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Who Pays? A Pragmatic Approach to Awarding Costs and Disbursements Post-Trial

By: Elizabeth Roff

Litigation costs have sky rocketed over the past decade. In a personal injury automobile case, it is not uncommon for defense costs to exceed \$10,000.00 for expert and trial expenses – exclusive of attorneys’ fees. After trial, a “prevailing party” is statutorily entitled to reimbursement of reasonable costs and disbursements incurred in the lawsuit. These costs and disbursements include costs for filing fees, medical record collection fees, deposition transcript fees, mediator fees, motion filing fees, expert report and testimony fees, and trial exhibits. The legislature only defined “prevailing party” in the context of a total obligation offer under Rule 68 of the Minnesota Rules of Civil Procedure. But who is the “prevailing party” when there is no applicable total obligation offer? The Minnesota Court of Appeals addressed this scenario in the unpublished decision of *Hamilton v. Progressive Direct Ins. Co.*, A18-0585 (Minn. Ct. App. Jan. 7, 2019).

Attorney Elizabeth Roff, now with Brown & Carlson, tried the case to a jury in Anoka County. Plaintiff Lauren Hamilton was involved in a motor vehicle accident. About nine months after the Accident, Plaintiff underwent low back surgery. She received the full policy limits from the tortfeasor and commenced an action against Progressive Direct Insurance Company (“Progressive”) seeking underinsured motorist (“UIM”) benefits and no-fault benefits. At trial, Plaintiff asked for about \$105,00.00 in past medical damages and \$52,010.00 in past wage loss. After four days of receiving evidence, the jury rejected Plaintiff’s claim and awarded only the damages deemed related by Progressive’s expert witnesses. The jury awarded less than 2% of the medical damages; nothing for wage loss damages; and nothing for future damages. The net verdict after offsets was \$242.00 for a medical bill that was not submitted to Progressive for payment until trial and never disputed as compensable by Progressive.

Plaintiff and Progressive brought cross-motions for costs and disbursements. Plaintiff sought nearly \$28,000.00 in costs. Attorney Roff argued that under a pragmatic approach, Plaintiff was clearly not the “prevailing party.” The trial court disagreed and found that Plaintiff was the “prevailing party” because a net verdict of over \$1.00 was awarded. The Court of Appeals disagreed with the district court. The trial court abused its discretion in focusing solely on a small monetary award and not applying a pragmatic examination. Under a pragmatic approach, the Court of Appeals found that the only “logical outcome the district court could have come to . . . is that Progressive was the prevailing party.” In reaching this conclusion the court emphasized that the jury was “unpersuaded by the bulk of [Plaintiff’s] arguments and persuaded by Progressive’s arguments, particularly on the major issues of this case.” The court deemed Progressive the prevailing party and remanded to the district court to determine its reasonable costs and disbursements.

Plaintiff filed a petition to the Minnesota Supreme Court for review; the Minnesota Supreme Court denied the petition. Plaintiff therefore has to pay Progressive’s reasonable costs and Progressive has no obligation to pay her costs. The court of appeals decision was, unfortunately, unpublished. It therefore does not create a mandatory precedent for

subsequent cases, but holds persuasive value. In practice, most district courts give substantial weight to unpublished decisions.

The takeaway from *Hamilton* is that a plaintiff who receives a net monetary award from a jury is not automatically the “prevailing party” for purposes of determining costs and disbursements. The trial court must take a holistic view of a plaintiff’s claim and compare them to the actual jury verdict to determine who is entitled to costs and disbursements.

Please contact Elizabeth Roff at Brown & Carlson should you have questions regarding this decision, or any other liability matter.

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