

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JESSICA VILLANUEVA,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

January 31, 1997

No. 180623

Houghton Circuit Court

LC No. 92-7731-CK

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JESSICA VILLANUEVA,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

No. 180735

Houghton Circuit Court

LC No. 92-7731-CK

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Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

This case concerns plaintiff's claims for a total of \$61,402.59 in no-fault first-party benefits allegedly due from defendant. The trial court directed a verdict in favor of plaintiff in the amount of \$20,713.40 for five unpaid medical bills. A jury then returned a verdict in favor of plaintiff in the amount of \$1,309.02 for unpaid medical expenses, \$3,489.70 in penalty interest, and \$7,058.41 for work loss. Plaintiff was thus awarded a total of \$29,080.83 in unpaid benefits, plus \$3,489.70 in penalty interest, and a judgment in the overall amount of \$32,570.53 was entered in her favor. The trial court subsequently awarded plaintiff \$3,150.71 in costs and attorney fees. Plaintiff appeals as of right from

the judgment, and defendant appeals as of right from the order awarding attorney fees. We affirm in both cases.

Plaintiff was involved in an automobile accident and subsequently suffered various health problems. Although defendant no-fault insurer paid certain medical and work loss benefits, it denied coverage for treatment of plaintiff's temporomandibular joint disorder on the ground that it was a pre-existing condition. Defendant also refused to make certain payments for work loss and for some expenses associated with treatment of plaintiff's other health problems, including doctor bills, prescriptions, and travel expenses. This lawsuit followed.

Plaintiff first argues that defense counsel denied her a fair trial when he improperly commented in his closing argument on the trial court's failure to fully grant plaintiff's motion for a directed verdict, implying that the trial court must not have thought that plaintiff had a worthwhile case. However, our examination of the record reveals that defense counsel was actually responding to plaintiff's counsel's own closing commentary and plaintiff therefore may not predicate error on these statements. *Joba Construction Co, Inc v Burns & Roe, Inc*, 121 Mich App 615, 636; 329 NW2d 760 (1982).

Plaintiff also argues that the trial court erred in denying her motion for a directed verdict regarding her entitlement to twelve percent penalty interest under MCL 500.3142; MSA 24.13142. The error, if any, was harmless. The jurors were specifically instructed that they could award twelve percent simple interest on the \$20,713.40 directed verdict amount, as well as on any amount they awarded plaintiff for unpaid benefits. They ultimately determined that plaintiff was entitled to an additional \$8,367.43 in unpaid medical and work loss benefits, for a total of \$29,080.83 in unpaid benefits. Twelve percent of that total is \$3,489.70 – the amount of penalty interest the jury awarded. The jury therefore remedied any error committed by the trial court when it refused to grant a directed verdict on plaintiff's entitlement to penalty interest.

In its appeal, defendant claims that the trial court failed to exercise any discretion when it followed non-binding precedent to award plaintiff taxable costs pursuant to MCR 2.625 and deposition costs pursuant to MCL 600.2549; MSA 27A.2549. However, the trial court was actually interpreting MCR 2.625 and MCL 600.2549; MSA 27A.2549. Since statutory interpretation is a question of law, the court was not called upon to exercise any discretion. *Blue Water Fabricators, Inc v New Apex Co, Inc*, 205 Mich App 295, 298; 517 NW2d 319 (1994); *Saraski v Dexter Davison Kosher Meat & Poultry*, 206 Mich App 347, 351; 520 NW2d 383 (1994). This issue is therefore without merit.

Defendant also claims that the trial court erred in granting taxable costs to plaintiff on all the medical bills for which she sought payment, asserting that MCR 2.625(B)(2) should be construed to allow recovery of taxable costs only to the extent that plaintiff prevailed at trial. In *McMillan v Auto Club Ins Ass'n*, 195 Mich App 463, 466; 491 NW2d 593 (1992), remanded on other grounds 443 Mich 853; 505 NW2d 579 (1993), this Court held that a plaintiff who was awarded no-fault personal protection insurance benefits was the prevailing party and was entitled to taxable costs on all of the medical bills he for which he sought payment, despite the fact that, like the plaintiff in this case, the jury

only awarded him a portion of the medical bills sought. Therefore, the trial court did not err in its decision.

Finally, defendant argues that the trial court erred in awarding plaintiff taxable costs pursuant to MCL 600.2549; MSA 27A.2549 with regard to two depositions because the depositions were only relevant to moot and uncontested issues. However, this statute is unambiguous and provides for payment of deposition costs without regard to whether the depositions were relevant to contested issues. The statute only requires that the depositions be read into evidence at trial for non-impeachment purposes, as the depositions were in this case. Accordingly, there was no error.

Affirmed. No costs on appeal, neither party having prevailed in full.

/s/ Roman S. Gibbs

/s/ Barbara B. MacKenzie

/s/ Richard Allen Griffin