

Be Quick, but Don't Hurry – Improper Motions to Exclude Evidence

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September 21, 2023

In *Phillipe Martin v Geico General Insurance Company*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2023 (Docket No. 362010), Plaintiff was injured on December 30, 2015, after he was struck by a vehicle while standing outside his home in Detroit, Michigan.

This interlocutory appeal primarily focuses on medical expenses incurred by Plaintiff in relation to treatment received from ISpine. Defendant filed a motion in limine to exclude evidence pertaining to fees incurred by Plaintiff for treatment with ISpine. Defendant stated that the parties intended to go to trial, and that it believed Plaintiff might seek to introduce bills for treatment with ISpine. Defendant argued that Plaintiff previously assigned away his right to claim no-fault benefits relating to expenses incurred from his treatment with ISpine.

I. Background

Defendant argued that Plaintiff could not recover for expenses related to ISpine's treatment because he "transferred his right to recoup any no-fault benefits" when he executed an irrevocable assignment to ISpine. Defendant argued that evidence regarding ISpine should be excluded as irrelevant under MRE 401 and MRE 402, except for the limited purpose of establishing the nature and extent of his injuries.

In response to the motion, Plaintiff argued that ISpine agreed to the revocation and reassignment of the claim, meaning that Plaintiff was once again responsible for pursuing personal protection insurance (PIP) benefits against Defendant in relation to those claims. Additionally, Plaintiff argued that ruling on the motion in limine without first taking testimony to confirm that ISpine agreed to the reassignment of the claim would essentially be equivalent to a ruling on a motion for summary disposition, rather than just a ruling on the admissibility of the evidence. The trial court ultimately granted the motion and entered an order granting the motion in limine, based upon the following:

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In this unpublished opinion, the Court of Appeals determined (1) Plaintiff was asking for an opportunity to present testimony to prove that his claims against ISpine were admissible, and the trial court incorrectly instead ruled on the merits of Plaintiff's claim; (2) Plaintiff's Motion for Reconsideration was based upon a piece of new evidence, so Plaintiff had not presented a palpable error requiring reconsideration, and the trial court did not err by denying the Motion for Reconsideration.

II. Motion to Exclude Evidence

Under MCR 2.119(E)(2), “[w]hen a motion is based on facts not appearing of record, the court may hear the motion on affidavits presented by the parties, or may direct that the motion be heard wholly or partly on oral testimony or deposition.” Trial courts may exercise their discretion to decline the opportunity for an evidentiary hearing. *Williams v Williams*, 214 Mich App 391, 399 (1995).

In this case, the trial court believed that Plaintiff could only present that testimony at trial, and overlooked the fact that it could have ordered a pretrial evidentiary hearing. The Court of Appeals held that the trial court erroneously and prematurely ruled on the merits of Plaintiff’s claim. The Court reasoned that the trial court ruled as if this was a motion for summary disposition and not simply a motion to exclude evidence. The Court held that granting the motion in limine to exclude evidence constituted an abuse of the Court’s discretion. Accordingly, Plaintiff would be entitled to an evidentiary hearing regarding the reassignment of the claim to him from ISpine.

On appeal, Defendant also argued that the statute of frauds in relation to the reassignment of the claim to Plaintiff from ISpine, where any testimony that Plaintiff might present in support of his claim, would ultimately be irrelevant because all assignments must be in writing to be valid. However, Plaintiff never actually argued that the statute of frauds prevents Plaintiff from presenting testimony about the reassignment of the claim from ISpine. The Court addressed this argument, stating that Defendant, as a third party to the assignment, cannot assert the statute of frauds in order to have it declared void.¹

The Court held, without an evidentiary hearing regarding the revocation of the assignment, that it would be premature for the Court or the trial court to make a substantive ruling pertaining to the statute of frauds or the broader contractual rights possessed by Plaintiff and ISpine.

III. Motion for Reconsideration

Under MCR 2.119(F)(3), to prevail on a motion for reconsideration, “[t]he moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” The trial court has broad discretion to grant or deny a motion for reconsideration. *Al-Maliki v LaGrant*, 286 Mich App 483, 486 (2009). “A circuit court does not err by declining to consider legal arguments raised for the first time in a motion for reconsideration.” *Pierron v Pierron*, 282 Mich App 222, 264 (2009).

Here, Plaintiff’s Motion for Reconsideration presented a new piece of evidence, namely a written document indicating that Dr. Pribil had agreed to reassign the claim for benefits from ISpine to Plaintiff. The Court held that Plaintiff had not presented a palpable error requiring reconsideration. Therefore, the trial court did not err by denying the Motion for Reconsideration.

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¹ *Burkhardt v Bailey*, 260 Mich App 636, 654-5; 680 NW2d 453 (2004)

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