OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JAMIE HATHAWAY,	)	No. ED103540
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	11SL-CC05012-01
	)	
MICHAEL HALLEY,	)	Honorable Michael T. Jamison
	)	
Respondent.	)	Filed: October 4, 2016

This is a personal injury action arising out of an automobile collision between a vehicle operated by Jamie Hathaway ("Plaintiff") in which his wife, Betsy Federici, was a passenger, and a vehicle operated by Michael Halley ("Defendant") that occurred at the intersection of Highway 141 and Manchester Road in St. Louis County. The case was tried to a jury and a verdict was entered in favor of Plaintiff in the amount of $8,580.00. Plaintiff appeals, raising four points: 1) the trial court erred in admitting certain opinion testimony of Defendant's retained expert, Keith D. Wilkey, M.D., because the opinions were new and had not been disclosed; 2) the trial court erred in allowing evidence that Federici had previously filed and dismissed her lawsuit against Defendant arising out of the same collision; 3) the trial court erred in instructing the jury that the evidence regarding the injuries, medical treatment, and claims of Federici could be considered with respect to the credibility of all witnesses and not just with regard to Federici's credibility; and 4) the trial court erred in denying Plaintiff's motion for an award of costs as the prevailing party.

AFFIRMED IN PART, AND REVERSED AND REMANDED IN PART.

DIVISION THREE HOLDS: As to the first three points, we have reviewed those claims and find that no error of law appears as to those claims. An extended opinion as to those points would have no precedential or jurisprudential value. Therefore, points I through III are affirmed in accordance with Rule 84.16(b). The parties have been provided a memorandum decision on those points. The trial court's ruling as to point IV, however, goes to the assessment of costs and is in error. As the prevailing party, Plaintiff was entitled to recover at least some of his costs. See Rule 77.01; § 514.060. Accordingly, we reverse and remand this case for the trial court to consider what costs Plaintiff is entitled to recover.

Opinion by: James M. Dowd, P.J.

Kurt S. Odenwald, J., and Gary M. Gaertner, Jr., J. concur.

Attorney for Appellant: Zane T. Cagle

Attorney for Respondent: Donald L. O'Keefe

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.