

NOTICE  
Decision filed 07/16/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130350-U

NO. 5-13-0350

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

ALMA McVEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Jackson County.
	)	
v.	)	No. 10-L-121
	)	
M.L.K. ENTERPRISES, L.L.C.,	)	
	)	
Defendant	)	
	)	
(Southern Illinois Hospital Services, d/b/a	)	Honorable
Memorial Hospital of Carbondale,	)	Christy Solverson,
Respondent-Appellee).	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.  
Presiding Justice Welch and Justice Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in refusing to follow our prior decision in *Stanton v. Rea*, 2012 IL App (5th) 110187, 978 N.E.2d 1146, and begin calculations pursuant to the Health Care Services Lien Act after the settlement was reduced by attorney fees and costs.

¶ 2 Plaintiff, Alma McVey, was injured after a waitress in a bar dropped a tray of drinks on plaintiff's foot, causing a deep cut on plaintiff's foot and requiring plaintiff to seek treatment with respondent, Southern Illinois Hospital Services, d/b/a Memorial

Hospital of Carbondale (hospital). Plaintiff eventually settled the suit with defendant, M.L.K. Enterprises, L.L.C., the waitress's employer, for \$7,500. A petition to adjudicate liens was filed pursuant to the Illinois Health Care Services Lien Act (Act) (770 ILCS 23/1 *et seq.* (West 2010)). The hospital entered an appearance and asserted a lien in the amount of \$2,891.64. The trial court found that under section 10 of the Act (770 ILCS 23/10 (West 2010)) the hospital is entitled to \$2,500, which is one third of the \$7,500 settlement. The issue on appeal is whether the trial court erred in holding that attorney fees and costs should not be deducted from the amount of the settlement prior to calculating the amount available for distribution to medical providers. We reverse and remand with directions.

¶ 3

#### FACTS

¶ 4 Plaintiff filed a lawsuit against defendant, alleging negligence of one of defendant's employees. Plaintiff and defendant agreed to settle the case for \$7,500. Because plaintiff's counsel was in receipt of lien notices, a petition to adjudicate liens was filed. The hospital entered its appearance and asserted a lien of \$2,891.64. Plaintiff stipulated to the lien. No other health care provider or health care professional appeared at the hearing or perfected a lien.

¶ 5 Plaintiff introduced evidence showing that the costs incurred by plaintiff in prosecuting the lawsuit were \$846.66 and that plaintiff's attorney fees amounted to \$2,250. After a hearing, the trial court ordered plaintiff to distribute the \$7,500 as follows:

"(a) \$2,250 [ ] to [p]laintiff's attorney for attorney's fees (\$7,500 x 30%);

(b) \$2,500[ ] to [hospital]; and

(c) \$2,750[ ] to [p]laintiff."

In making its determination, the trial court acknowledged our decision in *Stanton v. Rea*, 2012 IL App (5th) 110187, 978 N.E.2d 1146, in which we concluded that attorney fees and costs are to be deducted from the amount of the settlement before calculating the amount available to satisfy liens under the Act, but found the decision in conflict with *Wendling v. Southern Illinois Hospital Services*, 242 Ill. 2d 261, 950 N.E.2d 646 (2011), and refused to deduct the attorney fees and costs prior to calculating the amount available to lienholders. Plaintiff disagreed with the trial court's computation and filed a timely notice of appeal.

¶ 6

#### ANALYSIS

¶ 7 The issue raised by plaintiff on appeal is whether the trial court erred in refusing to follow our holding in *Stanton*, finding instead that attorney fees and costs should not be deducted from the amount of the settlement prior to calculating the amount available for distribution to medical providers. Plaintiff asserts that the hospital is entitled to one-third of the settlement, but only after reduction of attorney fees and costs. We agree.

¶ 8 We previously decided this issue in *Stanton*. The only distinction between *Stanton* and the instant case is that *Stanton* was tried to verdict (see *Stanton*, 2012 IL App (5th) 110187, ¶ 1, 978 N.E.2d 1146), whereas here a settlement agreement was reached between plaintiff and defendant. However, because the Act treats judgments and settlements the same, it is a distinction without a difference.

¶ 9 The Act provides that a health care professional or provider who renders treatment to an injured plaintiff "shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges." 770 ILCS 23/10(a) (West 2010). No health care professional or health care provider may receive more than one-third of the verdict or settlement. 770 ILCS 23/10(a) (West 2010). The total amount of all health care liens filed with regard to an individual plaintiff is limited to 40% of the judgment or settlement. 770 ILCS 23/10(a) (West 2010). Health care professionals and providers have the right to seek payment of the amount of their reasonable charges which remain unpaid after the satisfaction of their liens under the Lien Act. 770 ILCS 23/45 (West 2010). Where the total liens filed pursuant to the Act amount to 40% of the judgment or settlement, the total amount of attorneys' liens under the Attorneys Lien Act (770 ILCS 5/0.01 *et seq.* (West 2010)) is limited to 30% of the judgment or settlement. 770 ILCS 23/10(c)(2) (West 2010). The Act itself does not specifically state whether a health care professional or provider holding a lien pursuant to the Act is responsible for attorney fees. See *Wendling*, 242 Ill. 2d at 264, 950 N.E.2d at 647.

¶ 10 In *Stanton*, the plaintiff sustained injuries while she was a passenger in a car driven by the defendant. The defendant's car collided with a car driven by Roe. Plaintiff filed a lawsuit against both the defendant and Roe; however, because Roe was uninsured, the case proceeded only against the defendant. *Stanton*, 2012 IL App (5th) 110187, ¶ 1, 978 N.E.2d 1146. A jury awarded damages in the amount of \$13,506.80. The trial court entered a judgment on that amount, plus costs. By the time judgment was entered, out-

of-pocket expenses to bring the case to trial amounted to \$4,501.44. A garnishment action was filed to collect the judgment, and a check was issued in the amount of \$14,520.86. Plaintiff filed a petition to adjudicate liens. The trial court ruled that the costs, expenses, and fees incurred in securing the verdict were to be paid by plaintiff, and, as a result, plaintiff received nothing. *Stanton*, 2012 IL App (5th) 110187, ¶ 6, 978 N.E.2d 1146.

¶ 11 The plaintiff appealed, arguing the trial court did not properly interpret the Act and that it was unfair for plaintiff to pay all of the costs of acquiring the verdict. We agreed, specifically stating as follows:

"The Act is clear that lienholders are limited to 40% of the judgment or settlement and that if they in fact receive 40% of the judgment or settlement, then any attorney's liens are limited to 30%. Accordingly, the Act specifically limits the liens upon a judgment or settlement to 70%. Under these circumstances, we can deduce that our General Assembly intended that a plaintiff receive 30% of any judgment or settlement.

\*\*\*

In order to ensure that plaintiff receives 30% of the judgment as intended by the Act, it is necessary that computation of the 40% does not begin until costs associated with bringing the case to trial and securing payment of the judgment have been deducted from the amount of the original verdict. In the instant case, the trial court should have begun its calculations of 40% for the lienholders after payment of attorney fees and costs necessary in securing the judgment. While an

argument could be made that the attorney's lien should not be calculated until after payment of costs, we point out that the Act allows for health care professionals and providers to seek payment of the amount of their reasonable charges that remain unpaid after satisfaction of their liens under the Act, whereas an attorney who helped secure the verdict has no such right to seek additional payment. The attorney is required to accept 30%, no matter what his or her original fee arrangement was with the plaintiff. Thus, we believe the proper interpretation of the Act is to begin the 40% calculations after the verdict has been reduced by attorney fees and costs." *Stanton*, 2012 IL App (5th) 110381, ¶¶ 16, 18, 978 N.E.2d 1146.

Relying on our prior decision in *Stanton*, we find that the trial court erred in refusing to reduce the settlement by attorney fees and costs prior to calculating the amount available for distribution to the hospital.

¶ 12 With regard to the trial court's assertion that *Stanton* is in conflict with *Wendling*, we point out that we specifically addressed this issue in *Stanton*, finding *Wendling* distinguishable on the basis that it dealt with the common fund doctrine, not with an interpretation of the Act:

"The *Wendling* court simply determined that lienholders are not responsible for a proportionate share of attorney fees under the common fund doctrine. Second, the issue raised in this appeal is based solely upon the proper interpretation of the Act and its statutorily guided allocation of plaintiff's judgment or settlement. Our analysis is based solely upon statutory interpretation, not the common fund

doctrine, which pertains to attorney fees." *Stanton*, 2012 IL App (5th) 110187, ¶ 13, 978 N.E.2d 1146.

We believe the same analysis controls here and find the trial court erred in refusing to follow *Stanton* and begin calculations after the settlement has been reduced by attorney fees and costs.

¶ 13 The hospital cites to a new section added to the Act, effective January 1, 2013, regarding subrogation claims which arise as a result of the payment of medical expenses for plaintiff by insurance in support of its contention that our General Assembly excludes hospitals and physicians who have perfected their liens under the Act from any deductions or cost-sharing. See 770 ILCS 23/50 (West 2012). We point out, however, that the instant case is not a subrogation case, but deals only with the question of whether attorney fees and costs should have been deducted from the settlement prior to starting calculations. Thus, we find the hospital's reliance on this new section misplaced.

¶ 14 The hospital further argues that even assuming *arguendo* that the Act allows for the deduction of attorney fees and costs of litigation prior to calculating the amount available to lienholders, plaintiff is not entitled to deduct any litigation costs in this case, but only attorney fees. The hospital asserts plaintiff cannot recover her filing fees and service fees where settlement has been reached, cannot recover costs for depositions, and cannot recover overhead expenses. Because the trial court ruled that attorney fees and costs were not to be deducted from the amount of the settlement before calculating the 40% available to satisfy liens under the Act, these particular arguments were not

considered below. We decline to address at this time the question of what costs are recoverable. That is an issue better left to the trial court.

¶ 15

#### CONCLUSION

¶ 16 We believe the proper interpretation of the Act requires calculations begin after the settlement is reduced by attorney fees and costs; therefore, we reverse the judgment of the circuit court of Jackson County and remand with directions to reduce the amount available by attorney fees and costs prior to calculating the amount available to the hospital. Upon remand, the trial court should consider the hospital's arguments with regard to whether the costs asserted by plaintiff are recoverable.

¶ 17 For the foregoing reasons, the judgment of the circuit court of Jackson County is hereby reversed and the cause remanded with directions consistent with this order.

¶ 18 Reversed and remanded with directions.