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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1657**

Gaddisee Gameda Bedasso,
Appellant,

vs.

Anwar Yusuf Omar,
Respondent.

**Filed July 1, 2019
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CV-17-2329

Nuro B. Dedefo, Columbia Heights, Minnesota (for appellant)

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Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

ROSS, Judge

After a jury calculated the amount of damages that Gaddisee Bedasso incurred for injuries she suffered in a car collision caused by Anwar Omar, the district court deducted from her award the compensation she had received from collateral sources and awarded only part of her requested costs and disbursements. Because the district court correctly

deducted collateral sources and properly denied Bedasso's motion for her full costs and disbursements, we affirm in part. But because the district court overlooked Bedasso's request for prejudgment interest, and Omar correctly concedes her entitlement to it, we reverse in part and remand for the district court to order prejudgment interest.

FACTS

Anwar Omar lost control of his car in January 2016, causing a collision that injured his passenger, Gaddisee Bedasso. Bedasso sued Omar for negligence, seeking damages for her pain, distress, expenses, and lost income. Omar offered her \$50,000 to settle the suit, and Bedasso rejected the offer. The parties proceeded to trial.

A jury found Omar negligent and calculated the amount of Bedasso's damages to be \$15,000 for past pain, disability, and emotional distress, \$35,859 for past healthcare expenses, \$7,692 for past lost income, \$2,000 for future pain, disability, and emotional distress, and \$2,000 for future healthcare expenses, for a total amount of \$62,551. Bedasso's health insurer immediately notified her that it was placing a \$10,370.05 subrogation lien on her damages award.

Omar moved the district court to deduct from Bedasso's award the amounts she had received from collateral sources. Bedasso opposed the motion and also asserted her right to prejudgment interest on the award. The district court granted Omar's motion, deducting collateral-source benefits from Bedasso's damages award in the amount of \$20,000 to offset the amount she received in no-fault medical insurance benefits, \$1,754.40 to offset her no-fault personal-injury-protection wage-loss benefits, and \$12,741.88 to offset discounts and adjustments to her medical bill that her insurer had negotiated on her behalf.

The district court also applied Minnesota Rule of Civil Procedure 68.03(b)(1) to determine the amount of costs and disbursements to include in the judgment in light of the amount and timing of Omar's settlement offer. The district court did not address Bedasso's claim for prejudgment interest. It ultimately reduced her award from \$62,551 to \$21,606.75.

Bedasso appeals.

D E C I S I O N

Bedasso appeals from the judgment, raising three issues. She argues first that the district court improperly applied the collateral-source statute. She argues second that the district court failed to calculate prejudgment interest and add it to her award. She argues third that the district court erred by failing to award her all her costs and disbursements. Only Bedasso's prejudgment-interest argument identifies an error.

I

Bedasso argues unconvincingly that the district court misapplied the collateral-source statute. We review de novo the district court's application of that statute to undisputed facts. *Auers v. Progressive Direct Ins. Co.*, 878 N.W.2d 350, 354 (Minn. App. 2016), *review denied* (Minn. July 19, 2016).

Bedasso argues that the district court should not have reduced her award by the amount of payments she received from collateral sources because the award was subject to her insurer's \$10,370.05 subrogation lien. The district court must reduce the plaintiff's damages award by the amount of payments she received from collateral sources to cover her injuries, except those amounts subject to a subrogation lien. Minn. Stat. § 548.251, subd. 3 (2018). Although no collateral-source deduction is made for the amount of the

subrogation lien, the mere existence of a subrogation lien does not prevent collateral-source deductions on other amounts. *See Swanson v. Brewster*, 784 N.W.2d 264, 266–67, 282 (Minn. 2010); *Auers*, 878 N.W.2d at 355–57. Bedasso does not identify any portion of the district court’s order indicating that it failed to exempt the subrogation lien from its collateral-source deductions. And our review of the record informs us that the district court did not include the amount of the subrogation lien in its collateral-source deductions. The district court deducted \$21,754.40 from the award because the parties stipulated that these no-fault benefits were deductible collateral sources. The district court deducted \$12,741.88 in discounts that Bedasso’s insurer negotiated with Bedasso’s healthcare providers. Negotiated discounts are deductible collateral sources. *Swanson*, 784 N.W.2d at 282. And because negotiated discounts are not amounts for which a subrogation right can be asserted, they are included in the collateral-source deduction. *Auers*, 878 N.W.2d at 355–56. This total of \$34,496.28 in collateral-source deductions means that the district court left \$28,054.72 of the award intact. Bedasso has not shown that any of the overall collateral-source deduction included the \$10,370.05 subrogation lien or explained why the lien’s existence precludes a deduction of the collateral sources.

Bedasso similarly fails to persuade us that the district court erred by not excluding from its collateral-source deduction the \$5,632 in medical co-payments Bedasso incurred and her \$3,218.36 outstanding medical bill. She relies on *Westendorf by Westendorf v. Stasson*, 330 N.W.2d 699 (Minn. 1983), for the proposition that she “has the right to deduct [her co-payments] before [the] collateral source deduction applies.” No reading of *Westendorf*, which neither explicitly nor implicitly involved the collateral-source statute,

supports the proposition. The heart of Bedasso’s argument is that “the district [court] erred by taking away the money [she] should [be able to use to] pay for outstanding co-pays.” But the district court was bound to reduce the award according to the law, and this includes the requirement to make collateral-source deductions except for payments made by a plaintiff to secure the right to the collateral-source benefits in “the two-year period immediately before the accrual of the action.” Minn. Stat. § 548.251, subds. 2(2) and 3 (2018). The district court correctly reasoned that Bedasso’s co-payments made after the accrual of the action do not qualify. As for her argument that the district court erroneously failed to consider the \$3,218.36 outstanding medical bill when it made its collateral-source deduction, the record reveals that the district court did consider the bill. It properly reasoned that the bill did not qualify as an offset against the collateral-source deduction because it does not constitute a contribution to secure a collateral-source benefit.

II

Bedasso contends that the district court erred by failing to award her prejudgment interest. Because awards of prejudgment interest are governed by statute, we treat the decision to grant an award as a legal question and review it *de novo*. *See S.B. Foot Tanning Co. v. Piotrowski*, 554 N.W.2d 413, 420 (Minn. App. 1996), *review denied* (Minn. Dec. 17, 1996); *see also Hogenson v. Hogenson*, 852 N.W.2d 266, 272 (Minn. App. 2014).

Bedasso accurately observes that the district court did not address her claim for prejudgment interest, and Omar concedes that Bedasso was entitled to that interest on the amount of her award from the action’s commencement until his rule 68.03 settlement offer. Minn. Stat. § 549.09, subd. 1(b) (2018). Despite his concession, Omar opposes Bedasso’s

request that we remand the case for the district court to calculate her prejudgment interest, contending that Bedasso forfeited the opportunity to challenge the omission by having failed to provide the district court the information necessary to compute the interest. Omar's opposition is unconvincing.

That Bedasso asked for prejudgment interest without specifying the accurate data to calculate it did not forfeit the request or prevent the district court from including it in its order for judgment. The statute mandates the award of prejudgment interest, tasking the court administrator with computing it. *See* Minn. Stat. § 549.09, subd. 1(a) (“[I]nterest . . . shall be computed by the court administrator . . .”). The district court omitted the interest award as an apparent oversight, not as the result of lacking necessary data. The statute defines the source of determining the applicable interest rate, *see id.*, subd. 1(c)(1)(i) (2018), the record establishes the various dates necessary for the calculation, and the district court's final determination of damages to be awarded supplies the final element. The district court had the data it needed to award Bedasso the correct prejudgment interest, albeit in an amount less than she requested. We agree with Omar that Bedasso is entitled to prejudgment interest but disagree with his charge that she forfeited her right to obtain it. We remand for the district court to order prejudgment interest.

III

Bedasso argues that the district court erred by failing to award her all her costs and disbursements under Minnesota Rule of Civil Procedure 68. We review *de novo* a district court's legal determinations under that rule. *Vandenheuvel v. Wagner*, 690 N.W.2d 753, 754 (Minn. 2005). The district court properly applied the rule, whose terms establish the

extent to which Bedasso is entitled to costs and disbursements in relation to Omar's settlement offer:

If the offeror is a defendant, and the defendant-offeror prevails or the relief awarded to the plaintiff-offeree is less favorable than the offer, the plaintiff-offeree must pay the defendant-offeror's costs and disbursements incurred in the defense of the action after service of the offer, and the plaintiff-offeree shall not recover its costs and disbursements incurred after service of the offer

Minn. R. Civ. P. 68.03(b)(1). Given Bedasso's lower-than-settlement-offer award, she is not entitled to the costs and disbursements she incurred after receiving the offer. The district court therefore correctly limited her award of costs and disbursements to the amount she incurred before she received the offer.

Bedasso argues for a different result, relying on *Borchert v. Maloney*, 581 N.W.2d 838 (Minn. 1998). The argument fails. The *Borchert* court addressed and resolved an apparent conflict between a statute, which entitled the plaintiff to all of her costs and disbursements as the prevailing party, and rule 68 as it was then written, which entitled the defendant, who had made a settlement offer greater than the plaintiff's eventual recovery, to all of his costs and disbursements. 581 N.W.2d at 839. The *Borchert* analysis addressed a different issue and a differently worded rule. It has no bearing on our analysis.

Affirmed in part, reversed in part, and remanded.