SUMMARY
March 13, 2025

2025COA27

No. 23CA1950, *Gilley v. Oviatt* — Damages — Past Medical Expenses — Substantial Evidence — Necessary and Reasonable Treatment Incurred as a Result of an Accident

A division of the court of appeals holds, for the first time in a published case, that when a plaintiff seeks recovery for medical damages, a defendant is not entitled to a directed verdict solely on the basis that no witness stated the amount billed for medical treatment was reasonable, where plaintiff presented evidence of the bills received and testimony that the treatment was necessary, reasonable, and incurred as a result of the accident.

COLORADO COURT OF APPEALS **2025COA27**

Court of Appeals No. 23CA1950
Arapahoe County District Court No. 20CV31581
Honorable Elizabeth Beebe Volz, Judge

Tonya Gilley,

Plaintiff-Appellee,

v.

Jennifer Oviatt, as special administrator of the Estate of Joel Patrick Roche, deceased,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division III
Opinion by JUDGE TOW
Dunn and Berger*, JJ., concur

Announced March 13, 2025

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Messner Reeves, LLP, Caleb Meyer, John H. Stevens, Ian Ray Mitchell, Darren D. Alberti, Denver, Colorado, for Defendant-Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2024.

¶ 1 Defendant, Jennifer Oviatt, as special administrator of the Estate of Joel Patrick Roche,[1] appeals the entry of judgment following a jury verdict in favor of plaintiff, Tonya Gilley. This appeal requires us to consider whether a plaintiff seeking recovery for medical treatment costs must present explicit witness testimony that the amount charged in the plaintiff's medical bills was reasonable. Because we conclude that the amount billed is some evidence from which a jury could infer reasonableness of the charges, such explicit testimony is not required. Accordingly, we affirm.

I. Background

¶ 2 The jury heard evidence from which it could reasonably find the following.

¶ 3 On July 4, 2018, Roche rear-ended Gilley's car at a yield sign. Gilley sustained injuries and was immediately transported to the emergency room, where she was diagnosed with a traumatic brain

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[1] Joel Patrick Roche, the defendant at trial, died while this appeal was pending. After oral argument, Oviatt was permitted to substitute as the appellant in her capacity as special administrator of Roche's estate. Because Oviatt's involvement arises solely from her role in Roche's estate, we refer throughout this opinion to Roche, rather than Oviatt.

injury. After the accident, Gilley developed chronic health problems that impacted her vision, balance, and cognitive function. She began treatment regimens with multiple medical specialists to address these health issues.

¶ 4 Gilley filed suit against Roche asserting claims of negligence and negligence per se. During the nine-day jury trial, Gilley presented testimony from five specialists who treated her after the accident. Each physician testified about the injuries Gilley sustained in the accident and the treatment they provided to her within their specialty. Each physician was also asked whether "all of [Gilley's] medical care [was] reasonable and necessary and related to the crash of July 4th, 2018?" Every physician answered in the affirmative.

¶ 5 Gilley also presented an expert, Laura Woodard, to testify about her future life care needs and past medical treatment. Woodard broke down Gilley's future medical costs based on current treatment plans. Woodard testified that, based on her review of Gilley's medical records, "[t]he cost[s] of the life care plan [were] reasonable and necessary."

¶ 6 Another of Gilley's experts, Jeffrey Nehls, testified that Gilley's past medical expenses totaled $239,859.53. Nehls derived this calculation from his review of Exhibit 31, a 199-page document containing all of Gilley's medical bills accrued since the day of the accident. Gilley also moved for the admission of Exhibit 31, which the trial court allowed over Roche's objection.

¶ 7 At the conclusion of both parties' cases-in-chief, Roche moved for a directed verdict on Gilley's claims for damages for past and future medical expenses. Roche argued that Gilley "laid no foundation . . . for the reasonable value of [her] past medical expenses," and that "none of the doctors testified as to the amounts of their bills or that those amounts charged were reasonable." Roche also argued that there was insufficient foundation for the admission of Exhibit 31. Specifically, Roche contended that some of the bills were not disclosed before trial or were unrelated to treatment Gilley received as a result of the crash and that, as a result, the exhibit "could not be used by the jury to determine the reasonable value of [Gilley's] medical fees."

¶ 8 The court denied the motion for a directed verdict.[2] In its ruling, the court said that "sufficient foundation [to admit Exhibit 31] was laid through each of the various doctors that testified," and that the jury could consider in its damages deliberation Nehls's testimony regarding the total amount of Gilley's past medical bills.[3] The jury returned a verdict in Gilley's favor and awarded her noneconomic damages of $400,000; economic damages of $2,657,000; and physical impairment damages of $1,800,000. Because the jury assigned Gilley forty-five percent of the blame for the accident, her total award was reduced to $2,671,350.

¶ 9 This appeal followed.

II. Directed Verdict

¶ 10 Roche contends that the trial court erred by denying Roche's motion for a directed verdict on the bases that Gilley failed to prove her medical expenses were (1) actually incurred and (2) reasonable. We disagree.

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[2] On appeal, Roche does not challenge the denial of the directed verdict as it relates to Gilley's future medical expenses.
[3] The court later issued a written order consistent with its oral ruling.

A. Standard of Review

¶ 11 Directed verdicts are not favored. *State Farm Mut. Auto. Ins. Co. v. Goddard*, 2021 COA 15, ¶ 25. "A motion for a directed verdict . . . should not be granted unless the evidence compels the conclusion that reasonable jurors could not disagree and that no evidence or inference has been received at trial upon which a verdict against the moving party could be sustained." *MDM Grp. Assocs., Inc. v. CX Reinsurance Co.*, 165 P.3d 882, 885 (Colo. App. 2007). The trial court must view the evidence in the light most favorable to the nonmoving party. *Id.*

¶ 12 We review a trial court's determination on a motion for directed verdict de novo. *Id.* If there is no evidence to support an element of a claim, a directed verdict is appropriate. *Id.* at 885-86.

B. Analysis

1. Incurred Medical Expenses

¶ 13 To recover past medical expenses, a plaintiff must prove that the expenses were reasonable, necessary, and incurred as a result of the injury at issue. *Lawson v. Safeway, Inc.*, 878 P.2d 127, 130 (Colo. App. 1994). A claim for damages may be established by the submission of "substantial evidence, which together with

reasonable inferences to be drawn therefrom provides a reasonable basis for computation of the damage." *Palmer v. Diaz*, 214 P.3d 546, 552 (Colo. App. 2009) (quoting *Pomeranz v. McDonald's Corp.*, 843 P.2d 1378, 1383 (Colo. 1993)). Substantial evidence is that which is probative, credible, and competent. *Id.*

a. Exhibit 31 Was Properly Admitted

¶ 14 Roche contends that Exhibit 31 was insufficient to establish Gilley's incurred medical expenses because it lacked the proper foundation to be admitted.

¶ 15 "Trial courts have considerable discretion to decide evidentiary issues, so we review such decisions for an abuse of discretion." *Murray v. Just In Case Bus. Lighthouse, LLC*, 2016 CO 47M, ¶ 16. In particular, "[t]he determination of the sufficiency of a foundation for the admission of evidence is a matter within the sound discretion of the trial court." *Hauser v. Rose Health Care Sys.*, 857 P.2d 524, 530 (Colo. App. 1993). A trial court abuses its discretion if its ruling is "manifestly arbitrary, unreasonable, or unfair, or based on a misapplication or misunderstanding of the law." *Goddard*, ¶ 65.

¶ 16 "[A]uthentication or identification [is] a condition precedent to admissibility . . . ." CRE 901(a). "[Authentication] is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." *Id.* That being said, "[t]he burden to authenticate 'is not high — only a prima facie showing is required.'" *People v. Glover*, 2015 COA 16, ¶ 13 (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014)). When considering questions of authenticity, the trial court serves "as gatekeeper in assessing whether the proponent has offered a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." *Id.* (quoting *Hassan*, 742 F.3d at 133).

¶ 17 During the line of questioning for the admission of Exhibit 31, Gilley's counsel asked Nehls whether "he review[ed] [Gilley's] medical bills?" After Nehls answered affirmatively, he was shown Exhibit 31 and asked whether he recognized the document, to which he responded that it was a "199-page PDF of medical bills," all of which had been sent to Gilley. Finally, Nehls was asked whether this document was "a fair and accurate representation of all of the medical bills that [he] reviewed for [Gilley's] case?" Nehls responded affirmatively.

¶ 18 Nehls's testimony was sufficient to support a finding that Exhibit 31 was what it purported to be: a collection of Gilley's medical bills. Exhibit 31 was properly authenticated.

¶ 19 Roche's argument is essentially that Exhibit 31 included amounts not properly classified as medical bills, as well as amounts Gilley was not seeking to recover as damages. However, Roche provides no authority for the proposition that such minor discrepancies would be sufficient to preclude the admission of the document. To the extent the exhibit was overinclusive, that goes to the weight of the evidence and was a proper subject for cross-examination; it did not serve as a basis for keeping the document out entirely.

¶ 20 The trial court did not abuse its discretion by admitting Exhibit 31.

b. The Evidence Established Gilley's Incurred Medical Expenses

¶ 21 Roche further argues that, as admitted, Exhibit 31 did not establish Gilley's incurred medical expenses. Specifically, Roche alleges that Exhibit 31 was admitted for the narrow purpose of confirming that it was the document Nehls reviewed, and "not as an accurate collection of [Gilley's] past medical bills attributable to the

accident." While it is true that the trial court admitted Exhibit 31 with this narrow purpose in mind during Gilley's case-in-chief, the court clarified its position while discussing Roche's motion for a directed verdict, saying Exhibit 31 was "admissible because the foundation had been laid along the way by the witnesses as well." In coming to this conclusion, the court relied on the testimony of Gilley's various physicians. Each specialist explained their treatment plan, which was subsequently reflected in their medical bills in Exhibit 31, and how that plan was reasonable, necessary, and related to the crash. Therefore, the trial court did not abuse its discretion.

¶ 22 Finally, Roche contends that Exhibit 31 was not sufficient to establish Gilley's incurred medical expenses because Nehls's calculation was created by adding together all of the medical bills in the document without knowing if certain bills were attributable to the crash. But, as noted, Gilley's physicians described the treatment she received and that it was incurred as a result of her accident, which was then reflected in Exhibit 31. This, in combination with Nehls's testimony regarding his calculation of

Gilley's past medical expenses, provided a reasonable basis for computing damages. *Palmer*, 214 P.3d at 552.

¶ 23 Roche further argues that, unlike future damages, past damages must be proved with mathematical certainty — that "a reasonable approximation" is insufficient. This view is not supported by Colorado case law. *See, e.g.*, *Averyt v. Wal-Mart Stores, Inc.*, 265 P.3d 456, 462 (Colo. 2011) (approving a judgment for $4.5 million in economic damages that was based in part on testimony that "$500,000 was a *proper estimate* for [the plaintiff's] past medical costs") (emphasis added). Indeed, even *Lawson* — on which Roche heavily relies — upheld the entirety of a jury verdict based on a single treating physician's testimony that the expenses reflected in *his* bill, "which represented over one-third of plaintiff's total medical expenses," were reasonable and necessary and incurred as the result of the plaintiff's fall, thus placing no apparent weight on the lack of such testimony about the other two-thirds of the plaintiff's medical expenses. *Lawson*, 878 P.2d at 131.

¶ 24 In sum, whether Exhibit 31 included some charges that were unrelated to the accident was an issue for the jury to decide. And

even if some were not accident related, there was nevertheless ample evidence to support the verdict the jury returned.

2. Reasonable Value of Medical Expenses

¶ 25 Roche contends that Gilley failed to present any evidence establishing the reasonable *value* of her past medical expenses.

¶ 26 "[T]he correct measure of compensable damages for medical expenses is the necessary and reasonable value of the services rendered . . . ." *Id.*

¶ 27 Roche argues that Gilley presented no evidence that her medical bills were reasonable. In making this argument, Roche declares that *Lawson* "instructs that evidence of the billed amounts provides some evidence of reasonable value but does not in itself provide sufficient evidence to establish reasonable value as required to support a claim for past medical expenses and to defeat a motion for a directed verdict." *Lawson* cannot bear the weight Roche attempts to place on it.

¶ 28 *Lawson* says nothing whatsoever about the threshold for surviving a directed verdict motion. The issue in *Lawson* was whether the trial court had erred by instructing the jury that the plaintiff could recover for her medical expenses when no medical

expert had testified that her expenses were reasonable, necessary, and proximately caused by her fall. *Id.* at 130. The division in *Lawson* held that the instruction was proper because there was evidence that could demonstrate reasonableness, necessity, and causation; the evidence did not have to be in the form of expert testimony. *Id.* at 131.

¶ 29 The division noted that evidence of the amount paid for such services is "some evidence of their reasonable value." *Id.* (quoting *Palmer Park Gardens, Inc. v. Potter*, 425 P.2d 268, 272 (Colo. 1967)). Notably, though irrelevant to the issue before us, the Colorado Supreme Court has subsequently clarified that, because of the pre-verdict collateral source rule, evidence of the amount paid is inadmissible. *Wal-Mart Stores, Inc. v. Crossgrove*, 2012 CO 31, ¶ 25. Nevertheless, the division of this court that decided the *Crossgrove* case before it went to the supreme court observed that, in *Lawson*, in view of the testimony of the treating physician about his bill, "the evidence admitted as 'the amount paid' seems to have been the amount *billed* by the medical providers." *Crossgrove v. Wal-Mart Stores, Inc.*, 280 P.3d 29, 36 (Colo. App. 2010), *aff'd*, 2012 CO 31. Thus, to the extent *Lawson* is relevant to this dispute, it

stands for the proposition that the amount billed is some evidence of the reasonable value of the medical services.

¶ 30 Indeed, *Lawson* is not the only authority for this proposition. In *Pyles-Knutzen v. Board of County Commissioners*, 781 P.2d 164, 169 (Colo. App. 1989), a division of this court held that the plaintiff's testimony that he had incurred over $7,000 in medical bills "was admissible as evidence of the reasonable value of the medical services rendered." Similarly, in *Jorgensen v. Heinz*, 847 P.2d 181, 183 (Colo. App. 1992), a division of this court held that evidence of the amount of medical bills the plaintiff had incurred "may have been sufficient to show a reasonable *value* of the medical services rendered," but that testimony failed to establish the reasonable *need* for those services.[4] Here, as noted, Gilley presented ample medical testimony regarding the need for the services.

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[4] We recognize that the term "reasonable value" as applied in both *Pyles-Knutzen* and *Jorgensen* is in reference to repealed statutory language that defined "reasonable value" as "the average cost of specific types of services . . . as determined by the commissioner [of insurance]." § 10-4-714(1)(e), C.R.S. 2002. Nevertheless, if the amount billed was proper evidence of reasonable value under that definition, we see no reason why it would not be equally germane where the term no longer has a statutory definition.

¶ 31 A directed verdict is only appropriate when there is no evidence that could support a verdict against the moving party. *Garcia v. Colo. Cab Co.*, 2023 CO 56, ¶ 18. Evidence of the bills Gilley received for medical treatment that many of the witnesses testified was reasonable and necessary presented some evidence of the reasonable value of those medical services. Thus, the trial court did not err by denying the motion for directed verdict.

III. Disposition

¶ 32 The judgment is affirmed.

JUDGE DUNN and JUDGE BERGER concur.