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I. INTRODUCTION

(A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment. However, evidence of the life insurance payment or disability payment may be introduced if the plaintiff's employer paid for the life insurance or disability policy, and the employer is a defendant in the tort action.

R.C. 2315.20 (A).

An examination of the statute reveals that the General Assembly made a policy decision regarding the collateral source rule in Ohio. Section (A) of the statute provides that defendants in tort actions *will not* be able to introduce *evidence* of collateral source payments, where the source of those payments has a right of subrogation. This is reiterated in Section (C) which provides:

A source of collateral benefits of which evidence is introduced pursuant to division (A) of this section shall not recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.

R.C. 2315.20 (C)

This section of the statute clearly provides that should evidence of a subrogated collateral source somehow be admitted as evidence, that subrogee loses all rights of subrogation.

When these two sections are read together it becomes clear that the General Assembly considered the three parties present in modern tort litigation--the plaintiff, the defendant and the subrogee--and made a policy decision which allows the jury to consider the full measure of the plaintiff's damages, as well as the right of any subrogee to protect its interests, while not permitting the at fault party and her liability insurer to evade full responsibility for the damage done.

R.C. 2315.20, at its essence, protects the rights of subrogees--in tort litigation such subrogees are usually health insurance companies. Thus, both the trial court and the Court of Appeals properly read and applied the statute to the facts in this particular case. Both courts found that there was a subrogated third-party. Both courts then read the plain language of the statute and applied it as written. Neither the trial court nor the court of appeals erred. As such, the decision of the court of appeals must be affirmed.

II. STATEMENT OF THE CASE and STATEMENT OF FACTS

This case arises out of an automobile collision that occurred on December 20, 2005 when Defendant/Appellant, Patricia Manton, failed to yield to a stop sign and collided with the vehicle occupied by Richard and Robin Jaques. The claims of Richard Jaques proceeded to trial on February 20, 2008. Liability was admitted and the issue for jury determination was the proximate cause of any injury and the amount of damages. At trial, Plaintiff/Appellee offered medical bills for the jury's consideration. Portions of these charges were paid by Appellee's health insurer, Medical Mutual, and there is no dispute that Medical Mutual has a contractual right of subrogation for the amount paid.

Prior to trial, on Appellee's motion, the trial court precluded Defendant-Appellant from introducing payments made by Appellee's subrogated health insurer, as inadmissible pursuant to R.C. §2315.20. Consistent with his argument in the motion, Plaintiff/Appellee asserted, *inter alia*, that Robinson v. Bates (2006), 112 Ohio St.3d 17, did not apply in this case, based on footnote one in that decision. The *Robinson* Court held that the "**new collateral benefits statute does not apply in this case**, however, because it became effective after the cause of action accrued and after the complaint was filed." *Robinson*, 112

Ohio at 21, n.1, (emphasis supplied). Unlike the claim in *Robinson*, the cause of action in the present case accrued after the effective date of R.C. §2315.20.

The holding in *Robinson* permits juries to hear evidence of “write-offs” or third party contractually negotiated payment amounts, only if the cause of action accrued prior to April 7, 2005--the effective date of statute. Here, the date of incident is December 20, 2005, which is subsequent to the effective date of the collateral benefits statute. Simply put, the *Robinson* Court was interpreting the common law rule, but in this case, the statute controls.

The trial court granted Appellee’s motion on February 17, 2008 and the matter proceeded to trial on February 20th and 21st. The jury issued a verdict for Appellee and awarded \$15,500.00 in total medical expenses, \$4,500.00 in lost wages, and \$5,000.00 in past pain and suffering.

Appellant subsequently filed a motion for a new trial, asking the court to introduce insurance payments made by Appellee’s health insurer, based on the authority of *Robinson*. The court denied that motion on March 19, 2008. Appellant filed a Notice of Appeal on April 3, 2008, asserting that the trial court erred by precluding evidence of these proffered insurance payments and by denying their motion for new trial based on this exclusion of evidence.

The Court of Appeals for the Sixth Appellate District entered a *Decision and Judgment* on March 20, 2009. In the *Decision*, the court of appeals affirmed the trial court’s decision. Appellant’s timely appeal followed.

III. LAW AND ARGUMENT

Proposition of Law No. 1:

The holding in *Robinson v. Bates* does not apply in this matter because the Robinson Court neither applied nor construed R.C. 2315.20.

Despite the Appellant's allegations, neither the Appellee, the trial court nor the court of appeals ignored the holding in *Robinson*. It is important to recall that the *Robinson* Court held "[t]he purpose of this statute [R.C. 2315.20] was to set forth Ohio's statement of law on the collateral-source rule. *This new collateral-benefits statute does not apply in this case*, however, because it became effective after the cause of action accrued and after the complaint was filed." *Robinson*, at 21, n.1 (emphasis added). In the matter *sub judice*, the Appellee simply pointed out that by its own language, *Robinson* did not apply to the collateral source statute (R.C. 2315.20) which abrogated the common law collateral source rule. Both the trial court and the court of appeals took the *Robinson* Court at its word and found that the collateral source statute was not part of the *Robinson* decision and thus was inapposite.

The Appellant, however, wants this appeal to be about the application of *Robinson v. Bates*. It is not. This appeal is about applying a clearly written statute. *Robinson*, by its own language, does not apply.

The *Robinson* Court analyzed the common law collateral source rule first articulated in Ohio in *Pryor v. Weber*, (1970) 23 Ohio St. 2d 104. At the end of that analysis of the common law rule the Court concluded "whether plaintiffs should be allowed to seek recovery for medical expenses as they are originally billed or only for the amount negotiated and paid by insurance is for the General Assembly to determine." *Robinson*, at 23. Clearly, the *Robinson* Court limited its decision and deferred to the will to the General Assembly.

Moreover, the appeal before this Court is not, as Appellant suggests about whether or not "write-offs" are collateral source benefits. The *Robinson* Court clearly held that "write-offs" are not collateral source benefits under the common law collateral source rule. *Id.* at

SYLLABUS, p 2. However, that does not change the fact that “write-offs” are *evidence* of collateral source benefits.

Simply put, the Appellant is arguing a case that is not before the Court. There is no question before the Court as to whether “write-offs” are collateral source benefits. The question before the Court is whether those “write-offs” are evidence of collateral source benefits. Because that is a question upon which Appellant cannot prevail, Appellant uses some linguistic sleight of hand in an attempt to obfuscate the real issue before the Court--*viz.* whether the trial court and the court of appeals were correct in finding that “write-offs” are evidence of collateral source benefits.

Proposition of Law No. 2:

In a tort action, the defendant may not introduce any evidence of any amount payable as a benefit to the plaintiff by a third-party which has a right of subrogation. Because the amount “written-off” by the medical provider is evidence of the amount payable by the subrogated third-party, evidence of the written off amount is inadmissible under R.C. 2315.20.

A. The law requires the statute to be applied as written

It has long been understood that Ohio law requires the courts to apply the laws as written. Because this is the case, it is worthwhile to examine the collateral benefit statute again. The statute provides, in pertinent part:

(A) In any tort action, the defendant may introduce **evidence** of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, **except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation**

R.C. 2315.20 (bolding added).

Ohio jurisprudence and this Court have a long history of applying the laws as written. For at least one hundred years, this Court has consistently held that, “the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from

ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.” Slingluff v. Weaver, (1902) 66 Ohio St. 621, SYLLABUS ¶ 2. Put another way, “[a]n unambiguous statute is to be applied, not interpreted.” Sears v. Weimer, (1944) 143 Ohio St. 312, SYLLABUS, ¶ 5.

Building on these holdings, this Court has “stated on numerous occasions that if the meaning of a statute is clear on its face, then it must be applied as it is written.” Lake Hospital System, Inc. v. Ohio Insurance Guaranty Association, (1994) 69 Ohio St. 3d 521, 524. In this case the statute, on its face, clearly precludes defendant from introducing any *evidence* (including so-called “write-offs”) of any amount payable as a benefit to the plaintiff by a subrogated collateral source.

Finally, “[i]t has been held, too often to need any citation of authority, that in seeking legislative intention courts are to be guided by what the legislative body said rather than what we think they ought to have said.” State ex rel Foster v. Evatt, (1944) 144 Ohio St. 65, 104. In the matter *sub judice*, the statute is clear. There is no ambiguity requiring judicial interpretation. When all the words of the statute of given their proper meaning and effect there can only be one result--*viz.* that evidence of write-offs is not admissible where the collateral benefit payor has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation.

B. Both the amount accepted as payment in full and the “write-offs” are evidence of the amount paid by the subrogee and thus are inadmissible.

Consider the following hypothetical. Let us first assume a case where the medical bills are \$30,000.00. At trial the plaintiff introduces the amount of the medical bills. The plaintiff also testifies that he has paid \$1,000.00 of that amount personally. The defendant then brings in a witness who can testify that the medical provider accepted \$10,000.00 as

payment in full (which is the evidence Appellant has sought to introduce in this case.) *Merit Brief of Appellant*, p.1. The jury will be able to determine that some third-party paid the remaining \$9,000.00 of the bills. In other words, the jury will have unequivocal evidence that the plaintiff had health insurance and that said health insurance paid the majority of the medical bills.

The same result is had (with an extra step) if the “write-off” is introduced. Assuming again a case where medical bills are \$30,000.00 and the plaintiff testifies that he has paid \$1,000.00 himself, if the defendant produces a witness who testifies that the medical provider “wrote-off” \$20,000.00 of the bill, then the jury will be able to determine that the health care provider accepted \$10,000.00 as payment in full and that a third-party paid \$9,000.00. Again, the jury will have unequivocal evidence that the plaintiff has health insurance and that the insurer paid \$9,000.00 of the bills.

It is well understood that in a tort action for personal injury, the plaintiff must introduce the amount billed by the medical providers in order to prove damages. To suggest that the write-off amounts are not evidence of the amount paid by the collateral source is to suggest that no one on any jury in the State of Ohio is capable of simple subtraction. As is readily demonstrated by the example above, the amount written off is necessarily *evidence* of the amount paid by the collateral source. R.C. 2315.20 clearly and unequivocally prohibits such evidence where the collateral source payor has a right of subrogation.

A number of trial courts have reached this same conclusion. In *Herron v. Anderson*, the Summit County court held:

In the case at hand, both parties agree that Plaintiff’s health insurance carrier, United Health Care, a non-party herein, has a contractual right of subrogation against Plaintiff. As this right of subrogation is an exception to the Defendant’s right to introduce evidence of any amount payable under R.C.

2315.20(A) above, the Court finds the Plaintiff's Motion in Limine is well taken. Although Defendant asserts that it is entitled to introduce evidence of the "write-off" amounts from said medical bills, the Court finds the said amounts would be in direct contravention of the inherent meaning and intent of the above statute. To permit the same would give the jury the necessary information to make the logical deduction that the total billed amount less the write-off amount equals the amount paid, the latter amount clearly not permitted by said statute.

(Herron v. Anderson, Summit County, CV 2007-04-2600, p. 2--footnote omitted.)

This reasoning was then adopted by a second Summit County court in Masaveg-Barry v. Steward, Summit County, CV 2007-08-5997.

This issue was then considered by the Cuyahoga County court in Pride v. Ortez. In that case the court held:

After considering the reasoning of the court in Herron v. Anderson, (March 18, 2008) Summit C.P. No. 2007-04-2600, which found that the Supreme Court's holding in Robinson v. Bates was limited to cases dealing with personal injuries preceding the implementation of R.C. 2315.20. The Court also held that by passing R.C. 2315.20, the legislature intended to limit the collateral source rule. The Summit County court also reasoned that if the defendant was allowed to introduce evidence of "write-offs" because they are not considered "payments" of collateral benefits, as discussed by the Court in Robinson v. Bates, the jury would be able to determine the amount of collateral payments by simply subtracting the "write-off" from the plaintiff's medical bills. This would clearly circumvent the statute and the legislature's intent in enacting the new collateral source benefit statute--R.C. 2315.20.

(Pride v. Ortez, Cuyahoga County, CV-07-630869, p. 1--text changed from all caps.)

The reasoning employed in Pride was adopted in Kral v. Hren, Cuyahoga County, CV-07-642068 and Medenis v. Cinadar, Cuyahoga County, CV-07-632215.

Finally, in Lococo v. Loprich, the trial court found "Because evidence of a write-off is evidence of an amount payable as a benefit, and because R.C. § 2315.20 prohibits the introduction of such evidence, defendant may not introduce evidence of write-offs at trial." Lococo v. Loprich, Cuyahoga County, CV-07-629522. This line of reasoning was followed in Kuchta v. Merchant, Cuyahoga County, CV-08-637839.

Finally, because juries are sufficiently sophisticated to understand that the “amount accepted as payment in full” is what the insurer has paid, minus any co-pays, there is a danger that juries would award either \$0.00 in medical damages or only the amount actually paid by the plaintiff himself. Either way, from a practical point of view, the subrogee will have either nothing or very little to satisfy its lien. The rationale behind the policy decision of the General Assembly is clear--the rights of subrogated insurers must be protected--even if that means that only the full amount of the medical bills is introduced at trial.

C. Introduction of “write-offs” at trial would destroy the rights of the subrogees

Finally, this Court has held, “words in a statute do not exist in a vacuum. We must presume that in enacting a statute the General Assembly intended for the entire statute to be effective.... Thus, all words should have effect and no part should be disregarded.” D.A.B.E., Inc. v. Toledo-Lucas Co. Board of Health, 96 Ohio St. 3d 250, 254; 2002 Ohio 4172, ¶ 19. R.C. 2315.20(C) provides, “A source of collateral benefits of which evidence is introduced pursuant to division (A) of this section shall not recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.” Pursuant to section (C) of the statute, allowing the introduction of the amount accepted as payment in full, because it is evidence of a collateral source payment, would extinguish the payor’s right of subrogation. Put another way, if counsel for a defendant introduces the amount accepted as payment in full, Medical Mutual or Blue Cross or some other health insurer will have its right of subrogation terminated pursuant to R.C. 2315.20(C).

Yet, that is exactly the outcome for which the Appellant is arguing. If this Court accepts the Appellant’s invitation to ignore the plain and clear language of R.C. 2315.20(A), then, pursuant to section (C) the defendants, in every personal injury case in Ohio where there

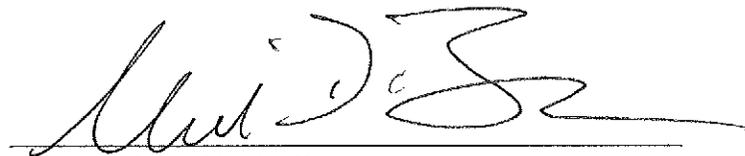
is a third-party payor, will destroy the subrogation rights of that third-party. Clearly that is not the outcome that the General Assembly desired when it included language in the statute which forbade the introduction of evidence of amounts payable by a subrogated collateral source.

The General Assembly made a policy decision which favors the right of the plaintiff to have the jury consider the full measure of his damages, as well as the right of any subrogee to the protection of its interests, over an attempt by the tortfeasor and her liability insurer to evade responsibility for the full measure of plaintiff's damages.

IV. CONCLUSION

The General Assembly set forth Ohio's statement of the law on the collateral source rule with R.C. 2315.20. The statute favors defendants in some instances (by allowing evidence of amounts paid by third-parties who do not have rights of subrogation) and plaintiffs and subrogees in others. This Court has a long history of applying clearly written statutes. Yet, Appellant invites this Court to ignore the clear language of the statute and completely abrogate the protections afforded subrogees by R.C. 2315.20. Over one hundred years of Ohio jurisprudence however, necessitate that the Appellant's invitation be declined.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Michael D. Bell", written over a horizontal line.

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CERTIFICATION

This is to certify that a copy of the foregoing **Merit Brief of Appellee, Richard Jaques** was sent this ^{4th}~~5th~~ day of December, 2009, via ordinary U.S. mail, postage pre-paid, to:

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