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IN THE

COURT OF APPEALS OF INDIANA

Daniel S. Gladstone,
Appellant/Plaintiff,

v.

West Bend Mutual Insurance Company,
Appellee/Defendant.

March 24, 2021

Court of Appeals Case No. 20A-CT-1499

Appeal from the Lake Superior Court

The Hon. Bruce D. Parent, Judge

Trial Court Cause No. 45D11-1810-CT-693

Bradford, Chief Judge

Case Summary[1]

[1] Daniel Gladstone was injured in an automobile accident in 2016, suffering a Colles Fracture,[2] for which he received medical treatment. In 2018, Gladstone sued the tortfeasor for negligence, and she was dismissed from the case after she tendered her insurance policy's limit of $50,000.00. Gladstone continued against his insurance provider West Bend Mutual Insurance Company, seeking to recover pursuant to his underinsured-motorist ("UIM") coverage. Gladstone eventually dropped his claim for medical expenses, electing to seek damages for pain and suffering only. West Bend nevertheless sought to introduce evidence of Gladstone's medical bills at trial, and the trial court admitted the evidence over Gladstone's objection. The jury awarded Gladstone $0.00. Gladstone contends that the trial court abused its discretion in admitting evidence of his medical bills, regarding settlement negotiations, and of insurance payments in violation of Indiana's collateral source statute. Because we reject Gladstone's first argument and conclude that his last two are waived for appellate review, we affirm.

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[1] Oral argument in this case was held remotely on March 8, 2021. We commend counsel for both parties and *amici curiae* on the quality of their written submissions and oral presentations.

[2] A Colles Fracture may be defined as

> a complete fracture of the radius bone of the forearm close to the wrist resulting in an upward (posterior) displacement of the radius and obvious deformity. It is commonly called a "broken wrist" in spite of the fact that the distal radius is the location of the fracture, not the carpal bones of the wrist.

PHYSIOPEDIA, https://www.physio-pedia.com/Colles_Fracture (last visited March 12, 2021).

Facts and Procedural History

[2] Late in the evening of December 17, 2016, Gladstone was driving west on Main Street in Calumet while Christina Carli was driving east. Carli swerved into Gladstone's lane and skidded, striking the front of Gladstone's vehicle with the side of hers. Gladstone, who is right-handed, suffered a laceration to his right forearm, a contusion to his right knee, and a Colles Fracture to his right wrist. Gladstone sought medical treatment the night of the accident after his father drove him to an emergency room, and his follow-up treatment consisted of him wearing a cast on his wrist for six weeks and attending follow-up visits with an orthopedist, as well as physical therapy to increase his mobility and strength. Gladstone was discharged from physical therapy on March 16, 2017, after he was able to perform a functional reach to desk height without limitation and a greater than ninety-five-pound grip without pain. Gladstone was not given any restrictions upon being discharged and did not see a medical professional about his wrist again until June of 2020.

[3] On October 16, 2018, Gladstone filed suit against Carli, alleging negligence and seeking punitive damages. On November 7, 2018, Gladstone filed an amended complaint adding West Bend as a defendant for breach of contract and UIM benefits pursuant to an automobile-insurance policy issued to Gladstone. Prior to trial, Carli tendered her insurance policy's limit of $50,000.00 and was dismissed from the case. West Bend did not object to the settlement and waived its right to subrogate against Carli.

[4] On June 2, 2020, Gladstone moved to exclude evidence of his medical billing records on the basis that he was not seeking medical expenses. On June 12, 2020, the trial court denied Gladstone's motion to exclude reference to his medical bills. The same day, West Bend filed a motion in limine seeking to present billed amounts and reductions. The trial court granted West Bend's motion regarding the admission of medical bills to include the billed amount and the reduced amount.

[5] On July 27, 2020, the case proceeded to jury trial against West Bend as Gladstone's UIM carrier with up to $250,000.00 in coverage.[3] West Bend claims specialist Steven Hines indicated (in testimony elicited by Gladstone) that Gladstone had already received $50,000.00 from Carli's insurer. Gladstone's mother testified that his wrist difficulty meant that he could no longer participate in the annual family bowling outing at Thanksgiving, could not draw for any length of time without pain, had experienced pain when helping to build a deck in 2019, and could not lift objects without pain. Gladstone testified that he had had "bad moments" ever since the accident involving "anything that is repetitive or heavy lifting" and noted that "anything that vibrates is really bad to be using." Tr. Vol. II p. 80. Gladstone also indicated that job duties such as scrubbing pots and pans, pulling carts, or lifting objects that weigh over fifty pounds caused him pain in his wrist.

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[3] Gladstone acknowledges that his recovery from West Bend would have been limited to $200,000.00 in any event, having already received $50,000.00 from Carli.

[6] A video recording of Michael Spence, M.D.'s, deposition was shown to the jury. Dr. Spence had evaluated Gladstone on June 18, 2020, and testified that Gladstone had suffered a nondisplaced Colles Fracture to the radius and ulna bones in his right forearm in the accident. Dr. Spence indicated that Gladstone had complained of pain in his right wrist on June 18, 2020, and Dr. Spence found that he had a diminished grip and a "little bit" of a diminished range of motion. Appellant's App. Vol. II p. 142. Dr. Spence's diagnosis was "[a] nondisplaced fracture to the right distal radius with intra-articular extension, as well as a nondisplaced ulnar styloid fracture, with residual pain and range of motion deficit due to posttraumatic osteoarthritis." Appellant's App. Vol. II p. 144. Dr. Spence opined that the wrist injury Gladstone had sustained in the accident had caused his arthritis and that he suspected it would be a "chronic, lifelong issue." Appellant's App. Vol. II p. 146. Dr. Spence calculated the impairment of Gladstone's right arm to be nine percent and of his entire body to be five percent. On cross-examination, Dr. Spence acknowledged that a diagnosis of carpal tunnel syndrome (which can be caused by repetitive motion) could not be ruled out without additional testing, which, by the time of trial, had not occurred or been sought.

[7] The trial court allowed West Bend to introduce Gladstone's medical bills into evidence and to question him about them over a relevance objection. The evidence of Gladstone's medical bills was admitted as Defendant's Exhibit B and indicated that his post-accident treatments had resulted in approximately $14,000.00 in medical bills, which had been reduced to just under $2000.00 by

insurance payments and discounts. The jury concluded that Gladstone was entitled to recover $0.00.

Discussion and Decision

I. Whether the Trial Court Abused its Discretion in Admitting Evidence of Gladstone's Medical Bills

[8] Gladstone contends that the trial court abused its discretion in admitting evidence of his medical bills at trial. A trial court's ruling on the admission or exclusion of evidence is reviewed for an abuse of discretion that results in prejudicial error. *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015). A trial court's evidentiary decision will be reversed for an abuse of discretion only where the court's decision is clearly against the logic and effect of the facts and circumstances, or when the court misinterprets the law. *Id.*

> This discretion means that, in many cases, trial judges have options. They can admit *or* exclude evidence, and we won't meddle with that decision on appeal. *See Smoote v. State*, 708 N.E.2d 1, 3 (Ind. 1999). There are good reasons for this. "Our instincts are less practiced than those of the trial bench and our sense for the rhythms of a trial less sure." [*United States v. Hall*, 858 F.3d 254, 289 (4th Cir. 2017) (Wilkinson, J., dissenting)]. And trial courts are far better at weighing evidence and assessing witness credibility. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). In sum, our vantage point—in a "far corner of the upper deck"—does not provide as clear a view. *State v. Keck*, 4 N.E.3d 1180, 1185 (Ind. 2014).

Snow v. State, 77 N.E.3d 173, 177 (Ind. 2017).

[9] Indiana Rule of Evidence 402 provides, in part, that "[i]rrelevant evidence is not admissible[,]" and Evidence Rule 401 provides that "[e]vidence is relevant if […] it has any tendency to make a fact more or less probable than it would be without the evidence; and […] the fact is of consequence in determining the action." "Evidence is admissible if it has a tendency to prove or disprove a material fact, and is not otherwise excluded by an evidentiary rule." *Lloyd v. State*, 669 N.E.2d 980, 985 (Ind. 1996). Evidence Rule 403, however, provides that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence."

[10] As the parties point out, the question of whether evidence of medical bills is admissible in a proceeding in which recovery of them is not sought has not been specifically addressed in Indiana. Gladstone argues that evidence of medical bills is never relevant to the question of pain and suffering and that, because he did not seek medical expenses in this case, the trial court abused its discretion in admitting the bills. Gladstone also argues that, even if evidence of his medical bills is relevant, the trial court abused its discretion in admitting it because its probative value is substantially outweighed by a danger of unfair prejudice or misleading the jury. West Bend argues that a bright-line rule regarding the admissibility of medical bills when the recovery of medical expenses is not sought is at odds with the Indiana Rules of Evidence and Indiana law. West Bend also argues that, not only is evidence of medical bills generally relevant to

the question of pain and suffering, but also its probative value was not substantially outweighed in this case by a danger of unfair prejudice or misleading the jury.

[11] As mentioned, Evidence Rule 401 provides that "[e]vidence is relevant if […] it has *any* tendency to make a fact more or less probable than it would be without the evidence; and […] the fact is of consequence in determining the action." (Emphasis added). As the Indiana Supreme Court has noted, "[t]his liberal standard for relevancy sets a low bar, and the trial court enjoys wide discretion in deciding whether that bar is cleared." *Snow*, 77 N.E.3d at 177 (citations omitted).

[12] We begin by rejecting Gladstone's argument that evidence of medical bills is never relevant to the question of pain and suffering. Common sense and experience dictate that a more serious injury generally brings with it greater medical expenses as well as greater pain and suffering. We agree with the United States District Court for the District of Montana, which has observed that

> [w]hile the amounts of disallowed medical expenses are not relevant to prove damages for past medical loss, it does not follow that the evidence of medical expenses is irrelevant for all purposes. For instance, Chapman says evidence of total medical bills is admissible "to show the jury the severity and the extent of her injuries." I agree. Even if medical expenses were disallowed by Medicaid, the documentation for such expenses presumably lists the medical procedures and treatments dispensed. They may bear on the necessity of future needs and provide a foundation for a life care plan. *They are relevant to prove the nature and extent of Chapman's*

> *injuries.* Evidence of cost for the complete range of treatment and care dispensed in past medical treatment may be relevant to future medical care and expenses required.

Chapman v. Mazda Motor of Am., Inc., 7 F. Supp. 2d 1123, 1125 (D. Mont. 1998) (emphasis added and record citation omitted).

[13] We also agree with Justice Larsen of the Pennsylvania Supreme Court, who noted in dissent that "medical expenses are routinely considered by both attorneys and insurance companies in negotiating settlements [and] appellate courts routinely look at medical expenses as a factor in determining whether the non-economic portion of a damage award is appropriate." *Martin v. Soblotney*, 466 A.2d 1022, 1027 (Pa. 1983) (Larsen, J., dissenting). Because we conclude that evidence of medical bills will generally have some relevance to the amount of pain and suffering experienced by the patient, we decline Gladstone's invitation to adopt a bright-line rule that evidence of medical bills is always inadmissible on relevance grounds when their recovery is not sought.

[14] Having declined Gladstone's invitation to adopt a bright-line rule, we conclude that West Bend has cleared the low bar for establishing the relevance of Gladstone's medical bills in this case. If the bills are low, as Gladstone apparently considers them to be, then they tend to establish that he has not experienced extensive pain and suffering from his injuries, and that is all that Evidence Rule 401 requires. We acknowledge that there are cases in which low medical bills may not accurately reflect the amount of pain and suffering experienced, but that does not mean that evidence of medical bills is irrelevant. If, in the estimation of one of the parties, the amount of the medical bills does

not accurately reflect the amount of pain and suffering, that party is free to counter it with other evidence and argument, as Gladstone did in this case.

[15] Even though evidence of medical expenses is generally relevant to the question of pain and suffering, it may still be excluded in a particular case if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence. Gladstone contends that even if evidence of his medical expenses had some relevance to the question of pain and suffering, the jury was improperly led by his relatively low medical bills to incorrectly conclude that he had experienced minimal pain and suffering.

[16] The ruling of a trial court under Rule 403 is afforded considerable deference on appeal. *Patchett v. Lee*, 60 N.E.3d 1025, 1033 (Ind. 2016). Rule 403 is biased in favor of admissibility: it requires the opponent of evidence to show that the risk of unfair prejudice substantially outweighs the probative value of the evidence. *See* 13 ROBERT LOWELL MILLER, JR., INDIANA PRACTICE: INDIANA EVIDENCE § 609.202, p. 170 (1995). Exclusion under Rule 403 is an extraordinary tool to be used but sparingly. *See* 12 ROBERT LOWELL MILLER, JR., INDIANA PRACTICE: INDIANA EVIDENCE § 403.102, p. 350 (3d ed. 2007). Trial courts are given wide latitude in weighing probative value against the danger of unfair prejudice. *Lashbrook v. State*, 762 N.E.2d 756, 759 (Ind. 2002). "'Unfair prejudice' addresses the way in which the jury is expected to respond to the evidence; it looks to the capacity of the evidence to persuade by illegitimate means, or the tendency of the evidence 'to suggest decision on an

improper basis[.]'" *Ingram v. State*, 715 N.E.2d 405, 407 (Ind. 1999) (citing 12 ROBERT LOWELL MILLER, JR., INDIANA PRACTICE: INDIANA EVIDENCE § 403.102, p. 284 (1995)).

[17] We conclude that Gladstone has failed to establish the danger of unfair prejudice of juror confusion substantially outweighed the relevance of his medical bills in this case. Gladstone's trial strategy was to convince the jury that his medical bills were not an accurate reflection of his degree of pain and suffering, a strategy which was fully developed at trial: Gladstone's medical expert opined that Gladstone has chronic osteoarthritis that he is likely to suffer from the rest of his life, while Gladstone and his mother both testified that he still suffered from pain caused by the accident and could not participate in certain activities. While the jury may not have credited this evidence, Gladstone has not established any danger that the jury was unable to grasp Gladstone's theory of the case or that its verdict was the result of confusion.[4]

[18] In the end, we conclude that the trial court did not abuse its discretion in admitting evidence of Gladstone's medical bills, even though he did not seek recovery of medical expenses. While it is, of course, possible to imagine a case

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[4] In any event, because Gladstone cannot establish that the jury concluded that he was entitled to no recovery for his pain and suffering, any error the trial court might have committed in this regard can only be considered harmless. Indiana Trial Rule 61 provides, in part, that "no error or defect in any ruling or order in anything done or omitted by the court […] is ground for […] reversal on appeal [] unless refusal to take such action appears to the court inconsistent with substantial justice." The jury heard evidence that Gladstone had already received $50,000.00 from Carli, so it is entirely possible that the jury did, in fact, conclude that Gladstone was entitled to recover for his pain and suffering but that he had already been fully compensated for it.

in which we might conclude that a trial court's admission of medical expenses was an abuse of discretion, this is not one of those cases. The weight such evidence is to be given is generally for the attorneys to argue and the jury to decide. We agree with the South Carolina Court of Appeals when it stated the following:

> We are confident in the jurors' ability to weigh evidence and must presume they followed their instructions by applying the facts to the law of damages. We see no reason they should be kept ignorant of the cost of Nestler's medical treatment in determining the facts. What they did with that evidence was largely up to them; as the trial court noted, part of the advocate's art is persuading jurors how such evidence should be interpreted.

Nestler v. Fields, 824 S.E.2d 461, 464 (S.C. Ct. App. 2019). In conclusion, we decline Gladstone's invitation to create a bright-line rule that evidence of medical bills is never admissible in cases where they are not sought and further conclude that the trial court did not abuse its discretion in admitting such evidence in this case.[5]

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[5] Both parties cite to numerous non-binding cases from other jurisdictions to support their arguments, but we find West Bend's cases to embody the better approach. A number of Gladstone's cases, *e.g.*, *Martin*, 466 A.2d at 1022, are based on the court's conclusion that evidence of medical bills is never relevant to the question of pain and suffering. *Id*. at 1025. Others, *e.g.*, *Johnson v. Union Pacific Railroad Co.*, 2007 WL 2914886 at *6 (D. Neb. 2007), are based on the court's conclusion that admission of medical expenses in that particular case presented the possibility of jury confusion, misuse, and/or double recovery that outweighed the bills' probative value. We have already rejected the reasoning on which *Martin* and similar cases are based. As for second group of cases cited by Gladstone, they stand for nothing more than the fact that trial courts sometimes abuse their discretion in admitting such evidence, which, although admittedly true, does not support the creation of a bright-line rule or mean that such an abuse occurred in this case.

II. Evidence of Settlement Negotiations

[19] Gladstone argues that he is entitled to a new trial because of the erroneous admission of evidence regarding settlement negotiations. During Hines's questioning by Gladstone's counsel, the following exchange took place:

> Q. Now, out of the next portion that we talked about, the underinsured motorist bodily injury, how much have they paid of that two hundred and fifty?
>
> A. Well, that's what we were trying to do in trying to resolve the case with you.
>
> Q. Oh, okay. So, you haven't paid anything yet, have you?
>
> A. No.
>
> [Gladstone's counsel]: Your Honor—Never—I'll strike that.
>
> Q. So, to date, Daniel has not received one dollar, one penny, nothing for the underinsured motorist provision?
>
> A. Correct, because you refused to accept—
>
> [Gladstone's counsel]: Hold on, your Honor. I'm going to actually—Your Honor, I'm going to object to his testimony. Can we approach?
>
> THE COURT: Please.
>
> **(The following bench conference was held outside the scope of the jury.)**
>
> [Gladstone's counsel]: So, settlement discussion is not allowed and I didn't ask him the direct question but he's saying—he's talking about settlement. So, I think we need [to] instruct him not to.
>
> THE COURT: What's your objection at this point?
>
> [Gladstone's counsel]: My objection is that he is talking about settlement discussions which is not allowed testimony.

> THE COURT: Right. Ms. Bond.
>
> [West Bend's counsel]: I agree. I think that if we can either—I think you should Judge or I certainly can instruct him as far as the motion in limine to avoid a mistrial. I mean we do have an agreed to motion in limine.
>
> THE COURT: Okay. So, the question, at this point, how much do you want me to say?
>
> [West Bend's counsel]: To the jury.
>
> THE COURT: This is for both of you.
>
> [Gladstone's counsel]: I guess I could request him to be declared as a hostile witness and then he can answer yes and no questions only.
>
> [West Bend's counsel]: I would prefer that not be the case, if there's another solution.
>
> THE COURT: Yeah, that's the best solution I can think of. Okay.
>
> [West Bend's counsel]: Okay.
>
> THE COURT: I think that's the safest thing.
>
> **(On the Record.)**
>
> THE COURT: What we're going to do Mr. Hines, I'm going to permit him to ask you yes and no questions.

Tr. Vol. II pp. 33–34.

[20] Pursuant to Evidence Rule 408(a),

> [e]vidence of the following is not admissible on behalf of any party either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:
>
> […]

> (2) conduct or a statement made during compromise negotiations about the claim. Compromise negotiations include alternative dispute resolution.

[21] Hines's statement, although incomplete, brief, and lacking in detail, does seem to clearly indicate that Gladstone had rejected a settlement offer from West Bend at some point. However,

> [w]hen faced with a circumstance that a [party] believes might warrant a mistrial, generally the correct procedure is to request an admonishment. *Etienne v. State*, 716 N.E.2d 457, 461 (Ind. 1999). If counsel is unsatisfied with the admonishment or it is obvious that the admonishment will not be sufficient to cure the error, then counsel may move for mistrial. *Id*. A "failure to request an admonishment *or* move for a mistrial results in waiver of the issue." *Id*. (emphasis added).

Isom v. State, 31 N.E.3d 469, 482 (Ind. 2015). At no point did Gladstone request either an admonition or a mistrial, instead suggesting the remedy of being able to treat Hines as a hostile witness going forward, which remedy was approved by the trial court. Because he failed to request either an admonition or a mistrial, we conclude that Gladstone has waived this argument for appellate review. *Id*.

III. Collateral Source Evidence

[22] Gladstone also argues the admission of his medical bills in Defendant's Exhibit B entitles him to a new trial because the exhibit improperly contained insurance payments in violation of the Indiana's collateral source statute. Indiana Code section 34-44-1-2 provides, in part, that "[i]n a personal injury or wrongful death action, the court shall allow the admission into evidence of […] proof of

collateral source payments other than […] insurance benefits that the plaintiff or members of the plaintiff's family have paid for directly[.]" As the Indiana Supreme Court has explained,

> [t]he purpose of the collateral source statute is to determine the actual amount of the prevailing party's pecuniary loss and to preclude that party from recovering more than once from all applicable sources for each item of loss sustained in a personal injury or wrongful death action. At the same time, it retains the common law principle that collateral source payments should not reduce a damage award if they resulted from the victim's own foresight—both insurance purchased by the victim and also government benefits—presumably because the victim has paid for those benefits through taxes.

Stanley v. Walker, 906 N.E.2d 852, 855 (Ind. 2009) (citation omitted).

[23] As mentioned, West Bend was allowed to introduce Gladstone's medical bills as Defendant's Exhibit B, which indicated bills of approximately $14,000.00 reduced to approximately $2000.00, in part, by insurance payments. As West Bend points out, however, Gladstone only objected to this evidence on relevance grounds and did not mention the collateral source statute: "[Gladstone's counsel]: Objection, your Honor. At this point I state that the relevance of this line of inquiry is not—nor relevant because the medical bills have not been admitted in this case. And also rely on my trial brief that I filed previously." Tr. Vol. II pp. 88–89. Gladstone's trial brief also contains no mention of the collateral source statute.

[24] An objection must be specific in order for the issue to be preserved for appellate review. *Fricke v. Gray*, 705 N.E.2d 1027, 1030 (Ind. Ct. App. 1999) (citing *Wills*

v. State, 510 N.E.2d 1354, 1357 (Ind. 1987)). A party cannot rely on one reason for an objection at trial and then assert another argument for objection on appeal. *Id.*; *see also Palmer v. State*, 640 N.E.2d 415, 423 (Ind. Ct. App. 1994). Gladstone objected to the admission of his medical bills only on the basis of relevance, and irrelevance is not the reason collateral source payments are inadmissible—the desire not to punish an injured person for his foresight in obtaining insurance and/or provide the tortfeasor with a windfall is the reason some collateral source evidence is barred. At trial, while Gladstone made an ongoing objection to relevance to Defendant's Exhibit B, he never mentioned the collateral source statute, nor did he request that evidence of insurance payments be redacted or that allegedly ineffective attempts at redaction be remedied, despite his claim on appeal that all of the above was clearly discernible in the exhibit. We conclude that Gladstone has waived this argument for failing to make a sufficiently specific objection in the trial court. *See Fricke*, 705 N.E.2d at 1030.

Conclusion

[25] We decline Gladstone's invitation to adopt a bright-line rule that evidence of medical expenses is never admissible in cases where their recovery is not sought. We further conclude that the trial court did not abuse its discretion in admitting evidence of Gladstone's medical expenses in this case. Finally, we conclude that Gladstone has waived his arguments that the admission of testimony regarding settlement negotiations and insurance payments entitle him to a new trial.

[26] The judgment of the trial court is affirmed.

May, J., and Vaidik, J., concur.