UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 777

September Term, 2016

DONELLA SHADE

v.

JOSUE SANCHEZ, ET AL.

Berger,
Beachley,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 9, 2017

On May 31, 2013, Donella Shade, appellant, was struck by a vehicle owned by appellee Rebecca Avila ("Avila") and operated by appellee Josue Sanchez ("Sanchez"). Appellant filed negligence actions against Avila and Sanchez in the Circuit Court for Prince George's County. Because appellant also asserted that Sanchez was uninsured, the Maryland Automobile Insurance Fund/Uninsured Division ("MAIF") was allowed to intervene in the action.

Trial proceeded in the circuit court on May 23, 2016. The parties agreed to bifurcate the trial as to liability and damages. Finding no agency relationship between Sanchez and Avila, the court granted judgment in favor of Avila at the close of appellant's case-in-chief.[1] However, the court found Sanchez, as the operator of the vehicle, liable for negligently striking appellant as a pedestrian.

Trial proceeded on the issue of damages. Because the parties agreed to cap appellant's damages at $29,000.00, the court admitted appellant's medical records and bills pursuant to the streamlined evidentiary procedures permitted by Md. Code (1973, 2013 Repl. Vol.), § 10-104 of the Courts and Judicial Proceedings Article ("CJP"). That section authorizes the admissibility of medical expenses and reports without live testimony from a health care provider or the custodian of the records.

After reviewing the evidence, the circuit court determined that it could not find by a preponderance "that [appellant] sustained medical damages and medical bills to a point

[1] At oral argument, appellant's counsel acknowledged that there was no appealable issue as to Avila.

[the court] [could] quantify in a dollar amount for those medical bills." The court further determined that there was no evidence in the written medical documentation that the bills were "fair, reasonable and necessary." Finally, the court found appellant's evidence of lost wages legally insufficient. Consequently, the court awarded no damages to appellant.

Appellant presents two questions on appeal:

1. Whether the lower court erred as a matter of law and abused its discretion in requiring causation language in Appellant Shade's medical records and bills.

2. Whether the lower court erred and abused its discretion in failing to consider and weigh all the evidence supporting Appellant Shade's claim for personal injuries against Appellee Sanchez.

Finding no error, we affirm.

STANDARD OF REVIEW

We review a trial court's interpretation and application of a statute *de novo*. *See Hall v. Univ. of Md. Medical System Corp.*, 398 Md. 67, 82-83 (2007) (stating that interpretation and application of Maryland statutes are reviewed under a *de novo* standard of review). Next, we review whether the trial court erred in determining that appellant failed to prove causation under a clearly erroneous standard. *See Goff v. State*, 387 Md. 327, 338 (2005) (stating that appellate courts will accept a trial court's factual findings unless those findings are clearly erroneous).

DISCUSSION

I.

Appellant contends that the trial court erred as a matter of law in concluding that the medical records admitted pursuant to CJP §10-104 did not establish that appellant's

medical treatments and expenses were caused by the accident. In appellant's view, CJP § 10-104 "itself establishes the causative nexus between the accident and the plaintiff's injuries by the introduction of a written report." Appellant misconstrues the statute.

Sections 10-104(d) and (e) provide:

> (d) *Supporting testimony – Writings or records to document condition, opinion or provision of health care.* – (1) A writing or record of a health care provider made to document a medical, dental, or other health condition, a health care provider's opinion, or the providing of health care is admissible without the support of the testimony of a health care provider as the maker or the custodian of the writing or record as evidence of the existence of a medical, dental, or health condition, the opinion, and the necessity and the providing of health care.
>
> (2) A finder of fact may attach whatever weight to a writing or record that the finder of fact deems appropriate.
>
> (e) *Supporting testimony – Written statement or bill for expenses.* – (1) A written statement or bill for health care expenses is admissible without the support of the testimony of a health care provider as the maker or the custodian of the statement or bill as evidence of the amount, fairness, and reasonableness of the charges for the services or materials provided.
>
> (2) A finder of fact may attach whatever weight to a writing or record that the finder of fact deems appropriate.

Appellant relies on *Singleton v. Travers*, 144 Md. App. 696 (2002), to support her contention that medical records admitted pursuant to CJP §10-104 need not contain explicit language proving causation. We disagree. In *Singleton*, the plaintiff sought to establish causation by submitting medical reports pursuant to CJP §10-104. *Id*. at 702. Of significance was the medical discharge report, which stated that the injuries plaintiff sustained "were causally connected to the accident on 11/18/99." *Id*. Defendant moved for summary judgment on the grounds that plaintiff could not establish causation simply

from the submitted medical reports. *Id*. at 703-4. The trial court granted defendant's motion for summary judgment, ruling that a plaintiff could not establish causation by submitting written medical reports pursuant to CJP §10-104. *Id*. at 704.

We reversed the trial court, holding that "it seems evident that the General Assembly intended *any* opinion of a health care provider expressed in a written report to be admissible [under § 10-104] so long as the opinion was 'otherwise admissible.'" *Id*. at 710. Accordingly, we concluded that, as long as the health care provider's opinion was adequately expressed in the written report admitted under § 10-104, the opinion could be considered by the factfinder – no supporting testimony from the health care provider was required. A plaintiff may therefore establish causation by submitting the proper records pursuant to CJP § 10-104(d)(1).

Our opinion did not, however, mandate that mere admission of such records would, by themselves, function as proof of causation by a preponderance of the evidence. *Singleton* stands for the proposition that the opinions contained in such records are admissible—not that they necessarily prove any element of a claim by the required burden of proof. Accordingly, we reject appellant's assertion that, once the written report is admitted, "the statute itself establishes the causative nexus between the accident and the plaintiff's injuries." It is the opinion expressed in the written report itself, and not the statute, that establishes causation.

II.

Having established that the admission of a medical record pursuant to CJP §10-104 does not necessarily establish causation, we turn to the issue of whether the trial court erred in finding that appellant failed to satisfy her burden of proof as to causation and damages.

After the close of all the evidence, the trial court asked appellant's trial counsel, "But when I look through these records, counsel, where do I show that there's any linkage between the accident and the treatment rendered? . . . . I'm looking for it. I don't see it. Is it there? Am I missing it?" After further discussion, appellant's trial counsel presented an evaluation which mentioned the auto accident. The court noted, however, that "It doesn't say it's causally related though." Appellant's trial counsel then pointed to another medical record in evidence which stated that appellant's injuries resulted from being struck as a pedestrian in May of 2013. The trial court acknowledged that this particular document suggested causation, but noted that the court was required to review all of the documents and determine whether they established causation, stating, "That's what you've submitted to me under a basic of 10-104. Basic [sic], all of the documents come in and I base my findings on what the documents say, correct?" From this colloquy between the court and counsel, it is reasonable to infer that the court based its decision, at least in part, on the fact that appellant failed to prove causation.

Courts and Judicial Proceedings §10-104(d)(2) states that "A finder of fact may attach whatever weight to a writing or record that the finder of fact deems appropriate." Of the voluminous treatment records from appellant's primary health care provider, the

Terrapin Care Center, the only clear reference to causation is contained in the initial examination note dated June 8, 2013: "The patient's condition is a result of being struck by a motor vehicle as a pedestrian." There are several other Terrapin Care medical records noting that appellant was struck by a vehicle, but none of those records expressly link appellant's treatment to the accident. Whether appellant's medical treatment was reasonably necessary and related to the accident became more significant as appellant's subjective complaints changed from "low back pain, left knee pain" on June 8, 2013 to other parts of her body as treatment progressed over many months. Given the paucity of evidence on causation, the trial court, as the trier of fact, was not clearly erroneous in concluding that appellant failed to prove causation by a preponderance of the evidence.

We also note that, by failing to connect specific medical expenses to the auto accident, appellant failed to establish her damages by a preponderance of the evidence.[2] Indeed, after reviewing the medical records introduced into evidence, the trial court concluded,

> I am simply not persuaded at this stage that the damages has [sic] been presented in a manner in which this Court can make a finding that it's more likely so than not so; that she sustained medical damages and medical bills to a point that I can quantify in a dollar amount for those medical bills in that regard.

[2] Appellant also asserts that the trial court erred in not awarding damages for the ambulance, emergency room, and radiology charges appellant incurred on the date of the accident. However, the records indicate that appellant left before seeing an emergency room physician and the radiology findings were "normal." The trial court could properly consider these findings in its overall evaluation of the evidence.

* * *

> I have nothing to substantiate the damages in this case from a medical perspective[.]

As the trier of fact, the court was well within its authority when it determined that appellant failed to prove, by a preponderance of the evidence, that her alleged medical damages were caused by the May 31, 2013 accident. Likewise, the court was not clearly erroneous in determining that appellant failed to prove her claim for lost wages.

In summary, both § 10-104(d)(2) and (e)(2) expressly provide that "the finder of fact may attach whatever weight to a writing or record that the finder of fact deems appropriate." Here, the trial court was not convinced that the evidence produced by appellant pursuant to § 10-104 satisfied her burden of proof as to causation and damages. We therefore affirm the judgment below.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.