

DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way Castle Rock, Colorado 80109 (720) 437-6200	DATE FILED: September 26, 2022 11:27 AM CASE NUMBER: 2021CV30087
Plaintiffs: KAITLYNN DERANI, Ward and Protected Person, by and through her co-guardians and co-conservators, DANIEL DERANI and SARA DERANI	▲ COURT USE ONLY ▲
v. Defendants: E.A. a minor child by and through JAMES TIMOTHY ALBI, his parent and guardian, and JAMES TIMOTHY ALBI, individually.	Case Number: 2021CV30087 Division: 5
ORDER RE: PRETRIAL MOTIONS	

NOTE: OTHER MOTIONS BY PLAINTIFF AND DEFENDANT REDACTED FOR PRIVACY AND BREVITY

THIS MATTER is before the court on various motions filed by the Plaintiffs and Defendant. The Court has considered the filings of the parties as well as applicable law, and finds and orders as follows:

Plaintiff’s Motion to Strike Defendants’ Witness Michael F. Arrigo

Michael Arrigo is a defense medical billing expert. Plaintiff disagrees with the methodology he used in determining the reasonable and necessary charges for medical care that the Plaintiff received.

Plaintiff has the burden of proving by a preponderance of the evidence her damages.

C.J.I. 6:1. The correct measure of damages is the reasonable and necessary value of the medical services rendered. *Kendall v. Hargrave*, 142 Colo. 120, 123, 349 P.2d 993, 994 (Colo. 1960). The amount billed to the Plaintiff is clearly some evidence of the reasonable and necessary value of the services provided. *Volunteers of America v. Gardenswartz*, 242 P.3d 1080, 1087 (Colo. 2010)(quoting *Arthur v. Catour*, 345 Ill. App.3d 804, 281 Ill.Dec. 243, 803 N.E.2d 647, 649 (2004)(plaintiff’s damages are not limited to the amount paid by her insurer, but may extend to the entire amount billed, provided those charges are reasonable expenses of necessary medical care.”). The defendant, of course, has a right to dispute the amount charged and “the trial setting is the proper forum for the parties to present evidence regarding the proper value of an injured plaintiff’s damages.” *Volunteers of America*, 242 P.3d at 1087.

C.R.E. 702 rather than the test in *Frye v. United States*, 293 F. 1013, 1014 (D.C.Cir.

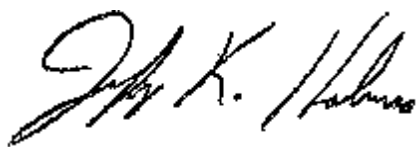
1923) governs a Colorado trial court's determination as to whether expert testimony should be admitted at a trial. *People v. Shreck*, 22 P.3d 68,70 (Colo. 2001). The court's inquiry focuses on the reliability and relevance of the proffered evidence and requires a determination of the reliability of the scientific principles, the qualifications of the witness and the usefulness of the testimony to the jury. *Id.*

C.R.E. 702 provides that if specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise.

It has not been suggested that there is anything particularly novel about the subject of medical billing or how it can be categorized and calculated. It is sufficiently complex and outside the experience of most lay people, however, that specialized knowledge would be helpful to the jury in determining the proper value of services provided. It is also a subject on which there can obviously be disagreement. Merely because there is disagreement about the proper way to calculate what charges for particular services should be, however, does not mean that one way of doing so should be precluded by court order.

Whether Arrigo qualifies as an expert will need to be determined at trial. Assuming that he does qualify by experience, training, etc. and is permitted to give expert testimony. Plaintiff will be permitted to cross-examine, point out deficiencies in his calculations, and question his conclusions. Plaintiff may, of course, also present contradictory testimony and evidence. **The motion to strike the witness is denied.**

DONE AND SIGNED this 26th day of September, 2022.



Jeffrey K. Holmes, District Court Judge