

Online Reference: FLWSUPP 3311TRAV

Torts -- Personal injury -- Damages -- Past medical expenses -- On reconsideration, trial court acknowledges that it erred in entering directed verdict in favor of defendants on issue of whether plaintiff provided sufficient proof of past medical expenses -- Plaintiff met his burden on past expenses by entering medical bills into evidence and associating bills with treatment of medical providers that testified to his relevant injuries -- Determining whether bills were reasonable and necessary was domain of jury, which determined that they were -- Defendants' motion for new trial is denied -- Court has now determined that bills were properly submitted to jury, and argument that medical bills may have tainted jury's decision on amount of other damages fails -- No merit to argument that new trial is required because plaintiff presented a deposition testimony of expert at trial from discovery deposition, rather than from a second deposition that was somehow specially designated as a "trial deposition" -- Argument that new trial is warranted because plaintiff's counsel did not accurately recount juror's answers during *Melbourne* colloquy on race-neutral reason for peremptory strike fails where defendants did not object on that basis at time of colloquy -- No merit to argument that defendants were prejudiced by jury panel member's extremely short, unsolicited comment on increase in insurance rates during jury selection process

ROOSEVELT TRAVIS, JR., Plaintiff, v. ACME BARRICADES L.C., et al., Defendants. Circuit Court, 2nd Judicial Circuit in and for Gadsden County. Case No. 23-CA-275. November 19, 2025. David Frank, Judge. Counsel: Hubert Brown, Brown and Brown Attorneys at Law, P.A., Tallahassee, for Plaintiff. Scott Shelton, Cole, Scott & Kissane, P.A., Orlando, for Defendants.

ORDER GRANTING**PLAINTIFF'S MOTION TO RESTORE AWARD****FOR PAST MEDICAL EXPENSES AND****DENYING DEFENDANT'S MOTION FOR NEW TRIAL**

This cause came before the Court for hearing on November 13, 2025 on plaintiff's motion to restore award for past medical expenses (for reconsideration / rehearing of directed verdict) and defendant's motion for new trial, and the Court having reviewed the motions with trial transcript exhibits, responses to the motions, and separately filed transcript volumes, heard argument of counsel, and being otherwise fully advised in the premises, finds

The Court has a solid recollection of this trial. In addition to considering the exhibits submitted by and arguments of the parties, the Court is relying upon its own personal observations and judgment of the credibility of witnesses and the weight of their testimony.

I. Defendant's Motion for Directed Verdict on**Plaintiff's Past Medical Expenses**

At the close of plaintiff's case at trial, the defendants moved for directed verdict regarding past medical expenses. Although there was some confusion over exhibits and the stipulations as to authenticity, etc., that had to be sorted out, the disputed issue was whether the plaintiff had presented enough evidence on the necessity and reasonableness of the medical expenses to go to the jury. Court found that the evidence was sufficient to go to the jury and denied the motion. Past medical bills were eventually admitted into evidence and sent back with the jury for consideration. At the close of defendant's case, defendant again moved for directed verdict on past medical expenses. The Court considered the additional argument provided by the

parties and reserved on its ruling. After the verdict was returned, the Court issued its ruling on the reserved motion granting directed verdict on past medical expenses, which were subtracted from the dollar amount of the verdict.

After considering the detailed and comprehensive arguments presented at the hearing, the Court now agrees with plaintiff that the Court's initial ruling was the correct ruling, that defendant's motion for directed verdict on past medical expenses should be denied.

A very recent case that the Court did not consider initially, *Young v. Panera, LLC*, No. 8:22-CV-2894-MSS-CPT, 2025 WL 2410615, at 3-4 (M.D. Fla. Aug. 20, 2025), is very instructive on this issue. The *Young* court provided the following analysis:

Relevant to several of Plaintiffs' arguments is what Florida law requires a personal injury plaintiff to prove to establish the reasonableness of his or her medical expenses. In Florida, a plaintiff may recover the reasonable value of his medical expenses resulting from a defendant's negligence. Thus, in a personal injury lawsuit, the plaintiff has the burden to prove the reasonableness and necessity of medical expenses. The plaintiff may achieve this through expert witness testimony, his or her own lay testimony, or a combination of both. To establish a prima facie claim for the recovery of past medical expenses, a plaintiff must establish that he incurred medical expenses, that the incurrence of these medical expenses was necessary, and that the particular medical expenses claimed were reasonably related to injuries related to the subject accident.

Although Florida requires “something more” than evidence of the amount of a medical bill to prove reasonableness, the “something more” is not evidence that justifie[s] the amount expended but rather evidence that tie[s] the incurrence of the expense to the subject accident. In *Roman*, the defendant argued that the plaintiff did not fully establish the reasonableness of the medical expenses because he failed to provide specific evidence of the reasonableness of the dollar amounts charged by the various medical providers. The Florida Second District Court of Appeal rejected this argument. Testimony from the plaintiff and his treating physicians along with [a] medical bill summary established that [the plaintiff] incurred damages he was responsible to repay and that the expenses were for necessary treatment for injuries reasonably related to the instant accident. Accordingly, the district court concluded the plaintiff presented prima facie evidence of the damages element of his negligence claim.

Likewise, in *Walerowicz*, the Florida Fourth District Court of Appeal concluded that the plaintiff's testimony, the testimony of one of her treating doctors, and the introduction of her medical bills linked the medical treatments she received to the injury resulting from the defendant's negligence. This evidence was sufficient to establish the reasonableness and necessity of the medical expenses. Thus, the evidence was sufficient for the plaintiff to survive the defendant's motion for a directed verdict and post-trial motions for a new trial and for judgment as a matter of law.

Panera contends that Plaintiffs may only recover damages for past medical expenses if those expenses are reasonable in amount. However, the Plaintiffs' burden to prove the reasonableness and necessity of the medical bills does not require proof of the reasonableness of the dollar amount charged.

Young at 3-4.; see also *Roman v. Sos*, 393 So.3d 1263, 1267 (Fla. 2d DCA 2024) [49 Fla. L. Weekly D1852a], citing *Walerowicz v. Armand-Hosang*, 248 So.3d 140, 145 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D1165a], which the Court relied upon for its initial ruling.

Similarly, the present plaintiff met his burden by entering the medical bills into evidence and associating the bills with the treatment of the various medical professionals that addressed the relevant injuries, through the testimony of those providers along with the plaintiff's testimony. *See* discussion and citations to the transcript in plaintiff's brief.

Deciding whether the medical bills were reasonable and necessary was the domain of the jury. The defendants were given ample opportunity to cross-examine and impeach plaintiff's witnesses, to bring their own witnesses, and to argue on closing, as it did, that they were not sufficient.

II. Defendant's Motion for New Trial

As our Supreme Court advised, when considering a motion for new trial:

A jury's verdict should not be lightly set aside. Our constitution says that the right of trial by jury must remain inviolate. It has long been well settled in this jurisdiction that where the jury has been properly instructed by the Court and the evidence is conflicting, and the case is one in which a jury of reasonable men could have found the verdict rendered on the evidence submitted to them, a new trial should not be granted. While the legal effect of the evidence is a question of law for the court, the jury is the trier of the facts, and conflicts in the evidence are for the jury to decide. The power of the trial court to grant a motion for new trial should be exercised cautiously, and only after a careful consideration of all the evidence in its most favorable aspect to the party in whose favor the verdict was rendered. *Wolkowsky v. Goodkind*, 153 Fla. 267, 14 So. 2d 398, 402 (1943).

Hernandez v. Mishali, 319 So.3d 753, 759 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1016b].

“The deference the law grants a trial court granting a motion for new trial based on the manifest weight of the evidence does not, however, grant it a license to operate ‘as a super-juror by disregarding a jury's verdict simply because the judge would have rendered a different one had it been the judge's choice to make.’” *Valenty v. Saraiva*, No. 2D18-4002, 2020 WL 1162454, at *3 (Fla. 2d DCA Mar. 11, 2020) [45 Fla. L. Weekly D563a].

“Thus, a trial court should grant a new trial ‘if the jury has been deceived as to the force and credibility of the evidence or has been influenced by considerations outside the record.’ ‘In making this decision, the trial judge must necessarily consider the credibility of the witnesses along with the weight of all of the other evidence.’ ‘Not every verdict which raises a judicial eyebrow should shock the judicial conscience.’” *Hashmi-Alikhan v. Staples*, 241 So.3d 264 (Fla. 5th DCA 2018) [43 Fla. L. Weekly D685a] (citations omitted).

A. The Jury's Verdict Was Tainted by

Consideration of Past Medical Expenses

Defendants first contend that a new trial should be granted because medical bills that never should have been considered by the jury were admitted into evidence and went back with the jury for consideration. The argument is that such high dollar medical bills would certainly and improperly influence the jurors' decision on the other categories of damages such as past and future pain and suffering.

However, the Court has now ruled that the medical bills were properly submitted to and considered by the jury, so this argument fails.

B. Discovery Versus Trial Depositions

Defendants' next argument needs little attention as it is wholly without merit. Defendants contend that a party

may not present the deposition testimony of an expert at trial, subject to valid objections, unless the expert was “unavailable” and the deposition was a second deposition, somehow specially designated a “trial deposition,” taken subsequent to the “discovery deposition.”

Although parties may take the time and expense to conduct a second “trial deposition” to fine tune an expert's testimony for trial, it has never been required by any authority whatsoever. Every day, all across this state, parties take the “discovery deposition” of their opponent's expert, or even their own, and then designate portions of the deposition to be played or read at trial, subject to valid objections. Notices of depositions, again, every day, across this state, always say, as they did here, that they will be used for trial and other purposes. *But they do not have to do so.* Let's look at the rules:

RULE 1.330. USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice of it so far as admissible under the rules of evidence applied as though the witness were then present and testifying in accordance with any of the following provisions:

...

(3) *The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:* (A) that the witness is dead; (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; *or (F) the witness is an expert or skilled witness.*

RULE 1.390. DEPOSITIONS OF EXPERT WITNESSES

(b) Procedure. The testimony of an expert or skilled witness may be taken at any time before the trial in accordance with the rules for taking depositions and may be used at trial, regardless of the place of residence of the witness or whether the witness is within the distance prescribed by rule 1.330(a)(3). **No special form of notice need be given that the deposition will be used for trial.**

The case cited by defendants, *Friedman v. Friedman*, 764 So.2d 754 (Fla. 2d DCA 2000) [25 Fla. L. Weekly D1641a], is strikingly distinguishable. “There, the trial court had admitted the deposition of a non-party witness as substantive evidence pursuant to Rule 1.330(a)(1), even though the witness's unavailability had apparently not been proven, because it found the deposition was permitted under the evidence code as “former testimony” under section 90.803(22), even though it was taken as a discovery deposition in the same proceeding.” *Castaneda ex rel. Cardona v. Redlands Christian Migrant Ass'n, Inc.*, 884 So.2d 1087, 1092 (Fla. 4th DCA 2004) [29 Fla. L. Weekly D2346a]

C. An Improper Peremptory Strike

Defendants' third argument also needs little attention and is without merit. Defendants contend that a party explaining a race neutral reason for a peremptory strike as part of the *Melbourne* colloquy must accurately recount the juror's answers. That is true. However, to use this alleged defect, the party challenging the strike

must object on that basis at the time of the colloquy:

The same is true in the context of preservation of Melbourne claims. It is the objecting party's obligation to place the trial court on notice of the basis for the challenge and create a record supporting that objection. *Dorsey v. State*, 868 So. 2d 1192, 1197 (Fla. 2003) [28 Fla. L. Weekly S858a]; *Rimmer v. State*, 825 So. 2d 304, 320-21 (Fla. 2002) [27 Fla. L. Weekly S633a]. Indeed, in *Floyd v. State*, 569 So. 2d 1225, 1229 (Fla. 1990) (emphasis added), we held that “[i]f the explanation is challenged by opposing counsel,” the strike opponent “must place the court on notice” to preserve a claim of racial discrimination for appellate review. We stated:

It is the state's obligation [as the proponent of the strike] to advance a facially race-neutral reason that is supported in the record. If the explanation is challenged by opposing counsel, the trial court must review the record to establish record support for the reason advanced. *However, when the state asserts a fact as existing in the record, the trial court cannot be faulted for assuming it is so when defense counsel is silent and the assertion remains unchallenged. Once the state has proffered a facially race-neutral reason, a defendant must place the court on notice that he or she contests the factual existence of the reason.* *Id.* (emphasis added).

State v. Johnson, 295 So. 3d 710, 714 (Fla. 2020) [45 Fla. L. Weekly S161a] (emphasis added).

Defendants never really established that plaintiff's counsel's recitation of the juror's answers were so factually incorrect (by a review of the record) that it eviscerated the proffered reason. But even if they had, “defense counsel [was] silent and the assertion remain[ed] unchallenged.”

D. The Discussion of Insurance

During Jury Selection Prejudiced Defendants

Finally, defendants' last argument also requires little attention. Defendants contend that the unprovoked, short discussion of insurance rates during jury selection “unfairly prejudiced [defendant] ACME.”

Not so. The comment came from a panel member without any solicitation or provocation by plaintiff's counsel. The concern the panel member expressed centered on the possibility of insurance rates increasing. There was no discussion of defendant ACME's liability insurance; whether it existed or didn't, or the amount. And the whole discussion was extremely short and handled well by plaintiff's counsel who had a right to follow up.

Accordingly, it is ORDERED and ADJUDGED that

1. Plaintiff's motion for reconsideration of the Court's ruling on defendants' motion for directed verdict on medical expenses is GRANTED. That motion for directed verdict is DENIED. Plaintiff will promptly submit an amended final judgment that reflects the medical expenses awarded by the jury.

2. Defendants' motion for new trial is DENIED for the reasons stated above.

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