

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001127-MR

SHARON L. GREEN

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 99-CI-00637

APRIL P. JACKSON

APPELLEE

OPINION

REVERSING and REMANDING

** ** * * * **

BEFORE: EMBERTON, CHIEF JUDGE; BAKER AND JOHNSON, JUDGES.
EMBERTON, CHIEF JUDGE. On April 15, 1998, Sharon Green was involved in a motor vehicle accident with April Jackson. Jackson admitted responsibility for causing the accident but contested that Green's damages were the result of the accident. On March 5, 2002, the case was tried before a jury on the issue of damages. After denying Green's motion for directed verdict on the issue of whether her damages exceeded \$1,000, the issue was submitted to the jury, which found that as a result of the

accident she had not incurred reasonable and necessary medical expenses exceeding \$1,000.

KRS¹ 304.39-060 provides, in part, that an action for injury sustained as the result of an automobile accident may be brought where the medical expenses exceed \$1,000. Medical expense is defined as "reasonable charges incurred for reasonably needed products, services and accommodations. . . ." The statute also provides for a presumption that any medical bill submitted is reasonable.² In Bolin v. Grider,³ the court stated that the statute reflects a legislative judgment that:

- A. "Medical expense" must be reasonable in the amount of charges.
- B. "Medical expense" must be reasonably needed as a result of the collision in issue.
- C. Once medical bills have been introduced they place on the defendant the practical necessity of going forward with impeaching proof if he would avoid a directed verdict on these issues.⁴
(Citations omitted).

Green submitted medical bills in excess of \$7,000 which she alleged were incurred as a result of the accident. No contention is made that the expenses incurred were not

¹ Kentucky Revised Statutes.

² KRS 304.39-020(5)(a).

³ Ky., 580 S.W.2d 490 (1979).

⁴ Id. at 491.

reasonable. Jackson maintains that there was, however, a question of fact as to whether the bills were reasonably needed as a result of the April 1998 accident and that the issue was properly submitted to the jury. Jackson is correct in that expenses must not only be reasonable but they must be needed as a result of the injury sustained in the accident. Where there is proof that the expenses were not necessary, a proper jury instruction should be submitted.⁵

In this case the only medical evidence was presented by Dr. Gerald Rightmeyer, Dr. Bryant Bloss and Dr. Juan Nunez, all of whom treated Green following the April 1998, accident. All three diagnosed her condition as a cervical strain, or whiplash-type injury. Also, each stated that it was within medical probability that the injury was caused by the April 1998 accident. Although Green had arthritic changes that pre-existed her accident, all three physicians testified that the accident aggravated her condition. All testified that her therapy, which consisted of office visits, treatment, physical therapy and medication, including chiropractic treatment received from Dr. Nunez, was reasonable and necessary as a result of the accident.

Jackson repeatedly stresses in her argument to this court that there is no medical testimony that Green suffered any fractures, compressions, or disc damage. There is no

⁵ See Thompson v. Piasta, Ky. App., 662 S.W.2d 223 (1983).

requirement that in actions under our no-fault statute an injury must be "acute" as suggested by Jackson.

There was medical testimony that Green's condition had improved with treatment but that her complaints began anew following another automobile accident in August 1998. This evidence goes, however, to the extent of her damages caused by the April accident, not whether she has met the threshold to establish a claim.

In summary, we have reviewed the evidence and have found nothing to contradict the testimony given by the three medical experts. All testified that the treatment administered to Green following her April 1998 accident and prior to August 1998, was reasonably necessary. On this issue there was nothing for the jury to decide and the court erred in not granting Green a directed verdict and her subsequent motion for a new trial.

This case is reversed and remanded for a new trial on the issue of damages.

JOHNSON, JUDGE CONCURS.

BAKER, JUDGE, DISSENTS AND FURNISHES SEPARATE OPINION.

BAKER, JUDGE, DISSENTING: Respectfully, I dissent.

The majority opinion correctly recites the standard for recovery of medical expenses as being "reasonable charges for reasonably needed products, services and accommodations . . .

. ."⁶ There is no contention by either party that the actual cost of the medical expenses in issue was "reasonable" - that is, the physicians and other healthcare providers charged a usual and customary amount for the service actually provided. However, the issue presented at trial, and now on appeal, is whether or not Sharon Green reasonably needed these services.

A review of the medical evidence indicates that there were contested objective medical findings regarding the injury allegedly related to this accident. Some of the findings do reference a pre-existing condition which is clearly not related to the accident itself, and there is also a subsequent motor vehicle accident which could have contributed to the plaintiff's injuries and complaints.

The plaintiff was apparently treated conservatively by each of the treating providers. Therefore, the jury was left to decide whether or not the trial plaintiff's subjective complaints of pain and other questionable symptoms were significant enough to warrant the medical treatment which she chose to undergo and incur resulting expense.

In short, this issue was properly presented to the jury, and the jury - as the finder of fact - has rendered its verdict on this contested issue. While a different jury on a different day may have reached a different result, I would be

⁶ Kentucky Revised Statute 304.39-060.

remiss in substituting my judgment for that of the jury that decided this case, as the resolution of this issue is properly to be decided by the fact finder.

BRIEF FOR APPELLANT:

John R. Tarter
NEEL, WILSON & CLEM
Henderson, Kentucky

BRIEF FOR APPELLEE:

H. Randall Redding
C. Donald Thompson, Jr.
KING, DEEP and BRANAMAN
Henderson, Kentucky