

N.C.P.I.—CIVIL—810.48D
 WRONGFUL DEATH INJURY DAMAGES—FUNERAL EXPENSES—NO
 STIPULATION, REBUTTAL EVIDENCE OFFERED
 GENERAL CIVIL VOLUME
 JUNE 2013

 810.48D WRONGFUL DEATH DAMAGES—FUNERAL EXPENSES—NO
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(Use for claims arising on or after 1 October 2011¹ when the plaintiff has offered evidence of the amount paid or necessary to be paid, and the defendant has offered rebuttal testimony by the provider of the funeral services. For claims arising before 1 October 2011, use N.C.P.I.—Civil 810.48.)

Damages for (*name deceased*)’s death also include all funeral (and burial)² expenses reasonably paid or incurred by (*name deceased*)’s estate.

To be reasonably incurred, funeral (and burial) expenses must have been: (1) incurred as a [proximate result of the defendant's negligence] [result of the defendant’s wrongful conduct] and (2) reasonable in amount.

To show that the amount of claimed funeral (and burial) expenses is reasonable,³ the plaintiff must prove by the greater weight of the evidence

¹ See 2011 N.C. Sess. Laws 317 § 1.1 (modifying 2011 N.C. Sess. Laws 283 § 4.2).

² There is no right of recovery for burial expenses separate and apart from the right to recover for wrongful death. Burial expenses are to be recovered out of the amount to be recovered in the action. *Davenport v. Patrick*, 227 N.C. 686, 691, 44 S.E.2d 203, 206-07 (1947).

³ N.C. Gen. Stat. § 8-58.1(b) (2011) establishes a “rebuttable presumption of the reasonableness” of the “amount paid or required to be paid in full satisfaction” of medical charges. The plaintiff, guardian, administrator or executor is “competent” to give evidence of these amounts if records or copies “showing the amount paid or required to be paid in full satisfaction of such charges accompany such testimony.” *Id.* § 8-58.1(a).

A “presumed fact” is “deemed proved” and the jury must be instructed “accordingly” unless the opposing party “go[es] forward with evidence to rebut or meet the presumption[.]” N.C. Gen. Stat. § 8C-1, Rule 301 (2009). See also *McCurry v. Painter*, 146 N.C. App. 547, 552, 553 S.E.2d 698, 702 (2001) (holding that where “[d]efendants presented no evidence” nor “rebut[ted] the reasonableness of the amount of [plaintiff's] medical charges on cross-examination,” the reasonableness of the amount of those charges was “conclusively established”); cf. *Osetek v. Jeremiah*, 174 N.C. App. 438, 440, 621 S.E.2d 202, 204–06 (2005) (finding no error in refusal to instruct jury to accept “as conclusive and binding” that the medical charges testified to by plaintiff were “reasonable in amount” where defendant challenged the “legitimacy” of plaintiff’s treatment and whether the charges were caused by the collision at issue), *aff’d per curiam*, 360 N.C. 471, 628 S.E. 2d 760 (2006); *Griffis v. Lazarovich*, 161 N.C. App. 434, 442, 588 S.E.2d 918, 924 (2003) (holding that an instruction on reasonableness presumption “would have been redundant

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the amount actually paid by (*name deceased*)'s estate for funeral (and burial) services (and the amount necessary to satisfy funeral (and burial) expenses that have not yet been paid). If you find that the plaintiff has proved [this amount] [these amounts], then the law presumes that [this amount is] [these amounts are] reasonable. This means that if you find by the greater weight of the evidence the amount actually paid by (*name deceased*)'s estate for funeral (and burial) expenses (and the amount necessary to satisfy funeral (and burial) expenses that have not yet been paid), in the absence of other evidence as I am about to discuss with you, then you also must find that the amount of funeral (and burial) expenses was reasonable.

However, it is your duty to consider all of the evidence in the case.

If you find from the plaintiff's evidence the amount actually paid by (*name deceased*)'s estate for funeral (and burial) expenses (and the amount necessary to satisfy funeral (and burial) expenses that have not yet been paid), then the burden shifts to the defendant to prove by the greater weight of the evidence that a different amount was actually paid by (*name deceased*)'s estate for funeral (and burial) expenses (or a different amount is necessary to satisfy funeral (and burial) expenses that have not yet been paid). If you find that the defendant has proved by the greater weight of the evidence that [[certain] [the] charges were] [a charge was] (either) satisfied by payment of an amount less than the amount charged (or can be satisfied by payment of less than the amount charged), then you must find

and confusing to the jury" where the parties stipulated to the amount and to the reasonableness of plaintiff's medical expenses).

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that the lesser amount is the reasonable amount of the charges⁴ (unless you find that the plaintiff has rebutted the defendant's evidence).

Remember, for you to find that (*name deceased*)'s funeral (and burial) expenses were reasonably incurred, the plaintiff also must prove by the greater weight of the evidence that the funeral (and burial) services shown on the bills were incurred by (*name deceased*)'s estate as a [proximate result of the defendant's negligence] [result of the defendant's wrongful conduct]. [I already have instructed you on the definition of proximate cause, and that definition applies equally here.]⁵

4 N.C. Gen. Stat. § 8-58.1(b) (2011) specifies that when the "provider . . . gives sworn testimony that the charge for that provider's service either was satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of any amount less than the amount charged, then with respect to that provider's charge only, the presumption of the reasonableness of the amount charged is rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount of the charges for the testifying provider's services."

5 Do not give this sentence in intentional tort cases.

