Circuit Court for Prince George's County
Case No. CAL18-00228

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 834

September Term, 2019

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CINCINNATI INSURANCE COMPANY, et al.

v.

ELISABETH SHUSTER

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Meredith,
Leahy,
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: August 11, 2020

Elisabeth Shuster, appellee, was a passenger in a vehicle driven by Alan Glazer, that was involved in a rear-end car accident in Howard County, Maryland. She filed a complaint against Glazer's insurance company, Cincinnati Insurance Company ("Cincinnati") and her insurance company Liberty Mutual General Insurance Company ("LM") in the Circuit Court for Prince George's County for underinsured/uninsured motorist coverage. A jury trial was held in April 2019 and the jury returned a verdict in favor of Shuster, awarding her $500,000 in damages. Cincinnati and LM, appellants, timely appealed and present the following questions for our review:

Cincinnati Insurance Company:

1. Did the Circuit Court abuse its discretion by ruling that Cincinnati did not provide reasonable notice of its intent to rely on foreign law?

2. Did the Circuit Court abuse its discretion by failing to rule on Cincinnati's Motion in Limine to exclude Shuster's medical expenses?

3. Did the Circuit Court err in admitting evidence of Shuster's medical expenses?

4. Was the Circuit Court's error prejudicial?

LM General Insurance Company:[1]

1. Did the Circuit Court err in denying Cincinnati Insurance Company's, Motion in Limine to exclude Ms. Shuster's past medical expenses?

2. Did the Circuit Court err in failing to apply Pennsylvania Law to an underinsured/uninsured motorist action when the contract arose out of Pennsylvania?

[1] Because LM's and Cincinnati's first two issues are identical, we will examine them together.

We conclude the circuit court did not abuse its discretion in failing to apply Pennsylvania Law and in denying the Motion in Limine, and therefore, we decline to answer Cincinnati's questions III and IV. For the reasons discussed below, we affirm.

## BACKGROUND

On March 15, 2018, Elizabeth Shuster and Alan Glazer were traveling in Howard County, Maryland when the car they were in was rear ended by Peggy Banks. Glazer was the driver and owner of the vehicle and both he and Shuster were Pennsylvania residents. The car driven by Peggy Banks was owned by Beatrice Banks and both were residents of Prince George's County. Upon impact, Shuster hit her head on "either the seat or headrest."

As the result of the accident, Shuster suffered neck and back injuries that required her to seek extensive medical treatment, including multiple surgeries. Her medical fees, in part, were covered by her medical insurance. In January 2018, she filed a complaint against the Banks and appellants in the Circuit Court for Prince Georges County, seeking damages as well as medical expenses incurred as a result of the accident. Prior to trial, Shuster settled with the Banks and accepted their insurance's liability limit. Following the settlement, appellants waived their subrogation rights against the Banks.

The parties engaged in the discovery process and the case was scheduled for trial on April 8, 2019. On April 3, 2019, prior to the start of a *de bene esse* deposition of Shuster's expert witness, Dr. Douglas Shepard, Cincinnati verbally notified Shuster's counsel that Pennsylvania law should apply to the case. LM did not provide oral notice or concur with the statements of Cincinnati's attorney. The following was stated by Cincinnati's attorney during the deposition:

> This is a Pennsylvania policy. The policy owner is obviously a Pennsylvania residen[t]. Ms. Shuster is a Pennsylvania resident. Maryland law in this case, Pennsylvania law applies because the contract is in Pennsylvania. Pennsylvania has a very straightforward exception to the collateral source rule with respect to benefits that have been paid or medical expenses that have been paid by health insurance. The case law is straightforward, that Ms. Shuster is not permitted to make a claim for her past medical expenses under—for uninsured motorist action. And so we will be objecting to the introduction and/or mention of any amount of medical bills [in] this case. But for the purposes of this the deposition, request and having been granted a continuing objection as to that fact to be resolved by the court at trial.

The following day, Shuster's counsel sent Cincinnati's attorney a letter contesting the application of Pennsylvania law at the upcoming trial. Cincinnati's attorney did not respond. On April 8, 2019, the day before trial, Cincinnati filed a Notice of Intent to Rely on Foreign Law ("Notice"), specifically Pennsylvania law and a Motion in *Limine* ("Motion") to exclude claims for Shuster's medical expenses.

On April 9, 2019, the court first heard arguments on the preliminary motions filed. While LM had not filed either of the motions filed by Cincinnati the day before, it orally joined Cincinnati's Motion. LM's attorney stated:

> Your Honor, on behalf of defendant Liberty Mutual, we join in the motion [in] limine of Cincinnati. I would point out that the contract of Liberty Mutual is also a Pennsylvania policy. Ms. Shuster is a Pennsylvania resident. And I do want to point out, counsel [Ms. Shuster's trial attorney] touched on whether or not the contract in Pennsylvania should have had a tort law provision in the contract and in the case, the Erie case that she mentioned, it does clearly say absent or contractual choice of law provision, any dispute to the validity of the policy or meaning of the terms shall be resolved based on the law where the contract was made. In both cases, in Cincinnati and Liberty, the contract was made in Pennsylvania.

After listening to the parties' arguments, the court found the filing of the Notice to be unreasonable and denied the Motion, stating:

> Okay. All right. Counsel, I have had an opportunity to review the case law that you referenced in this case. I've also had an opportunity to review the policy of insurance. What's more troublesome to me is that this, notice to rely on foreign law was filed with the [c]ourt yesterday. There are some substantive issues that are substantial in this case and I think [Shuster] has been prejudiced by you not filing this notification more, in a more reasonable time frame. . . . 10-504 Courts and Judicial Proceedings does indicate that if a party intends to rely on foreign law that reasonable notice shall be given. And in this instance, I don't find that reasonableness was provided to [Shuster's] counsel that you intended to rely on Pennsylvania law in this case. Therefore, your motion in limine is denied.

During trial, Cincinnati unsuccessfully objected to the admission of Shuster's medical records and bills, however, LM remained silent. Following deliberations, the jury returned a verdict in favor of Shuster, awarding her $190,000 for past medical expenses and $310,000 for non-economic damages.

## STANDARD OF REVIEW

"Our standard of review on the admissibility of evidence depends on whether the ruling under review was based on a discretionary weighing of relevance in relation to other factors or on a pure conclusion of law." *Perry v. Asphalt & Concrete Servs.*, Inc., 447 Md. 31, 48 (2016) (internal citation and quotations omitted). "An evidentiary ruling on a motion in limine 'is left to the sound discretion of the trial judge and will only be reversed upon a clear showing of abuse of discretion.'" *Ayala v. Lee*, 215 Md. App. 457, 474–75 (2013) (quoting *Malik v. State*, 152 Md. App. 305, 324 (2003)). "So long as the hearing judge exercises his or her discretion reasonably, an appellate court will not reverse the judgment under review." *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 21 (2018). "We do not disturb a trial court's discretionary ruling simply because we would not have made the same ruling." *Abrishamian v. Barbely*, 188 Md. App. 334,

342 (2009).

## DISCUSSION

### 1. The circuit court did not abuse its discretion in determining that Cincinnati Insurance did not provide reasonable notice of its intent to rely on foreign law.

Appellants claim the court abused its discretion when it found reasonable notice had not been provided to Shuster of its intent to rely on foreign law. According to appellants, there was no prejudice, as Shuster was notified orally one week prior to trial, her counsel was barred in Pennsylvania and she indicated that she was prepared to argue the merits of the motion in limine. Shuster, on the other hand, contends that Cincinnati did not comply with Maryland Courts and Judicial Proceedings §10-504 because the notice provided one day prior to trial was not reasonable and the oral notification was insufficient to put her on notice of the specific foreign rules it intended to rely on. As to LM, Shuster argues, LM failed to provide any notice of intent to rely on foreign law, failed to object to the admission of her medical records and bills and did not object to the collateral source jury instruction provided by the court.

Maryland Courts and Judicial Proceedings §10-504 governs how parties are to notify each other of their intent to rely on foreign law. It states:

> A party may also present to the trial court any admissible evidence of foreign laws, but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken of it, reasonable notice shall be given to the adverse parties either in the pleadings or by other written notice.

Md. Code Ann., Cts. & Jud. Proc. § 10-504.

Cincinnati argues *Frericks v. Gen. Motors Corp*., is dispositive. In *Frericks*, the Court of Appeals examined the "liability of automobile manufacturers and dealers for

alleged design defects which cause[d] or enhance[d] injuries in so-called 'second collisions[.]'" *Frericks v. Gen. Motors Corp.*, 274 Md. 288, 290 (1975). John Frericks was a passenger in a vehicle manufactured by General Motors Corporation ("GM") and purchased from Anchor Pontiac Buick, Inc., in Maryland. *Id.* The vehicle overturned in North Carolina, which resulted in Frericks sustaining injuries. *Id.* at 290–91. At the time of the accident the vehicle was being driven by Ronald Baines, whose parents purchased the vehicle. *Id.*

On appeal GM argued the "sufficiency of the negligence and strict liability counts of [Frericks'] declaration should be evaluated under North Carolina law" because the accident occurred in North Carolina. *Frericks* 274 Md. at 295. The Court acknowledged GM's claim that under Maryland law "*lex loci delictus* is applicable in tort actions brought in Maryland;"[2] but ultimately declined to apply North Carolina law because GM failed to provide "notice of their intent to rely on foreign law, when the case was before the trial court, as required by Maryland Code (1974), [§]10-504 of the Courts and Judicial Proceedings Article." *Id.* at 296. The Court noted that the purpose of the rule was to ensure "the adverse party has an adequate opportunity to prepare his arguments on the foreign law." *Id.*

The Court stated:

> Although we may in our discretion take judicial notice of foreign law where the statutory notification was not given and proof of the foreign law was not

[2] Under the doctrine of *lex loci delictus*, "where the events giving rise to a tort action occur in more than one State, we apply the law of the State where the injury-the last event required to constitute the tort occurred." *Erie Ins. Exch. v. Heffernan*, 399 Md. 598, 620 (2007) (internal quotation omitted).

> presented, . . . we decline to do so here because the case proceeded in the trial court and before the Court of Special Appeals on the assumption that Maryland law was applicable, and we granted certiorari on that basis.

*Id.* at 297. The Court did, however, note that on remand GM will have an opportunity to comply with §10-504 and file notice in their pleadings because they had yet to file an answer. *Id.* The Court further stated, "[i]f the circumstances indicate that no unfair surprise would result, notice of intent to rely on foreign law may be filed up to the start of trial." *Id.*

Here, the trial court, after listening to the argument of counsel, stated it found the timing of the filing "troublesome."

> There are some substantive issues that are substantial in this case and I think [Shuster] has been prejudiced by you not filing this notification more, in a more reasonable time frame. . . . I don't find that reasonableness was provided to [Shuster's] counsel that you intended to rely on Pennsylvania law in this case. Therefore, your motion in limine is denied.

We observe, as stated in *Frericks*, that the purpose of §10-504 is to prevent "unfair surprises" and to allow parties to adequately prepare their cases. Further there are significant differences in Maryland and Pennsylvania law. In Maryland, the collateral source rule permits recovery of the full amount of damages, while Pennsylvania law is more restricted. Thus, the presentation of the case would have been significantly altered.

As we see it, the court carefully weighed the arguments of counsel, with its understanding of the applicable statute and case law and determined that allowing Pennsylvania law would be prejudicial. This decision was not an abuse of discretion as it was not "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Moser v. Heffington*, 465 Md. 381, 400–01 (2019).

**2. The circuit court did not abuse its discretion in denying Cincinnati's Motion in Limine.**

Appellants argue the court abused its discretion in not ruling on the merits of the Motion in Limine and by not taking judicial notice. Shuster contends Cincinnati's argument is waived because it did not request the trial court to take judicial notice of Pennsylvania law. She further argues LM failed to object on the record to the admittance of the medical record and therefore waived its right to appeal this matter.

In accordance with Maryland Rule 8-131(a), appellate courts will ordinarily decide only matters that appear in the record "to have been raised in or decided by the trial court," but the Courts may exercise their discretion to decide issues not in the record when "necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). The Court of Appeals has previously discussed foreign law and judicial notice and stated:

> Where the parties to an action fail to give the statutory notice of an intent to rely on foreign law, and where it is clear that one or more issues in the case are controlled by another jurisdiction's law, a court in its discretion may exercise one of two choices with respect to ascertaining the foreign law. First, the court may presume that the law of the other jurisdiction is the same as Maryland law. Alternatively, the court may take judicial notice of the other state's law.

*Chambco, Div. of Chamberlin Waterproofing & Roofing, Inc. v. Urban Masonry Corp.*, 338 Md. 417, 421 (1995).

Here the court properly exercised its discretion in ruling that proper notice had not been given and that Shuster would be prejudiced by the improper notice. The court was

not then required to take judicial notice of an issue that was not presented to it. We hold the trial court did not abuse its discretion.

**JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.**