Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-272

FEBRUARY TERM, 2002

Patricia L. Scott	}	APPEALED FROM:
	}	
v.	}	Chittenden Superior Court
	}	
Stephen M. Polak	}	
	}	DOCKET NO. S1560-98 CnC
	}	
	}	Trial Judge: David A. Jenkins
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals a Chittenden Superior Court's order granting defendant's motion to offset plaintiff's personal injury award by the amount defendant's insurer allegedly paid to cover certain medical bills plaintiff incurred. We reverse.

Plaintiff sued defendant for damages arising from a car accident in which defendant rear-ended plaintiff on Interstate 89 in December 1995. After a two-day trial, the jury returned a verdict for plaintiff in the amount of $25,000. The jury found plaintiff 50% negligent, and therefore reduced the total award to $12,500. Ten days after the verdict, defendant moved the court pursuant to V.R.C.P. 59(e) to modify the judgment to account for $1,998.60 in payments defendant's insurer allegedly made towards plaintiff's medical bills. To support his motion, defendant submitted a copy of a claim plaintiff's insurer filed in an inter-company arbitration proceeding reflecting plaintiff's insurer's request for reimbursement from defendant's insurer of $1,998.60 in medical expenses plaintiff's insurer paid on plaintiff's behalf. No other proof of payment by defendant's insurer was submitted to the court. On May 4, 2001, the trial court granted defendant's motion, ordering a setoff of $1,998.60 from the $12,500 jury verdict. Plaintiff timely appealed.

Disposition of a motion under Rule 59(e) is a committed to the trial court's discretion. Rubin v. Sterling Enters., 164 Vt. 582, 588 (1996). The rule's purpose is to allow the trial court to modify the original judgment to relieve a party from "the unjust operation of the record resulting from the mistake or inadvertence of the court and not the fault or neglect of a party." Id. On appeal, we will reverse an order resolving a Rule 59(e) motion only where the appellant demonstrates that the trial court abused its discretion. See id. at 589 (court did not abuse its discretion by refusing to hear post-verdict evidence where movant's failure to produce such evidence at trial was not attributable to the court's mistake or inadvertence).

A tortfeasor is entitled to offset an award of damages by the amount the tortfeasor's insurer pays on the insured's behalf to the injured party. See Restatement (Second) of Torts § 920A(1) (1977). The rule applies even where the payment was for medical bills for which a finding of liability is not a prerequisite for payment under the policy at issue. Id. cmt. a. The rule contemplates, however, that the party seeking the offset provide proof that payment was in fact made. In this case, the court had no such proof. As plaintiff correctly points out, and as she argued below, the only evidence submitted with defendant's motion was a claim plaintiff's insurer made against defendant's insurer in an inter-company arbitration proceeding. Defendant offered no evidence to show what the outcome of that proceeding was. Proof that a claim was made is not equivalent to proof that the claim prevailed. Accordingly, the trial court abused its discretion by

granting defendant's motion.

Reversed.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
James L. Morse, Associate Justice