IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00229 COA

JODY FRANKLIN **APPELLANT**

v.

VERDINE JUDD, INDIVIDUALLY **APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	08/18/95
TRIAL JUDGE:	HON. HENRY LAFAYETTE LACKEY
COURT FROM WHICH APPEALED:	CHICKASAW COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JACK H. HAYES, JR.
ATTORNEY FOR APPELLEE:	JIMMY D. SHELTON
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	JURY VERDICT FOR PLAINTIFF AND DAMAGES OF $11,638.44
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

EN BANC

HERRING, J., FOR THE COURT:

This is an appeal from the Circuit Court of Chickasaw County, Mississippi where a jury awarded Verdine Judd the sum of $11,638.44 in damages for injuries which she received when the vehicle in which she was riding was struck by a vehicle driven by the Appellant, Jody Franklin. Franklin now takes issue with this decision and cites the following points of error:

I. THE TRIAL COURT ERRED IN REFUSING TO ALLOW A CHALLENGE FOR CAUSE OF A VENIRE PERSON WHO WAS THE PLAINTIFF'S COUSIN.

II. THE TRIAL COURT ERRED IN ALLOWING INTO EVIDENCE AN UNITEMIZED MEDICAL BILL THAT WAS NOT SHOWN TO BE SUFFICIENTLY CONNECTED TO THE ACCIDENT IN QUESTION.

III. THE TRIAL COURT ERRED IN ALLOWING THE VERDICT TO STAND AS IT IS EXCESSIVE AND AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

We have reviewed the record and applicable law in the case, and we find no reversible error. Thus, we affirm.

THE FACTS

The facts surrounding the automobile accident involved in this case are largely irrelevant to the issues before us. The record reveals that Jody Franklin failed to properly obey a stop sign and pulled his vehicle in front of the vehicle in which Verdine Judd was a passenger. The ensuing collision, which occurred on May 13, 1991, resulted in certain injuries to Judd, some of which form the basis for this appeal.

On May 12, 1994, Judd filed a complaint against Franklin on behalf of herself and her three minor children. In her complaint, Judd charged that Franklin was negligent in failing to obey a stop sign, which resulted in injuries to the Appellee. At trial, Judd presented no expert testimony in support of her claim for damages as a result of the injuries which she received. She did testify on her own behalf and offered into evidence a statement of account from the North Mississippi Medical Center, dated August 13, 1991, which showed a balance of $9,509.87 for hospital expenses as a result of treatment rendered to the Appellee. This statement of account was not itemized, and the only proof connecting it to the traffic accident and to Jody Franklin was the testimony of Judd. Nonetheless, the jury returned a verdict in favor of Judd, and against Franklin, in the amount of $11,638.44. The jury also returned verdicts in favor of Judd's children, but those verdicts are not disputed here.

ANALYSIS

I. DID THE TRIAL COURT ERR IN REFUSING TO ALLOW A CHALLENGE FOR CAUSE OF A VENIRE PERSON WHO WAS THE PLAINTIFF'S COUSIN?

During voir dire, LeShonia Babbitt revealed that she was a cousin of the plaintiff, Verdine Judd. The degree of kinship was not disclosed. Franklin's counsel incorrectly intimates in the Appellant's brief that Babbitt was uncooperative in revealing the degree of kinship. In actuality, the record shows that counsel simply failed to inquire. Babbitt stated that, though she and Judd were cousins, she had only seen her two or three times in the period between the accident in May 1991 and the trial in July 1995. According to Babbitt, all of those encounters were chance meetings in such places as the grocery store in which the two would typically only exchange greetings. She said that the two were not close and did not visit in each other's houses. Though Franklin's counsel claims, in the summary of the argument on this issue, that Babbitt "admitted . . . being aware that [Judd] had been involved in an accident and had been injured," there is nothing in the record to support such a contention.

The trial court declined to allow a challenge for cause as to this juror. Franklin exercised one of his four peremptory challenges to remove Babbitt. Franklin ultimately exhausted his four peremptory challenges and now claims that the disallowance of a challenge for cause as to Babbitt had the effect of improperly limiting him to only three peremptory challenges.

The trial court is vested with wide discretion in ruling on challenges for cause. *See Scott v. Ball*, 595 So. 2d 848, 849-50 (Miss. 1992). While close relationships based on a family connection can certainly be a legitimate basis to a challenge for cause, we are aware of no authority that holds that every cousin of a party, no matter what the degree of kinship, is automatically disqualified from jury participation. In this case, counsel failed to prove a sufficiently close kinship that would, standing alone, disqualify this juror. Neither is there proof of a close personal connection between this litigant and the potential juror that would demonstrate, without regard to the degree of kinship, the potential juror's susceptibility to improper influences in deliberating the merits of the case. The trial court's decision to deny a challenge for cause as to this potential juror was within the discretionary authority given the trial court in such matters. There was no error in this ruling by the court.

> II. DID THE TRIAL COURT ERR IN ALLOWING INTO EVIDENCE AN UNITEMIZED MEDICAL BILL THAT WAS NOT SHOWN TO BE SUFFICIENTLY CONNECTED TO THE ACCIDENT IN QUESTION?

On this issue, Franklin argues that the trial court erred in admitting into evidence an unitemized medical bill presented by Judd. Specifically, Franklin asserts that the bill does not state "what JUDD was being treated for, for how long, the nature of the treatment, or how much each aspect of the treatment costs." A review of the record reveals that the medical bill in question is lacking in each of these areas. Furthermore, the only connecting proof between the medical bill and the accident is the testimony of Judd herself. The medical bill was incurred by Judd approximately two months after the wreck when she went to the hospital complaining of stomach pains. At trial, Judd offered the following testimony in a successful attempt to lay a foundation for the admission of the medical bill into evidence:

> Q. What caused the abdominal pains?
>
> A. I say it was from the car wreck because I had never been to a hospital no more than giving birth to my children.
>
> Q. And how long did you stay in the hospital?
>
> A. Nine days.
>
> Q. That was a $9,500 plus bill, right?
>
> A. Yes, Sir.
>
> Q. Was your stomach hurt during the wreck?
>
> A. Yes, Sir.

We begin our discussion of this issue by looking to Section 41-9-119 of the Mississippi Code (Rev. 1993), which provides that "[p]roof that medical, hospital, and doctor bills were paid or incurred because of any illness, disease, or injury shall be prima facie evidence that such bills so paid or incurred were necessary and reasonable."

In interpreting this statute, the Mississippi Supreme Court held, in a case relied upon by Franklin,

that:

> When a party takes the witness stand and exhibits bills for examination by the court and testifies that said bills were incurred as a result of the injuries complained of, they become prima facie evidence that the bills so paid or incurred were necessary and reasonable.

Jackson v. Brumfield, 458 So. 2d 736, 737 (Miss. 1984). *See also Moody v. R.P.M. Pizza Inc.,* 659 So. 2d 877, 884 (Miss. 1995); *Stratton v. Webb,* 513 So. 2d 587, 591 (Miss. 1987).

Thus, the testimony of the proponent of a medical bill necessarily constitutes connecting proof, linking the medical bill to the accident. Furthermore, the mere fact that Judd, and not a medical expert, testified to the cause of the injury did not render the testimony incompetent. As stated by the Mississippi Supreme Court, "[a]ny witness is competent to testify who has evidentiary facts within his personal knowledge, gained through any of his senses. A nonprofessional witness may describe personal injuries. Physical pain, weakness, exhaustion and the like are matters one may testify about." *Stratton,* 513 So. 2d at 590 (quoting *Dennis v. Prisock,* 221 So. 2d 706, 710 (Miss. 1969)). The court went on to state that "[w]e are of the opnion that [the plaintiff] could testify that she had pain in her back as a result of the collision . . . ." *Stratton,* 513 So. 2d at 590.

While we certainly appreciate Franklin's suspicion of evidence that is unsupported by medical testimony, *Jackson* attempts to protect defendants from liability for unrelated medical bills by stating that "the opposing party may, if desired, rebut the necessity and reasonableness of the bills by proper evidence. The ultimate question is then for the jury to determine." *Jackson,* 458 So. 2d at 737. Thus, the procedural guidelines set out by our supreme court provide some protection for a defendant, while permitting all available and relevant evidence to be admitted.

The record in the case before us reveals that Franklin took full advantage of the procedural safeguards set out in *Jackson* by submitting testimony that Judd's injuries were not caused by the accident in question. Furthermore, Jury Instruction D-7 properly informed the jury that its members were not to award any damages based upon pre-existing physical or mental conditions, or as a result of any physical or mental problems that were not related to any injury sustained in the accident in question. Nevertheless, the jury, with knowledge of Jury Instruction D-7 and other applicable law, decided to accept Judd's explanation of how her injuries were incurred, and we should not interfere with that decision.

Franklin also asserts that medical bills *must* be itemized in order to be admissible in this case. We disagree. The Mississippi Supreme Court has repeatedly held that a case will not be reversed due to the admission or exclusion of evidence unless it results in prejudice and harm or adversely affects a substantial right of a party. *Terrain Enters., Inc. v. Mockbee*, 654 So. 2d 1122, 1130 (Miss. 1995). *See also* Mississippi Rule of Evidence 103, *and* Mississippi Rule of Civil Procedure 61. In the case *sub judice,* Franklin had an adequate opportunity to attack the medical bills submitted by Judd and did so in a vigorous manner on cross-examination of Judd, by presenting hospital records and medical reports in an attempt to convince the jury that the medical expenses incurred by Judd were unrelated to her accident. Thus, Franklin was not deprived of a substantial right by the admission of the hospital

bill since he had an adequate opportunity to attack its validity as an expense proximately caused by the accident. In addition, it should be noted that while *Jackson v. Brumfield* stated that medical bills *should* be itemized, the plaintiff's verdict in that case was reversed on other grounds, and we find no language mandating the exclusive use of itemized bills. While every effort should be made to encourage the itemization of medical bills in situations such as this, a reversal in this case because of the plaintiff's failure to itemize a medical bill would be too harsh, especially in light of the fact that the defendant had an adequate opportunity to challenge the bill's validity. Thus, we hold that this issue has no merit.

III. DID THE TRIAL COURT ERR IN ALLOWING THE VERDICT TO STAND AS IT IS EXCESSIVE AND AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE?

In finding that the medical bill was properly admitted into evidence, we also hold that the jury's verdict was not against the overwhelming weight of the evidence. Only when the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal. *Herrington v. Spell*, 692 So. 2d 93, 103-04 (Miss. 1997). In this case, we do not believe that the jury committed any unconscionable injustice. Therefore, this issue has no merit and we affirm.

THE JUDGMENT OF THE CHICKASAW COUNTY CIRCUIT COURT IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. ALL COSTS OF THIS APPEAL ARE TO BE PAID BY THE APPELLANT.

BRIDGES, C.J., THOMAS, P.J., DIAZ, KING, AND PAYNE, JJ., CONCUR. McMILLIN, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY COLEMAN, HINKEBEIN, AND SOUTHWICK, JJ.

McMILLIN, P.J., DISSENTING:

I respectfully dissent. During discovery, defense counsel was furnished with a summary medical bill for Verdine Judd's thirteen-day hospitalization at North Mississippi Medical Center, which commenced on July 28, 1991. The unitemized summary showed total charges of $9,509.87. The date of hospitalization was over two months after the vehicular accident that formed the basis of this suit, the accident having occurred on May 13, 1991.

Defense counsel, outside the presence of the jury, objected to introduction of the bill summary, stating

that the "bill does not in any manner indicate from its face that it was related to the accident some two months afterwards; and, in fact, the medical records we have including the discharge summary for her was that the etiology was leukopenia, anemia, and ovarian cysts. It doesn't have anything to do with the accident." The trial court did not rule on the objection at the time. Rather, the court stated that "I'm going to allow you [plaintiff's counsel] to see if you can lay the proper predicate to introduce it. *Unless you can relate it to this resulting accident, it [the objection] will be sustained."*

Subsequently, during direct examination of Judd, her counsel asked her to "explain" the hospital bill. She replied, "This was a bill. I was having abdominal pains; and I went to a doctor here in Okolona, which is named Donald S. Smith." She then attempted to relate her version of her conversation with Dr. Smith; however, the trial court sustained a timely hearsay objection to that testimony. The following exchange then took place between Judd and her attorney:

> Judd: The only thing I can say for myself is that I went to the hospital with abdominal pains. They put me in and kept me nine days is where this bill come from.
>
> Counsel: What caused the abdominal pains?
>
> Judd: I say it was from the car wreck because I had never been to a hospital no more than giving birth to my children.

Based upon this testimony, the trial court admitted the summary hospital bill into evidence. Even conceding the discretion given to a trial judge to control the admission of evidence, I would hold this to be a manifest abuse of that discretion. There is no connection between Judd's alleged injuries and her hospitalization some ten weeks later for complaints unrelated to those for which she had previously sought medical treatment. Judd's own assessment that since she had never been to a hospital before except for child birth, the accident must have been the source of her stomach problems does not provide the necessary connection. Such a *post hoc ergo propter hoc* proposition has been found insufficient to establish a connection between a traumatic event and subsequent medical complications by the Mississippi Supreme Court on similar facts in the case of *Jackson v. Swinney*, 244 Miss. 117 121-122, 140 So. 2d 555, 556-57 (1962).

The statute relied upon by the majority, section 41-9-119, requires, as a prerequisite to admissibility, "*[p]roof* that . . . [the] bills were . . . incurred *because of* [her] injury . . ." Miss. Code Ann. § 41-9-119 (Rev. 1993) (emphasis supplied). Judd's testimony does not, based upon the *Jackson v. Swinney* decision, provide the necessary proof that her hospitalization was because of her claimed injury within the contemplation of the statute.

It is my view that to rely upon the *Jackson v. Brumfield* decision for the proposition that "anything goes" in terms of the introduction of medical expenses so long as the plaintiff is willing to so testify is to turn the rules of evidence upside down. *Jackson v. Brumfield*, 458 So. 2d 736, 737 (Miss. 1984). A decision by an appellate court speaks to a specific factual situation. Its application to other cases must, in part, be based upon an analysis of the facts before the prior court and the specific issues with which that court was dealing. We are hampered in assessing the impact of *Jackson v. Brumfield* since the court did not precede the broad pronouncement quoted by the majority with even the barest statement of the relevant facts. *Id.* at 737. In that regard, it must be realized that in writing on a

specific issue, it is unwieldy for a court to attach limiting phrases and caveats to every general statement to cover situations not currently before the court. Thus, the context in which the court was writing may implicitly supply the limits to an otherwise general pronouncement of the court. Admittedly, a literal reading of the very broad language quoted from the *Jackson v. Brumfield* decision would suggest that a plaintiff may, on the most preposterous and unbelievable testimony, *always* make a jury issue as to whether certain claimed expenses constituted an element of damages. I would not, however, read the case so broadly. Such an interpretation requires the trial court to totally surrender control of the admissibility of evidence to a plaintiff whose only limit is his or her audacity. I find nothing in the *Jackson v. Brumfield* decision that would expand the effect of section 41-9-119 beyond its plain language. I would conclude that the plaintiff's testimony in support of this medical bill was insufficient, as a matter of law, to permit the bill's introduction as proof of her damages.

I would, therefore, hold that the trial court was manifestly in error in admitting the bill. This case ought to be reversed and remanded for a new trial on the issue of damages.

COLEMAN, HINKEBEIN, AND SOUTHWICK, JJ., JOIN THIS SEPARATE OPINION.