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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0254, A12-1321

Jennifer A. Crawford,
Appellant (A12-0254)
Respondent (A12-1321),

vs.

State Farm Mutual Automobile Insurance Company,
Respondent (A12-0254)
Appellant (A12-1321).

Filed December 17, 2012
Affirmed (A12-1321)
Affirmed in part, reversed in part, and remanded; motion denied (A12-0254)
Stoneburner, Judge

Hennepin County District Court
File No. 27-CV-09-24523

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Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

These consolidated appeals challenge posttrial orders following a jury's award of damages to an insured who sued her insurer for no-fault and underinsured-motorist benefits. The insured, appellant in file A12-0254, asserts that the district court erred by (1) offsetting unpaid past medical bills as having been discounted; (2) denying imposition of the 15% no-fault statutory interest penalty on those bills; and (3) denying her motion to amend the complaint to request taxable costs under Minn. Stat. § 604.18 (2010). The insurer, appellant in file A12-1321, challenges the district court's denial of its motion to vacate the judgment based on the insured's acceptance of checks tendered by the insurer in satisfaction of the judgment. The insurer also moved to dismiss the insured's appeal, arguing that by accepting the checks, the insured waived the right to appeal.

We deny the insurer's motion to dismiss the insured's appeal, affirm the district court's denial of the insurer's motion to vacate the judgment, reverse the district court's offset of the insured's unpaid past medical bills and denial of the statutory interest penalty on those unpaid bills, and affirm the district court's denial of the insured's motion to amend the complaint. We remand to the district court for entry of judgment in accord with this opinion.

FACTS

Appellant Jennifer A. Crawford was injured in separate automobile accidents on January 14 and May 10, 2003. Crawford had no-fault coverage and $100,000 in underinsured coverage through respondent State Farm Mutual Automobile Insurance

Company (State Farm). On January 9, 2004, State Farm denied further no-fault benefits based, in part, on the report from a December 2003 medical examination that Crawford underwent at State Farm's request.

In December 2005, Crawford settled with the January at-fault driver for $40,000 of his $50,000 liability policy. Crawford then sued State Farm for breach of contract for denying no-fault benefits for both accidents and for underinsurance benefits for the January accident. State Farm admitted that Crawford was not at fault in either accident, therefore the only issue at trial was the amount of Crawford's damages.

Trial took place in January 2011. On January 27, 2011, the jury awarded Crawford $200,678.67 in total damages, including $76,878.67 for past medical expenses, consisting of $68,878.67 for medical expenses related to the January accident and $8,000 for medical expenses related to the May accident; $8,200 for past wage loss; $15,000 for past pain and suffering; and $100,600 for future damages. Crawford was also awarded $13,616.71 in costs and disbursements.

Both parties filed posttrial motions. On February 7, 2011, State Farm moved for collateral-source offsets against the award for past medical expenses and also moved for remittitur or a new trial. Crawford responded to the motion, agreeing to collateral-source offsets for no-fault and third-party-provider payment or discounting of past medical expenses, but arguing that she was entitled to an award of unpaid past medical expenses plus a 15% no-fault interest penalty on that award. Crawford's response to State Farm's motion also contained a motion to amend her complaint to add a claim for taxable costs

under Minn. Stat. § 604.18, asserting that State Farm had no reasonable basis for denying benefits due under its policies.

The district court denied State Farm's request for remittitur or a new trial. The district court also denied Crawford's motion to amend the complaint, finding that the motion was untimely, that it was based on conduct that occurred prior to the effective date of Minn. Stat. § 604.18, and that there was insufficient evidence to support the claim.

The district court offset the award for Crawford's past medical expenses related to the January accident by $9,825.21, the amount of no-fault benefits paid by State Farm for injuries arising from that accident, and $22,582.51, the amount paid by third-party providers for injuries arising from that accident. Additionally, the district court offset all of the remaining award for past medical expenses arising from the January accident, stating only that this offset was "pursuant to *Brewster*," referring to a 2010 holding by the supreme court that "negotiated-discount amounts—amounts a plaintiff is billed by a medical provider but does not pay because the plaintiff's insurance provider negotiated a discount on the plaintiff's behalf—are 'collateral sources' for the purposes of the Minnesota collateral-source statute, Minn. Stat. § 548.251."[1] Because the district court found that all past medical expenses were offset, it denied Crawford's request for application of the 15% no-fault interest penalty for nonpayment of past medical expenses. The issue of the "*Brewster*" offsets was argued several times to the district court. Ultimately, after additional submissions and arguments from the parties, the district court

[1] *Swanson v. Brewster*, 784 N.W.2d 264, 282 (Minn. 2010).

issued an amended judgment, rejecting Crawford's continued arguments against offsetting unpaid medical expenses, finding that Crawford had not presented sufficient evidence that "reimbursement is sought for those expenses or a subrogation interest has been asserted" for those bills. The district court ordered that judgment be entered for Crawford in the total amount of $111,815.76 (which includes $8,121 in subrogation claims to be paid by State Farm directly to providers) plus interest.

After the amended order for judgment was issued, State Farm paid the subrogation liens and sent Crawford two checks totaling $103,644.76. The letter accompanying the checks stated that the payments "are made to fully satisfy the judgment entered" and requested that Crawford sign an enclosed no-fault release prior to negotiating the checks and sign and enter an enclosed satisfaction-of-judgment form.

Crawford cashed the checks on the day they were received, but she did not sign the release or satisfaction of judgment. And she immediately notified State Farm by letter that the payment did not satisfy the judgment and was considered only a partial payment because interest awarded was not included.

Judgment was subsequently entered, whereupon State Farm moved to vacate the judgment as satisfied. Crawford opposed the motion and again moved to amend the judgment to add unpaid medical expenses and a no-fault interest penalty. The district court denied all motions, finding no merit in State Farm's claim of satisfaction of

judgment[2] and treating Crawford's motion as an unauthorized motion for reconsideration of issues previously decided. These separate appeals followed and were consolidated.

D E C I S I O N

I. State Farm's motion to dismiss Crawford's appeal in file A12-0254 is denied.

State Farm's motion to dismiss Crawford's appeal is based on State Farm's assertion that by accepting the checks tendered by State Farm, Crawford waived her right to appeal. We disagree. As more fully set forth below, State Farm's tender of less than the judgment ordered did not constitute an accord and satisfaction of judgment or a waiver of Crawford's right to appeal.[3] State Farm's motion to dismiss Crawford's appeal is denied. But, as ordered by the district court, and not challenged by Crawford, State Farm is credited with a payment toward the judgment in the amount of $111,765.76 as of December 30, 2011, with interest accruing as set forth in the district court's order dated May 30, 2012.

II. The district court did not abuse its discretion by failing to vacate the judgment for Crawford on the basis of accord and satisfaction.

In file A12-1321, State Farm challenges the district court's denial of its motion to vacate the judgment, arguing that the district court abused its discretion by declining to

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[2] The district court noted that in addition to failing to include interest awarded on the judgment, State Farm tendered $50.00 less than the principal amount awarded.

[3] During oral argument before this court, State Farm argued for the first time, and based on conversations that took place between counsel that are not in the record, that its waiver argument is based on contract, not accord and satisfaction. "It is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence [in the district court] may not be considered." *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977). And issues not briefed on appeal are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

hold that Crawford's negotiation of checks tendered by State Farm for less than the judgment ordered constituted accord and satisfaction. Whether there has been an accord and satisfaction is a question of fact, which will not be set aside on appeal unless the district court's factual findings are "manifestly and palpably" contrary to the evidence. *Webb Bus. Promotions, Inc. v. Am. Elecs. & Entm't Corp.*, 617 N.W.2d 67, 73 (Minn. 2000).

The district court found that there was no accord and satisfaction because the judgment State Farm purported to satisfy was not the subject of a bona fide dispute. This finding is supported by the evidence. In *Dwyer v. Illinois Oil Co.*, the supreme court stated:

> Under the decisions of this court, where one party accepts a check from another for an amount less than what he claims is due him, and cashes it, at least three elements must be present before there can be a valid accord and satisfaction: (a) The check must be offered in full settlement, . . . (b) of an unliquidated claim concerning which there is a bona fide dispute, . . . (c) for a sufficient consideration, i.e. each party must make a concession to the other or give up some right to which he asserts a bona fide claim . . . . Consideration follows as a matter of course from the settlement of an unliquidated claim and mutual concessions. . . . But where the dispute is over which of two fixed sums represents the debt and the party offering a check in full settlement thereof tenders no more than the smaller amount, which he admits is due, such party has made no concession and there is no consideration for the alleged accord and satisfaction. Thereupon the offeree is at liberty to accept the tendered check even though offered in full satisfaction of the claim.

190 Minn. 616, 621, 252 N.W. 837, 839 (1934). Here, State Farm offered $50 less than the principal amount of the judgment and did not include interest awarded in the

judgment. Payment of only part of the amount awarded involved no concession by State Farm and provided no consideration for an alleged accord and satisfaction. Crawford was at liberty to accept the tendered checks without signing the proffered release and satisfaction of judgment. The district court did not abuse its discretion by denying State Farm's motion to vacate the judgment based on accord and satisfaction.

III. The district court did not err by finding that State Farm's payment to Crawford did not satisfy the judgment, and Crawford did not waive her right to interest on the judgment or to appeal by accepting partial payment of the judgment.

State Farm relies on *Summit Court, Inc. v. N. States Power Co.*, 354 N.W.2d 13 (Minn. 1984), to argue that Crawford's acceptance of its checks acknowledged that the judgment is satisfied and that she has waived any claim to interest or to appeal. In *Summit Court*, the supreme court addressed the issue of whether the plaintiff, by negotiating checks and executing a release and satisfaction of judgment, waived its right to assert a claim for prejudgment interest on a property-damages award. 354 N.W.2d at 15. The supreme court stated that "[s]atisfaction of a judgment is the last act of a proceeding" that extinguishes the judgment for all purposes. *Id.* The supreme court held that "where a plaintiff accepts payment of a judgment in its favor *and executes a release and satisfaction of that judgment*, it may not later claim prejudgment interest on the damages award underlying the judgment." *Id.* (emphasis added). Because Crawford did not execute a release and satisfaction of judgment, *Summit Court* is inapposite. There is no evidence in the record that State Farm satisfied the judgment or that Crawford acknowledged satisfaction of the judgment, waiving her claim to interest awarded on the

judgment or her right to appeal the district court's denial of her claim to additional damages.

IV. The record does not support the district court's finding that Crawford failed to establish that unpaid medical bills should not be offset.

Crawford asserts that the district court erroneously offset $28,478.62 of the jury award for past medical expenses. Initially, based on an erroneous assumption that all of Crawford's medical bills had been paid or discounted, the district court stated that it was offsetting medical bills not paid by no-fault benefits or third-party providers "pursuant to *Brewster*." The district court then allowed further evidence and argument on Crawford's objection to offsets for bills not paid. But the district court found that Crawford had not presented sufficient evidence that "reimbursement is sought" or that "a subrogation interest has been asserted" for these bills and continued to offset the entire award for past medical expenses.

Crawford's evidence that she has been and continues to be responsible for unpaid medical services related to the January 2003 accident in the amount of $28,478.62 consists of bills to Crawford requesting payment in that amount. There is no evidence in the record that this amount has been reduced by negotiation or discount or that Crawford does not remain liable for these bills.

Minn. Stat. § 548.251 (2010) governs the calculation and application of collateral sources. The collateral source offset statute is designed to prevent a double recovery by a plaintiff. *Graff v. Robert M. Swendra Agency, Inc.*, 800 N.W.2d 112, 120 (Minn. 2011). Under the statute, a party found liable for damages incurred prior to the verdict may

move for a determination of collateral sources and the district court is required to adjust the award to reflect collateral sources as provided in the statute. Minn. Stat. § 548.251, subds. 2, 3; *Graff*, 800 N.W.2d at 120. "Collateral sources" are defined, in relevant part, as

> payments related to the injury or disability in question made to the plaintiff, or on the plaintiff's behalf up to the date of the verdict, by or pursuant to: . . .
>
> (2) health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage . . . .

Minn. Stat. § 548.251, subd. 1. "[A]mounts a plaintiff is billed by a medical provider but does not pay because the plaintiff's insurance provider negotiated a discount on the plaintiff's behalf" are collateral sources under Minn. Stat. § 548.251 that offset damages awarded. *Brewster*, 784 N.W.2d at 282.

The district court rejected Crawford's evidence that she continues to have unpaid medical bills in the amount of $28,478.62, stating that Crawford failed to show "that reimbursement is sought for those expenses or a subrogation interest has been asserted." But Crawford has never asserted that the providers were seeking "reimbursement" for amounts paid: she has consistently argued that she remains liable for $28,478.62 in unpaid medical bills that have not been paid, negotiated, or discounted. The district court's analysis that led to the rejection of Crawford's evidence is flawed and does not support rejection of Crawford's evidence.

Minn. Stat. § 548.251 requires, in relevant part, that parties submit written evidence of "amounts of collateral sources that have been paid for the benefit of the

plaintiff or are otherwise available to the plaintiff as a result of losses." Minn. Stat. § 548.251, subd. 2. The district court is required to make its determination on such written evidence. *Id.* Crawford submitted written evidence that she remains responsible for medical bills in the amount of $28,478.62. State Farm did not submit any written evidence that these bills have been paid, negotiated, or discounted. On appeal, State Farm states: "While not evidenced by [Crawford], it appears very likely that [Crawford's] medical expenses from the facilities identified have been discharged without a subrogation lien being asserted or have simply been written off by the healthcare provider." And State Farm asserts that Crawford's failure to present any evidence to the contrary "was very telling, as noted by the district court in its Amended Order." But this argument presupposes, without any support in the record, the existence of evidence of a discharge or write-off.

The bills submitted reflect that Crawford is asserting responsibility for only the amounts directly billed to her after accounting by the providers for negotiated discounts, third-party payments, and other credits. And there is no evidence in the record that awarding Crawford amounts she continues to owe providers will result in a double recovery.

Because no evidence supports the district court's finding that bills submitted by Crawford were paid or discounted, we reverse the district court's $28,478.62 offset to the jury's award for past medical expenses and remand to the district court for addition of this amount to the judgment. And, because the district court's denial of the 15% no-fault interest penalty on $28,478.62 is based solely on the district court's conclusion that

Crawford was not entitled to recover that amount, we also reverse the district court's denial of the no-fault interest penalty to the award for past medical expenses and direct the district court to add the no-fault interest penalty to the judgment. *See* Minn. Stat. § 65B.54, subd. 2 (2010) ("Overdue payments [of basic economic loss benefits] shall bear simple interest at the rate of 15 percent per annum.").

V. The district court did not abuse its discretion by denying Crawford's posttrial motion to amend the complaint to add a claim for taxable costs under Minn. Stat. § 604.18 (2010).

"Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). "Whether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

Crawford argues that the district court abused its discretion by denying her posttrial motion to amend the complaint to add a claim for taxable costs under Minn. Stat. § 604.18, which provides, in relevant part:

> The [district] court may award as taxable costs to an insured against an insurer amounts as provided in subdivision 3 if the insured can show:
>
> (1) [t]he absence of a reasonable basis for denying the benefits of the insurance policy; and
>
> (2) [t]hat the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.

Minn. Stat. § 604.18, subd 2(a). Subdivision 3 of the statute provides:

> [T]he [district] court may award an insured the following taxable costs . . . :
>
> (1) an amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer at least ten days before the trial begins or $250,000, whichever is less; and
>
> (2) reasonable attorney fees actually incurred to establish the insurer's violation of this section.

Id., subd. 3(a).

A claim for taxable costs under Minn. Stat. § 604.18 cannot be included in the complaint, but

> [a]fter filing the suit, a party may make a motion to amend the pleadings to claim recovery of taxable costs under this section . . . [and] if the court finds prima facie evidence in support of the motion, the court may grant the moving party permission to amend the pleadings to claim taxable costs under this section.

Id., subd. 4(a).

Minn. Stat. § 604.18 became effective on August 1, 2008 "and applies to causes of action for conduct that occurs on or after that date." 2008 Minn. Laws ch. 208, § 2, at 524. The district court correctly determined that the statute, by its plain language, is not retroactive. *See* Minn. Stat. § 645.21 (2010) ("No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.").

State Farm denied further benefits under the policies in January 2004. In an attempt to argue that the statute nonetheless applies to her claim, Crawford argues that State Farm engaged in "continuing conduct" when, for example, after August 1, 2008, State Farm offered to settle this lawsuit for an amount less than that ultimately awarded

by the jury. But the relevant conduct is the insurer's denial of benefits under the policy. *See* Minn. Stat. § 604.18, subd. 2(a). Because State Farm denied benefits under Crawford's policies long before the effective date of Minn. Stat. § 604.18, the district court did not abuse its discretion by denying Crawford's motion to amend the complaint to add a claim under Minn. Stat. § 604.18. Because the inapplicability of the statute to Crawford's claim is dispositive, we decline to address the district court's additional reasons for denying her motion to amend the pleadings.

A12-1321 Affirmed.

A12-0254 Affirmed in part, reversed in part, and remanded; motion denied.