

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO: 502014AP000049XXXXMB
L.T. NO: 502012SC021163XXXXSBRD

DAVID WALL M.D. (Patient: Martin Kleer),
Appellant,

v.

UNITED SERVICES AUTOMOBILE
ASSOCIATION,
Appellee.

Opinion filed: **NOV 13 2015**

Appeal from the County Court in and for Palm Beach County,
Judge Reginald Corlew.

For Appellant: Chad L. Christenson, Esq., Ellis, Ged & Bodden, P.A.
7171 North Federal Highway
Boca Raton, FL 33487
piplaw@ellisandged.com@email

For Appellee: Douglas H. Stein, Esq., Seipp, Flick & Hosley LLP
Two Alhambra Plaza – Suite 800
Miami, FL 33134
dstein@seippflick.com

Stephanie Martinez, Esq., Seipp, Flick & Hosley LLP
Two Alhambra Plaza – Suite 800
Miami, FL 33134
smartinez@seippflick.com

PER CURIAM.

Appellant, David Wall, M.D. (“Wall”), seeks review of the trial court’s award of attorney’s fees and costs in favor of Appellee, United Services Automobile Association (“USAA”), under section 57.105, Florida Statutes. Wall alleges that the trial court abused its discretion by awarding USAA attorney’s fees and costs. This Court affirms the trial court’s

sanctions and award of attorney's fees without comment. As to the issue of costs, this Court agrees with Appellant, and reverses the trial court's award of costs in the amount of \$1,700.00. Both Appellant and Appellee's motions for appellate attorney's fees are denied.

Martin Kleer ("Kleer") was involved in a motor vehicle accident in Pinellas County and received medical services from Wall. Wall billed USAA for medical services provided to Kleer. Wall subsequently filed a lawsuit against USAA for unpaid PIP benefits and medical payment benefits in the County Court of Palm Beach County. USAA filed two motions for sanctions under section 57.105 predicated on Wall's lack of standing, and the fact that Wall had been paid in accordance with the insurance agreement. USAA sought attorney's fees and any other relief that the court found was just and proper.

On September 19, 2013, the trial court granted USAA's motions for sanctions but did not award an amount at that time. On June 3, 2014, an evidentiary hearing was held on USAA's Motion for Attorneys Fees to determine the amount to be awarded to USAA. At the hearing, USAA requested the court to award costs for its expert who appeared at the fee hearing, but did not file a motion for costs. The court awarded USAA \$2,457.00 in attorney's fees and \$1,700.00 in taxable costs for USAA's expert witness under section 57.105.

Wall argues that the trial court abused its discretion by imposing USAA's costs for an expert under section 57.105. *Smith v. Sch. Bd. of Palm Beach County*, 981 So. 2d 6, 10 (Fla. 4th DCA 2007) (an award of costs is reviewed under an abuse of discretion standard.) Section 57.105 provides that "the court shall award a reasonable attorney's fee to be paid to the prevailing party," but does not reference costs. § 57.105, Fla. Stat. (2012). The statute's omission regarding costs has been interpreted to mean that costs are not permitted to be awarded

by the statute. *Santini v. Cleveland Clinic Florida*, 65 So. 3d 22, 36 (Fla. 4th DCA 2011). Thus, USAA is not entitled to receive costs for their expert witness under section 57.105.

USAA argues that pursuant to Florida Rule of Civil Procedure 1.420(d), it was automatically entitled to an award of taxable costs upon the filing of the voluntary dismissal. USAA however, failed to serve a motion taxing costs within thirty (30) days after Wall's voluntary dismissal. Fla. R. Civ. P. 1.525; *Atkins v. Eris*, 873 So. 2d 1264, 1265-66 (Fla. 1st DCA 2004). Thus, the trial court erred by awarding costs to USAA.

USAA's motion seeking appellate attorney's fees failed to state a valid ground for recovery. Fla. R. App. P. 9.400(b); *United Services Auto. Ass'n v. Phillips*, 775 So. 2d 921, 922 (Fla. 2000). Wall's motion seeking appellate attorney's fees and costs was untimely. Fla. R. App. P. 9.400(b).

This Court **AFFIRMS** the trial court's award for sanctions and attorney's fees and **REVERSES** the trial court's award of costs in the amount of \$1,700.00. Appellant Wall's Motion for Appellate Attorney's Fees and Costs is **DENIED**. Appellee USAA's Motion for Attorney's Fees is **DENIED**.

G. KEYSER, ARTAU, and OFTEDAL, JJ. concur.