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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2015-CA-000706-MR

STATE FARM INSURANCE CO.
A/S/O SANTOS I. CRUZ — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A. C. MCKAY CHAUVIN, JUDGE
ACTION NO. 12-CI-002425

SHAWN B. MORRIS — APPELLEE

OPINION
REVERSING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

KRAMER, CHIEF JUDGE: State Farm Insurance Co. asserted a subrogation claim against appellee, Shawn B. Morris, in Jefferson Circuit Court. It now appeals the circuit court's decision to enter a zero-judgment regarding its claim. Upon review, we reverse.

Santos I. Cruz was involved in an automobile collision with Morris on or about May 5, 2010.[1] On May 17, 2010, Cruz sought treatment from Cardinal Chiropractic Center, complaining of bilateral pain in the neck area which, according to Cardinal's records, Cruz attributed to the accident. Cruz continued regular treatment with Cardinal for about three more months and eventually submitted the bill for his treatments (totaling $6,679.08) to his insurance carrier, State Farm Insurance Co. State Farm paid this amount out of the no-fault component of Cruz's coverage (coverage that is referred to interchangeably as "personal injury protection," "PIP," "basic reparations benefit," or "BRB").

State Farm then filed suit in Jefferson Circuit Court against Morris. Its suit alleged that as a direct and proximate result of Morris's negligence, its insured, Cruz, had sustained bodily injury resulting from the aforementioned collision; Morris was uninsured at the time; and, having paid Cruz's consequent medical expenses in the amount of $6,679.08 as Cruz's reparations obligor, State Farm had a right of subrogation and was entitled to reimbursement from Morris.[2]

[1] Some of the documentation of record indicates the collision occurred on May 5, 2010, while other documentation indicates it occurred on May 8, 2010. For our purposes, the date is unimportant.

[2] As discussed in *City of Louisville v. State Farm Mut. Auto. Ins. Co.*, 194 S.W.3d 304, 306 (Ky. 2006),

> The two principal provisions of the Kentucky Motor Vehicle Reparations Act (MVRA) pertaining to BRB subrogation claims are found in KRS 304.39–070, viz:
>
> > (2) A reparation obligor which has paid or may become obligated to pay basic reparation benefits shall be subrogated to the extent of its obligations to all of the rights of the person suffering the injury against any person or organization *other than a secured person*.
> > (3) A reparation obligor shall have the right to recover basic reparation benefits paid to or for the benefit of a person suffering the injury *from the reparation obligor of a secured person* as

Thereafter, Morris was effectively served. But, he never filed an answer, made an appearance, or responded to the motion for default judgment State Farm ultimately filed in this matter.

The circuit court granted State Farm's motion for default judgment with respect to the issue of Morris's liability. Because State Farm's damages were unliquidated,[3] however, the circuit court held a hearing to determine the extent of State Farm's damages.[4] At the hearing, State Farm presented the several bills Cruz

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> provided in this subsection . . . .
>
> (Emphasis added.)
>
> Under these provisions, if the injury was caused by an unsecured person, the injured party's reparation obligor may obtain BRB reimbursement directly from the unsecured person; but if the injury was caused by a secured person, the injured party's reparation obligor may obtain BRB reimbursement only from the secured person's reparation obligor. *Young v. United States*, 71 F.3d 1238, 1243 (6th Cir. 1995) (construing KRS 304.39–070(2) & (3)).

[3] A damages claim is liquidated if it is "of such a nature that the amount is capable of ascertainment by mere computation, can be established with reasonable certainty, can be ascertained in accordance with fixed rules of evidence and known standards of value, or can be determined by reference to well-established market values." *3D Enterprises Contracting Corp. v. Louisville and Jefferson County Metropolitan Sewer District*, 174 S.W.3d 440, 450 (Ky. 2005) 450 (citation omitted). By contrast, a damages claim is unliquidated where, as here, it must be established by proof and left to the discretion of the judge or jury. *See Jackson v. Tullar*, 285 S.W.3d 290, 299 (Ky. App. 2007).

[4] Kentucky Rule of Civil Procedure 8.04 provides in relevant part:

> Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading, except that the following allegations must be proved:
>
> (a) Those against a person under any disability.
>
> (b) Those necessary to sustain an action for divorce.
>
> (c) Those concerning value or amount of damages which are not for a sum certain or for a sum which may by computation be made certain.

In other words, a defaulting party does not admit unliquidated damages; such damages must be proven. As such, CR 55.01 authorizes the circuit court to conduct a hearing for determination of damages in order to enable the court to enter judgment; and, CR 52.01 requires the circuit court to make specific findings of fact and conclusions of law in support of its judgment. *See Howard v. Fountain*, 749 S.W.2d 690, 693 (Ky. App. 1988).

had submitted regarding his treatment from Cardinal, which totaled $6,679.08; it also presented a representative from State Farm, who testified State Farm had paid the bills. Morris did not attend the hearing.

Subsequently, the circuit court entered a zero-damages judgment in favor of State Farm. In the relevant part of its findings of fact and conclusions of law, the circuit court explained State Farm was entitled to nothing because:

> Having reviewed the tendered proof and considered the record in its entirety, the Court finds that there is insufficient evidence of record to conclude that the low-speed, low-impact, non-injury automobile accident caused the purported nonspecific injuries for which Mr. Cruz sought treatment from Cardinal. There is evidence in the record that Mr. Cruz received treatment. There is no evidence that such treatment was reasonable and necessary. While the Court is not inclined to assume that the purported injuries were contrived in order to allow disreputable chiropractors and unscrupulous pain-management specialists to profit from the aforementioned PIP payment decision matrix, neither is the Court able, or at least willing under the totality of the circumstances, to conclude that Mr. Cruz was injured as a direct result of the accident, or that the treatment provided by Cardinal was necessary or reasonable. Despite Mr. Morris' liability for the accident and his ill-advised failure to participate in this litigation, there is insufficient proof to warrant saddling him with the obligation of reimbursing State Farm for its decision not to challenge Mr. Cruz' imminently challengeable claim.

On appeal, State Farm argues, contrary to what the circuit court held, that it was entitled to reimbursement because it introduced evidence supporting that Cruz's medical bills from Cardinal were both reasonable and related to the accident. We agree. The medical bills themselves qualified as that evidence.

As to why, the explanation is found in KRS 304.39-020. When State Farm paid Cruz's medical bills, it did so as part of his basic reparation benefits coverage as defined in KRS 304.39-020(2). Basic reparation benefits consist of one or more of the elements defined as "loss" in KRS 304.39-020(5). Relevant to this case is the element of "medical expense" as described in KRS 304.39-020(5)(a), which provides:

> "Medical expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, physical rehabilitation, rehabilitative occupational training, licensed ambulance services, and other remedial treatment and care. "Medical expense" may include non-medical remedial treatment rendered in accordance with a recognized religious method of healing. The term includes a total charge not in excess of one thousand dollars ($1,000) per person for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. Medical expense shall include all healing arts professions licensed by the Commonwealth of Kentucky. *There shall be a presumption that any medical bill submitted is reasonable*.

(Emphasis added.)

Cruz received treatment in accordance with a recognized method of healing and thus incurred medical expenses. He submitted his bill for his medical expenses to State Farm. And, the above-italicized language of KRS 304.39-020(5)(a), as interpreted by the Kentucky Supreme Court, means that once such

bills have been submitted, they are *presumed* to be both reasonable in amount and a reasonably needed expense resulting from the accident. *See Bolin v. Grider*, 580 S.W.2d 490, 491 (Ky. 1971).[5] Once a medical bill has been introduced, the burden is on the defendant to go forward with proof to impeach the bill. *Id*.

Morris has never participated in these proceedings, much less impeached Cruz's bills. Cruz's bills, therefore, constituted undisputed evidence of his reasonable and necessary medical expenses resulting from his collision with Morris—a collision for which, by reason of Morris's default, Morris was liable.

The Jefferson Circuit Court is therefore REVERSED. In conformity with this opinion, the circuit court is directed to enter default judgment against Morris and in favor of State Farm for the amount of $6,729.08.

DIXON, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS.

| BRIEF FOR APPELLANT: | BRIEF FOR APPELLEE: |
|---|---|
| Franklin S. Yudkin<br>Louisville, Kentucky | No brief filed. |

[5] *See also Cincinnati Ins. Co. v. Samples*, 192 S.W.3d 311, 318 (Ky. 2006), explaining it was not error for the court to allow the plaintiff in that matter to introduce his medical bills without expert proof that they were necessary for and related to treatment for injuries caused the accident because

> [W]e have long held that evidence such as that presented in this case is sufficient to establish that the medical bills were reasonable and were related to the accident. *Daugherty v. Daugherty*, 609 S.W.2d 127, 128 (Ky. 1980) (noting the statutory presumption in KRS 304.39–020(5)(a) that any medical bill submitted is reasonable); *Townsend v. Stamper*, 398 S.W.2d 45, 48 (Ky. 1965); *Miller v. Mills*, 257 S.W.2d 520, 523 (Ky. 1953).