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PROPER PLANNING MAY CREATE PEACE OF MIND

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THE COLLATERAL SOURCE RULE

Trial attorneys should be familiar with the collateral source rule. In the case of Velilla v. VIP Care Pavilion Ltd., 861 So. 2d 69 (Fla. 4th DCA 2003) the Court held that the trial court erroneously admitted collateral source evidence. The facts of the case concern Sara Velilla who had Alzheimer's and other medical issues in March 2000 when her family placed her in VIP (an assisted living facility). Within two weeks of admission it was noticed that she was favoring her right hip and had difficulty ambulating. The x-ray came back negative. The following month she lost her balance and fell. X-ray results showed bilateral hip fractures and a broken pelvis. She was hospitalized, had surgery, and went to a rehabilitation center. The family filed a cause of action alleging violation of rights under Chapter 400, Florida Statutes. The jury found that VIP was not liable.

At trial an employee of the defendant testified that Velilla was entitled to Medicaid benefits which would help cover the cost of her care. VIP attempted to shift the focus away from VIP's violation of resident rights toward the availability of government benefits to pay for Velilla's care. The collateral source rule allows ad-

mission of evidence about governmental or charitable health care benefits. However, evidence of Medicaid benefits did not go to the issue of Velilla's future medical care and the testimony should not have been admitted.

A second issue on appeal concerned the trial court allowing VIP to interject the financial situation of the Velilla family. The appellate court remanded with instruction that in the new trial no reference should be made to the wealth or poverty of a party, or to Medicare or Medicaid benefits.

UPCOMING EVENTS:

Our firm will be an exhibitor at the AFTLA 2004 Medical Malpractice Seminar to be held at the Renaissance Hotel in Ft. Lauderdale on May 20, 2004. We will also be participating as an exhibitor at the AFTLA 2004 Annual Meeting to be held at The Breakers Palm Beach on June 16 to 18, 2004. Please stop by our booth to receive your complimentary updated desk reference guide to guardianships and special needs trusts. We look forward to seeing you.

ANNOUNCEMENTS:

Stephanie has been elected Chair of The Florida Bar Elder Law Sec-

tion as of July 1, 2003.

Stephanie is now offering a CLE credit approved course: Preserving the Personal Injury Settlement for the Aged & Disabled Client. Call Andrea for more information.

Our firm is a proud Business Patron of the Eagle Program of the Academy of Florida Trial Lawyers.

Meet The Staff

Kathy Russo - CLA

Bonnie Hale

- Special Needs Trusts
- Medicaid & SSI
- Nursing Home/ALF Resident Rights
- Estate Planning

Flo Koplo - CLA

- Guardianship
- Probate
- Trust Administration
- Court Appointments

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