

**FIFTH DIVISION
MERCIER, C. J.,
MCFADDEN, P. J., and RICKMAN, J.**

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January 27, 2025

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A24A1215. SMITH v. MIZER.

RICKMAN, Judge.

Isaac Smith filed suit against Julia Mizer for negligence, seeking damages for injuries allegedly sustained in an automobile accident.¹ A jury found in favor of Mizer. On appeal, Smith contends that the trial court abused its discretion by allowing him to be impeached with an undisclosed medical record and by ordering him to bear all costs for the suit. For the following reasons, we affirm.

Following a jury verdict, we view the evidence in the light most favorable to the verdict. See *Bloom v. Camp*, 336 Ga. App. 891, 892 (1) (785 SE2d 573) (2016). So viewed, the evidence at trial showed that on July 12, 2021, Mizer's vehicle collided

¹Originally there was another plaintiff, but he was dismissed with prejudice and is not a part of this appeal.

with Smith's vehicle after Mizer failed to yield. The airbags in Smith's vehicle did not deploy, he did not request an ambulance, and he drove his vehicle from the scene after the accident. Smith, however, filed suit against Mizer alleging that he "suffered significant and permanent personal injuries and will continue to suffer personal injuries in the future including bodily injury, pain, and suffering."

Smith deposed that he had been in a prior motor vehicle accident and when asked if he had sustained injuries in that accident he replied, "[j]ust the typical, you know, that you get in a[n] accident. I can't even remember all of it, but I do know I went to get checked out [at a hospital in Mississippi], so I have to go back and look in the files to see the details of it."

At trial, Smith testified that prior to the July 2021 accident he had never injured his neck or back. Mizer impeached Smith's testimony with a medical record from a hospital in Mississippi. The medical record included a statement that "[Smith's] only complaint today is [] the pain to his thoracic spine area. He reports he was in a car accident in 2012, and apparently six months later, developed mid-back pain. He reports he also developed tension headaches." Smith objected to the use of the medical record claiming that he was not properly notified of Mizer's intent to use the

document. The trial court overruled the objection. At the conclusion of the trial, the jury found in favor of Mizer.

1. Smith contends that the trial court abused its discretion by allowing him to be impeached with an undisclosed medical record.

The consolidated pre-trial order listed all documentary evidence to be tendered at trial and included “[a]ny of [Smith’s] medical records related to this case, or for the purposes of impeachment or rebuttal.” Additionally, Mizer filed a notice of intent to use records as evidence at trial. That notice listed several different medical institutions including the hospital in Mississippi where the challenged record was from.

Accordingly, the medical record was therefore not undisclosed and was properly used for impeachment purposes as authorized by OCGA § 24-6-621 (“A witness may be impeached by disproving the facts testified to by the witness.”) See *Baronev. Law*, 242 Ga. App. 102, 105 (2) (527 SE2d 898) (2000) (holding that because the plaintiff specifically denied any prior back, neck, or leg pain at trial, the plaintiff’s medical records showing otherwise were admissible for impeachment); *Fulton-Fritchlee v. Douglas*, 240 Ga. App. 413, 415 (1) (523 SE2d 349) (1999) (plaintiff

properly impeached with prior medical record after she denied ever injuring or having problems with her neck prior to the accident that was the subject of the suit).

2. Smith contends that the trial court erred by ordering him to pay all costs for the suit.

The trial court's final judgment stated that, "the judgment is entered in favor of [Mizer]. [Smith] shall bear all costs of the action." "Generally, the award of court costs to the prevailing parties is not error." *Hancock County Bd. of Tax Assessors v. Dickens*, 208 Ga. App. 742, 743 (2) (431 SE2d 735) (1993) Pursuant to OCGA § 9-15-1, "[i]n all civil cases in any of the courts of this state, except as otherwise provided, the party who dismisses, loses, or is cast in the action shall be liable for the costs thereof." "Except where express provision therefor is made in a statute, costs shall be allowed as a matter of course to the prevailing party unless the court otherwise directs[.]" OCGA § 9-11-54 (d). Accordingly, it was not error for the trial court to award costs to Smith, the prevailing party. See *Hancock*, 208 Ga. App. at 743 (2).²

Judgment affirmed. Mercier, C. J., and McFadden, P. J., concur.

² The trial court has not yet ruled on Mizer's motion for attorney fees pursuant to OCGA § 9-11-68 so that issue is not yet ripe for our review.