance Co. ("American Family") violated Indiana's Hospital Lien Act, Ind. Code §§ 32-33-4-1 to -8 (2015) ("the Act"), when, pursuant to the Ohio trial court's order, American Family paid its underinsured motorist policy limits of $50,000 to the Ohio plaintiffs without having obtained a release of Parkview's lien. *Parkview Hosp. Inc. v. Am. Fam. Ins. Co.*, 151 N.E.3d 1218 (Ind. Ct. App. 2020), *trans. denied* ("*Parkview I*"). We thus affirmed "the trial court's denial of American Family's motion for summary judgment" but reversed "the trial court's denial of Parkview's motion for summary judgment," and we remanded "for proceedings consistent with this opinion." *Id.* at 1229.

[2] On remand, the trial court ordered American Family to pay Parkview $95,541.88, the full amount of Parkview's hospital lien, as well as Parkview's reasonable attorney's fees. American Family then filed a motion to correct error and asserted that it was not liable for the full amount of Parkview's lien but that its liability was capped at $50,000, the underinsured motorist policy limits with its insureds, the Ohio plaintiffs. American Family also asserted that Parkview was not entitled to recover attorney's fees under the Act. After a hearing, the trial court denied American Family's motion to limit its liability to the $50,000 policy but granted American Family's motion to deny Parkview's request for attorney's fees.

[3] Parkview now appeals the trial court's order on American Family's motion to correct error. Parkview raises three issues for our review, which we restate as follows:

1. Whether our holdings in *Parkview I* required the trial court to enter judgment for Parkview on its original request for damages and attorney's fees.

2. Whether American Family forfeited its challenges to Parkview's damages and fees by raising those challenges in a motion to correct error under Indiana Trial Rule 59 after remand in *Parkview I*.

3. Whether Parkview is entitled to attorney's fees under the Act.

American Family cross-appeals and raises the following issue for review:

4. Whether the trial court erred when it ordered American Family to pay Parkview damages of $95,541.88, the entire amount of Parkview's hospital lien, rather than to pay the $50,000 policy limits on its underinsured motorist policy with the Ohio plaintiffs.

[4] We conclude that, in *Parkview I*, we did not address the amount of damages or whether Parkview would be entitled to attorney's fees but only whether the Ohio court order was entitled to full faith and credit and whether American Family was justified by that order when it failed to honor Parkview's hospital lien. We also conclude that American Family did not forfeit its right to contest the trial court's award of damages and attorney's fees under Trial Rule 59 and

that Parkview is not entitled to attorney's fees under the Act. Thus, Parkview has not shown reversible error. And, on American Family's cross-appeal, we conclude that American Family has no obligation under the Act to pay more than its policy limits toward Parkview's lien. Therefore, we affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History[1]

[5] We set out the underlying facts and procedural history in *Parkview I* as follows:

> On November 29, 2015, [Carl] Willis suffered injuries in an automobile accident, and American Family [provided underinsured motorist coverage to Willis.[2]] The accident occurred in Ohio, and Willis was transferred to Parkview [in Indiana] for treatment. Parkview agreed to the transfer, and Willis incurred medical bills at Parkview in the amount of $98,040.88. With credits and adjustments, the remaining balance due on Willis' account is $95,541.88.
>
> On January 13, 2016, Parkview filed and recorded a hospital lien ("Hospital Lien") with the Allen County Recorder pursuant to Indiana Code Section 32-33-4-4. Parkview served a copy of the Hospital Lien on the relevant parties, including Willis and American Family. When Parkview became aware that Attorney Samuel Bolotin was representing Willis, Parkview provided a copy of the Hospital Lien to Bolotin by certified mail.

[1] We held oral argument at the Indiana University Maurer School of Law in Bloomington. We commend counsel for the quality of their advocacy, and we thank the faculty and students of the Maurer School of Law for their hospitality.

[2] Our opinion in *Parkview I* states that American Family insured the Ohio defendants. This misstatement was derived from Parkview's complaint against American Family, which says the same. Appellant's App. Vol. 2 at 34. However, the Ohio complaint, and the ensuing Ohio motion to enforce the settlement agreement, make clear that American Family provided underinsured motorist coverage for the Ohio plaintiffs and that State Farm Insurance Co. insured the Ohio defendants. *Id.* at 62, 78.

In June 2017, Willis filed a personal injury action in Ohio against the parties responsible for the accident, American Family, and several John Doe defendants. A motion was filed to join Parkview as a party plaintiff in the Ohio action, which the Ohio court granted. The Ohio court ordered Parkview to enter an appearance in Willis' Ohio action within twenty-eight days. The Ohio court's order provided: "[I]f Parkview Hospital, Inc. fails to do so, any and all of the rights of Parkview Hospital, Inc. that could have arisen from this cause of action being brought by Plaintiffs are hereby waived and forever barred." Appellant's App. Vol. II pp. 72-73. Parkview did not enter an appearance in the Ohio action. Parkview's local counsel and Bolotin's associate, however, were in contact regarding the claim. Parkview's counsel informed Bolotin's associate that the Ohio court did not have subject matter jurisdiction [over Parkview's claim on the lien], and they discussed settlement of the claim.

Willis ultimately settled his [Ohio] claim without informing Parkview, and Parkview's lien was not satisfied from the settlement. American Family expressed concern to Bolotin that the Ohio court did not have jurisdiction to extinguish the Hospital Lien. American Family suggested that "the only way to deal with this is to file what amounts to in the [Indiana] equivalent of a dec [sic] action, where Parkview has to participate in the litigation." *Id.* at 86.

In January 2018, Willis filed a motion to enforce the settlement agreement with the Ohio court.[3] In April 2018, the Ohio court ordered American Family to "issue the settlement draft in the amount of $50,000.00 made payable to Plaintiffs Carl and Rhonda Willis and the Bolotin Law Offices, only." *Id.* at 193.

[3] In its motion to enforce the settlement agreement, the Ohio plaintiffs represented that they had reached an agreement for a $50,000 payment from State Farm, the Ohio defendants' insurance company, and an additional $50,000 payment from American Family's underinsured motorist policy. Appellant's App. Vol. 2 at 78.

The Ohio court ordered Willis to "execute a hold harmless agreement with respect to any remaining valid liens . . . ." *Id.* The motion and order were not served on Parkview. The Ohio action was then dismissed with prejudice.

On July 16, 2018, Parkview filed a complaint in Allen County against American Family and Willis. On May 28, 2019, Parkview obtained a default judgment against Willis. In November 2018, American Family filed a motion for summary judgment, and Parkview filed a response. American Family argued that Parkview was attempting to "circumvent an order" from the Ohio court and that Parkview's Hospital Lien claim was barred by *res judicata*. *Id.* at 48. The trial court denied American Family's motion for summary judgment. Specifically, the trial court found that, because the Ohio court "lacked the subject matter jurisdiction to address the issue regarding Parkview's perfected [H]ospital [L]ien, the order from that court regarding the lien is void [and] will not be given full faith and credit in this Court." *Id.* at 22.

In April 2019, Parkview filed a motion for summary judgment, and American Family filed a response. Parkview argued that it had satisfied the requirements of the Hospital Lien Act and that American Family had violated the Act. The trial court also denied Parkview's motion for summary judgment. The trial court found:

> This Court has previously ruled the Defiance County[, Ohio,] Court lacked subject matter jurisdiction over Parkview's lien under the Hospital Lien Act. Ind. Code § 32-33-4-1, *et seq*. However, it is not disputed that the Defiance County Court had subject matter jurisdiction over Willis's claim for personal injury, to which American Family was a defendant. Therefore, the Defiance County Court had jurisdiction over American Family for purposes of the litigation.

The designated evidence clearly shows American Family was ordered by the Defiance County Court to "issue the settlement draft in the amount of $50,000.00 made payable to Plaintiffs Carl and Rhonda Willis and the Bolotin Law Offices, only." This was ordered after Bolotin Law Offices filed on behalf of Willis, a Motion to Enforce Settlement Agreement. American Family, at that time, was arguably under an obligation to tender payment as ordered by the court, or risk potential sanctions.

Parkview was on notice of the proceedings in Defiance County but did not take any action to avail itself of the Defiance County Court's jurisdiction. Parkview was within its rights to do so considering the issues with subject matter jurisdiction. However, this approach kept Parkview essentially in the dark on what was occurring in the Defiance County Court. American Family found itself in a predicament: being aware of an Indiana lien and being ordered to comply with a direction from the Defiance County Court to tender settlement funds. This creates a genuine issue of material fact as to whether the failure to honor the lien in Indiana was justified through American Family's compliance with the Defiance County Court Order to tender the settlement draft.

This Court acknowledges the architect of the settlement in Ohio was Willis's attorney, Bolotin. His office was working with both Parkview's Indiana counsel and American Family regarding potential settlement of the lien and the personal injury claim.

Based on the evidence that has been designated to the Court, Bolotin manipulated Parkview, American Family[,] and the Defiance County Court to get the

> most money in his client's hands under cover of Court Order and with total disregard to the lien. Willis's liability as to Parkview has already been addressed through a default judgment in this case.
>
> Here we have circumstances where Parkview complied with the Hospital Lien Act when it filed and recorded the Hospital Lien in the office of the Recorder of Allen County, Indiana[,] on January 13, 2016, and American Family complied with the April 2, 2018[,] Order from the Defiance County Court to the detriment of Parkview. Whether American Family was warranted in doing so is an issue at the heart of this case to determine whether American Family is liable to Parkview for failure to honor the lien. There is a good faith dispute on this question and, therefore, a genuine issue of material fact for the jury to address in this case.

Id. at 30-32.

> Both American Family and Parkview filed motions for certification of the summary judgment orders for interlocutory appeal, which the trial court granted. This Court granted the parties' motions for acceptance of interlocutory appeal and consolidated the appeals.

151 N.E.3d at 1221-23 (footnote omitted).

[6] In *Parkview I*, we held that the Ohio court lacked subject matter jurisdiction and, accordingly, that the Ohio court order was "'void *ab initio* and [had] no effect whatsoever.'" *Id.* at 1227 (quoting *In re Adoption of L.T.*, 9 N.E.3d 172, 175 (Ind. Ct. App. 2014)) (alteration added). On the issue of Parkview's alleged damages under the Act, we noted that American Family had argued that Parkview was

"not entitled to damages . . . after the settlement of Willis' claim . . . because American Family was required to follow the orders of the Ohio court." *Id.* at 1228. But, because the Ohio court's order was void and a nullity, we agreed with Parkview that "any allegation that the [Ohio court's] Order allowed [American Family] to ignore Parkview Hospital's lien is improper." *Id.* at 1229 (quotation marks omitted). Accordingly, we concluded that the Ohio court's order did not justify American Family's failure to comply with the Act, that American Family violated the Act when it paid the settlement proceeds to the Ohio plaintiffs and their attorney without satisfying Parkview's lien, and that given the Ohio court's lack of subject matter jurisdiction, there were no genuine issues of material fact. *Id.* On the question whether American Family had violated the Act, we held that Parkview was "entitled to judgment as a matter of law," and we remanded for proceedings "consistent with this opinion." *Id.*

[7] On remand, the trial court entered judgment for Parkview in the full amount of the lien, or $95,541.88, "plus pre-judgment interest of 8% per annum from 4/2/2018, . . . plus the costs of this action." Appellant's App. Vol. 3 at 195-96. The court then set a hearing "to determine the reasonable amount of [Parkview's] attorney fees, which were caused by [American Family's] violation of the Indiana Hospital Lien Act." *Id.* at 196. However, prior to that hearing, American Family filed a motion to correct error and alleged that its liability on Parkview's lien is capped at $50,000, the policy limits of its underinsured motorist coverage with the Ohio plaintiffs. American Family also argued that Parkview is not entitled to attorney's fees under the Act. In a detailed written

order, the trial court denied American Family's motion to cap its liability at the policy limits but concluded that the Act does not provide for the recovery of attorney's fees and that Parkview was not entitled to recover attorney's fees as part of its damage claim against American Family for its failure to comply with the Act. This appeal ensued.

Discussion and Decision

***Parkview I* Did Not Require the Trial Court to Enter Judgment in the Amount of Parkview's Lien or to Award Attorney's Fees.**

[8] We first address Parkview's argument on appeal that our holdings in *Parkview I* required the trial court on remand to enter an award for Parkview for the full amount of its lien and reasonable attorney's fees. In particular, Parkview asserts that our holdings and remand instructions in *Parkview I* "compelled" the trial court to enter damages and "to have a hearing to determine reasonable [attorney's] fees." Appellant's Br. at 12. Parkview frames this issue as a "limitation upon the trial court's jurisdiction after remand" which required the trial court to "comply with this Court's mandate" in *Parkview I*. *Id.*

[9] We review *de novo* our holdings and remand instructions in *Parkview I*. *See, e.g.*, *Deen-Bacchus v. Bacchus*, 71 N.E.3d 882, 885 (Ind. Ct. App. 2017). Further, "'[w]hether the trial court upon remand has jurisdiction to make additional factual inquiries or to hear new issues depends upon what issues [we]re decided upon appeal and what issues [we]re expressly or impliedly reserved upon remand.'" *Stepp v. Duffy*, 686 N.E.2d 148, 152 (Ind. Ct. App. 1997) (quoting *Herrell v. Casey*, 609 N.E.2d 1146 (Ind. Ct. App. 1993)), *trans. denied*.

[10] Parkview maintains that when we held in *Parkview I* that Parkview was "entitled to judgment as a matter of law" and reversed the trial court's denial of Parkview's motion for summary judgment, we also instructed the trial court to grant all of the relief Parkview had requested in its motion for summary judgment, including a liability determination, damages in the full amount of its lien, and attorney's fees. But in its motion for summary judgment, Parkview addressed those issues separately. In its motion, Parkview stated that "[t]he first issue to be determined by the Court is whether Parkview had a valid lien under the Hospital Lien Act and whether the Defendant violated that lien." Appellant's App. Vol. 2 at 125. Parkview then described the "second issue" as "the value of Parkview's damages," and it also requested a hearing on its attorney's fees. *Id.* It is clear from the text of this Court's opinion in *Parkview I* that we only addressed and decided Parkview's "first issue."

[11] The trial court correctly determined on remand that, in *Parkview I*, we neither addressed the amount of damages to award Parkview nor whether Parkview would be entitled to attorney's fees. Appellant's App. Vol. 2 at 20. We merely addressed the question of whether the designated evidence entitled Parkview to judgment as a matter of law on the first issue, American Family's liability. After concluding that Parkview was entitled to judgment on its lien, we instructed the trial court on remand to enter judgment for Parkview and to conduct proceedings consistent with our opinion. *Parkview I*, 151 N.E.3d at 1229.

[12] In the alternative, Parkview asserts that, even if we did not explicitly address the issues of damages and fees in *Parkview I*, we addressed them by implication. As

such, Parkview continues, either the doctrine of *res judicata* or the doctrine of law of the case prohibited American Family from arguing and the trial court from considering damages and fees other than those claimed by Parkview in its complaint.

[13] Parkview's invocation of *res judicata* is not well taken. "Generally speaking, *res judicata* operates 'to prevent repetitious litigation of disputes that are essentially the same . . . .'" *V.B. v. Ind. Dep't of Child Servs. (In re Eq. W.)*, 124 N.E.3d 1201, 1208-09 (Ind. 2019) (citation omitted). Here, the trial court proceedings, the interlocutory appeal, and this appeal are all one and the same case. There was no judgment entered in a prior case, and, thus, as a matter of law, the doctrine of *res judicata* does not apply. *See id.*

[14] Neither does the law of the case doctrine apply. "[Q]uestions not conclusively decided in the earlier appeal do not become the law of the case." *Dean V. Kruse Found., Inc. v. Gates*, 973 N.E.2d 583, 590 (Ind. Ct. App. 2012) (citation omitted), *trans. denied*. Again, our opinion in *Parkview I* was silent on Parkview's claim for damages and attorney's fees. *Parkview I* did not address or decide those issues. There is no law of the case to be applied.

[15] Finally, we underscore that, in *Parkview I*, when the parties both moved for certification of the trial court's summary judgment orders for an interlocutory appeal, the trial court had not yet addressed the damages and attorney's fees issues on the merits. Parkview's contention in this second appeal that we decided these issues in *Parkview I* is belied by the state of the record at that time.

As the trial court stated, these issues remained open for the trial court's consideration on remand. Appellant's App. Vol. 2 at 20. In the first appeal, we could not have—in the first instance—made the findings required to award damages or determined whether Parkview was entitled to attorney's fees under the Act. The trial court had not yet addressed and decided those issues, and for that additional reason, we decline Parkview's invitation to appropriate the trial court's original jurisdiction.

American Family was Permitted to Challenge Parkview's Damages and Fees in a Motion to Correct Error under Indiana Trial Rule 59.

[16] Parkview also argues that American Family failed to properly challenge Parkview's request for damages and fees and, as such, American Family has forfeited the opportunity to make those challenges. Specifically, Parkview asserts that American Family's motion to correct error was procedurally improper under Indiana Trial Rule 59(A) because American Family's motion was not based on newly discovered evidence and did not allege an excessive jury verdict. Parkview is not correct.

[17] Trial Rule 59(A) states:

> A Motion to Correct Error is not a prerequisite for appeal, except when a party seeks to address:
>
> > (1) Newly discovered material evidence, including alleged jury misconduct, capable of production within thirty (30) days of final judgment which, with reasonable diligence, could not have been discovered and produced at trial; or

(2) A claim that a jury verdict is excessive or inadequate.

All other issues and grounds for appeal appropriately preserved during trial may be initially addressed in the appellate brief.

[18] Trial Rule 59(A) did not preclude American Family's motion to correct error. Rather, if either (1) or (2) had been present—which was not American Family's contention—then American Family would have been obliged under Rule 59(A) to file its motion. But nothing in the text of the Rule prohibited American Family from filing the motion that it filed. Thus, Parkview has not shown that the trial court erred when it permitted Parkview to challenge the damages and fees by way of a Rule 59 motion to correct error after remand from the interlocutory appeal.

Indiana's Hospital Lien Act Does not Authorize an Award of Attorney's Fees.

[19] Parkview's final issue on appeal is that the trial court erred when it concluded that Parkview was not entitled to its reasonable attorney's fees under the Act. Generally, "[t]he award or denial of attorney's fees is 'in the exercise of [the trial court's] sound discretion, and in the absence of an affirmative showing of error or abuse of discretion we must affirm [the trial court's] order.'" *Techna-Fit, Inc. v. Fluid Transfer Prods., Inc.*, 45 N.E.3d 399, 416 (Ind. Ct. App. 2015) (quoting *Malachowski v. Bank One, Indianapolis., N.A.*, 682 N.E.2d 530, 533 (Ind. 1997)). A trial court abuses its discretion when it misapplies the law. *E.g.*, *Dycus v. State*, 108 N.E.3d 301, 303 (Ind. 2018). Further, Indiana adheres to the

American rule, which provides that a party must pay his own attorney's fees absent an agreement between the parties, a statute, or other rule to the contrary. *Techna-Fit, Inc.*, 45 N.E.3d at 416.

[20] Parkview asserts that "Indiana has long recognized that hospitals are entitled to attorney fee awards in cases where the hospital lien is impaired." Appellant's Br. at 26. In support of that assertion, Parkview cites *National Insurance Association v. Parkview Memorial Hospital*, 590 N.E.2d 1141 (Ind. Ct. App. 1992). But we agree with the trial court that Parkview's reliance on *National Insurance* is misplaced because, in that case, we did not address the hospital's claim for attorney's fees under the Act or state that Parkview was entitled to recover its attorney's fees as a part of its damage claim. Rather, we affirmed the grant of partial summary judgment for the hospital on its lien and "remanded to the trial court for a determination of [the hospital's] claim . . . for trial and appellate attorney's fees." *Id.* at 1146. Moreover, our discussion of attorney's fees was not based on the Act but on a prior version of what is now Indiana Code Section 34-52-1-1(b) (2021), which provides for attorney's fees in a civil action if the trial court finds that a party has brought an action or asserted a claim that is frivolous, unreasonable, or groundless or litigated in bad faith.

[21] In sum, in *National Insurance* we did not hold that the hospital was entitled to attorney's fees as a matter of law under the Act, nor did we direct the trial court to award attorney's fees on remand. And, here, Parkview did not argue to the trial court that it was entitled to attorney's fees under Indiana Code Section 34-52-1-1. *See* Appellant's App. Vol. 3 at 211-15; Tr. at 10-14. At oral argument,

Parkview suggested that bad faith might be attributed to American Family, but we will not consider any such contention for the first time on appeal. And there is no evidence that American Family asserted or maintained any claim or defense that is frivolous, unreasonable, or groundless, or that American Family litigated in bad faith. Accordingly, Parkview's reliance on *National Insurance* for an award of attorney's fees is not well founded.

[22] There is no provision in the Act for attorney's fees. I.C. §§ 32-33-4-1 to -8. And, again, in the absence of an agreement between the parties, a statute, or other rule to the contrary, the American Rule applies. *Techna-Fit, Inc.*, 45 N.E.3d at 416. Under the American Rule, parties pay their own attorney's fees. *Id.* Thus, the trial court did not err when it granted American Family's motion to correct error on this issue and denied Parkview's claim for attorney's fees.

American Family is not Liable to Parkview for the Full Amount of its Hospital Lien but is Liable for its Policy Limits.

[23] On cross-appeal, American Family contends that the trial court erred when it awarded Parkview the full amount of its hospital lien, $95,541.88, rather than capping American Family's liability at $50,000, its policy limits with the Ohio plaintiffs.[4] In so concluding, the trial court relied on Indiana Code Section 32-33-4-6(b) of the Hospital Lien Act, which provides:

> (b) The release or settlement of a claim with a patient *by a person claimed to be liable for the damages incurred by the patient*:
>
> > (1) after a lien has been perfected under section 4 of this chapter; and
> >
> > (2) without obtaining a release of the lien;
>
> entitles the lienholder to damages for the reasonable cost of the hospital care, treatment, and maintenance.

I.C. § 32-33-4-6(b) (emphasis added). The question presented is whether under this provision, (the "lienholder damages provision"), American Family, which indemnified the Ohio plaintiffs with underinsured motorist coverage, is liable for the full amount of Parkview's hospital lien. As American Family observes, no Indiana case has directly addressed this issue. Appellee's Br. at 20.

[24] Thirty years ago in *National Insurance,* we explained the operation and effect of a hospital lien as follows:

> By this statute [now Indiana Code § 32-33-4-3], our legislature gives the hospital a specific interest in property otherwise accruing to the patient for the amount of the health care, treatment, and maintenance rendered by the hospital to its patient when the hospital has properly perfected its lien. With a properly perfected lien for the amount of services provided to the hospital's patient, the hospital has a direct right in the insurance proceeds and other settlement funds *which are paid to the patient by the person claimed to be liable for the patient's injuries or that person's agent.*

590 N.E.2d at 1144 (emphasis added). Under this statute, the hospital lien "applies to any amount obtained or recovered by the patient by settlement or compromise." I.C. § 32-33-4-3(b).

[25] And in *National Insurance* we specifically addressed the lienholder damages provision of the Act. This provision applies when insurance proceeds or other settlement funds are paid to the patient for the "release or settlement of a claim *by a person claimed to be liable for the damages incurred by the patient* . . . without obtaining a release of the lien." I.C. § 32-33-4-6(b) (emphasis added). We concluded that under this statute, "our legislature . . . *intended to bind parties responsible for a patient's injuries* if they ignore the lien when settling a claim." 590 N.E.2d at 1144. (Emphasis added.) In such cases, the hospital lienholder is a necessary party to any release or settlement, and lienholder damages "for the reasonable cost of the hospital care, treatment, and maintenance" are chargeable to the parties responsible for the patient's injuries if they fail to obtain a release of the lien. *Id.*

[26] In *National Insurance*, American Family issued a settlement check to the patient without any payment to Parkview on its hospital lien, and we applied the lienholder damages provision to National's liability coverage for its insured, who was the person responsible for the patient's injuries. But that provision does not apply here, where the plaintiffs purchased underinsured motorist coverage from American Family for their own indemnification, and the proceeds from American Family's policy were not "paid to the patient by the person claimed to be liable for the patient's injuries or that person's agent."

Id. Thus, the lienholder damages provision of the Act is not triggered when a patient recovers from his own underinsured coverage. Still, any amount obtained or recovered by the patient from underinsured coverage remains subject to the lien, and the patient and his insurance company are liable up to and including the policy limits of that coverage if they should fail to obtain a release of the lien.

[27] We hold that the trial court erred when it required American Family to pay the full amount of Parkview's hospital lien. The lienholder damages provision applies to "a person claimed to be liable for the damages incurred by the patient," in other words, the tortfeasor or his liability insurance company who releases or settles a claim with a patient without having obtained a release of the hospital lien. But this provision does not apply where the insurer has only contracted to indemnify the patient with underinsured motorist coverage.

[28] We note that in its complaint Parkview alleged that "American Family Insurance Company is an insurer that provided insurance coverage to Joseph Gregg and Michael Gregg, who were the responsible parties in the Accident." Appellant's App. Vol. 2 at 34. Parkview was incorrect when it alleged that American Family insured the Greggs, but it was correct when it alleged that the Greggs were the parties responsible for the accident. At the outset, Parkview's attempt to recover the full amount of its hospital lien from American Family was based upon the faulty premise stated in its complaint that American Family provided liability coverage for "the parties responsible for the patient's injuries." *See Nat'l Ins.*, 590 N.E.2d at 1144.

[29] In sum, we conclude that because American Family insured the patient and not "a person claimed to be liable for the damages incurred by the patient," American Family is not chargeable for the entire "reasonable cost of the hospital care, treatment, and maintenance" that Parkview provided to the patient. Had American Family done what it should have done and included Parkview as a payee on its $50,000 settlement draft, Parkview would have received all it was due from American Family. When American Family failed to comply with the Act, it assumed the risk of having to pay the $50,000 policy limits twice,[4] but that failure does not entitle Parkview to be placed in a better position than it would have been if American Family had simply complied with the Act in the first instance.

[30] The American Family insurance at issue in this case is not tort liability coverage but coverage which indemnified its insureds, including the injured Parkview patient. Underinsured motorist coverage is designed to provide individuals with indemnification in the event negligent motorists are not adequately insured for damages that result from motor vehicle accidents. *United Nat. Ins. Co. v. DePrizio*, 705 N.E.2d 455, 459 (Ind. 1999). Thus, we agree with American Family that the lienholder damages provision of the Act does not apply and that its liability to Parkview is capped at its policy limits of $50,000 with the Ohio plaintiffs.

[4] At oral argument, American Family contested its liability for the full amount of Parkview's lien but conceded that it had assumed this risk and would have to make a second $50,000 payment.

Conclusion

[31] We affirm the trial court's consideration of damages and attorney's fees on remand, and we affirm the trial court's denial of Parkview's request for attorney's fees under the Act. However, we reverse the trial court's judgment that American Family's obligation under the Act is greater than its policy limits. On that issue, we remand with instructions for the trial court to enter judgment for Parkview and against American Family in the amount of $50,000 plus pre-judgment interest.

[32] Affirmed in part, reversed in part, and remanded with instructions.

Weissmann, J., and Baker, Sr.J., concur.