

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH W. GADDIN AND JANET E.
GADDIN,
Appellants,
vs.
ALLAN STEWART BIRD AND PETER
R. DIEFENDERFER, JR.,
Respondents.

No. 48361

FILED

SEP 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Proper person appeal from a district court judgment on a jury verdict and from post judgment orders awarding attorney fees and costs in a personal injury case. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

This case arises from an automobile accident that occurred on July 11, 2000, when a vehicle driven by respondent Allan Bird collided with another vehicle operated by respondent Peter Diefenderfer. The Diefenderfer vehicle was owned by a Las Vegas automobile dealership, "Team Ford," and Diefenderfer was engaged in a "test-drive" at the time of the accident. Appellant Janet Gaddin, an employee of Team Ford acting within the course and scope of her employment, was a passenger in the rear seat of the Diefenderfer vehicle. Claiming personal injuries, Mrs. Gaddin filed a negligence suit against Bird and Diefenderfer.¹ Mr. Gaddin joined in the action, seeking damages for loss of consortium.

¹"Team Ford" was immune from any suit by Mrs. Gaddin under the Nevada Industrial Insurance Act and, regardless, no theory of negligent entrustment to Diefenderfer was alleged.

Bird and Diefenderfer answered the complaint and the parties commenced pre-trial discovery. The Nevada Auto Network Self Insured Group, Gaddin's worker's compensation benefits provider, subsequently intervened as a party plaintiff.² Following a court-ordered settlement conference, Bird served the Gaddins with an offer of judgment for \$150,001. Mr. And Mrs. Gaddin rejected the offer and the matter proceeded to a jury trial.

Mrs. Gaddin presented evidence at trial that she injured her left shoulder and cervical spine, and that she suffered from migraines, as a result of the accident. That testimony was in part undermined on cross-examination of her witnesses, and by other trial testimony and medical reports indicating that she had injured her left shoulder and spine in a previous accident. The jury subsequently returned a \$35,000 verdict against Bird and exonerated Diefenderfer. The district court entered judgment on the jury verdict and awarded Bird his costs and attorney's fees under NRCP 68, NRS 17.115 and NRS 18.020. Mr. and Mrs. Gaddin appeal.³ We affirm.

The Gaddins make several claims of trial error. In particular, they assert that irregularities occurred resulting in the failure to admit the deposition transcript of Dr. Richard Kudrewicz; that the trial court improperly admitted a Permanent Partial Disability Rating (PPDR) report prepared by Dr. Kudrewicz, which indicates that 50 percent of Mrs.

²Mrs. Gaddin submitted a claim for workers compensation benefits in connection with this accident.

³This court denied respondents' motion to dismiss the appeal on timeliness grounds.

Gaddin's claimed injuries were attributable to the previous accident;⁴ that it was improper to show the jury the rating figures as to the amount of disability taken from Dr. Kudrewicz's PPDR report; and admission of testimony relating to her workers compensation benefits violated the collateral source rule.⁵ According to the Gaddins, all of the improperly admitted evidence prejudiced the jury's calculation of damages.

We conclude that the Gaddins waived these claims of error at the trial of this matter.⁶ First, appellants, through their counsel, made no attempt to publish or otherwise admit Dr. Kudrewicz's deposition, via excerpts or otherwise. Second, the district court admitted Dr. Kudrewicz's report by stipulation in connection with the testimony of Dr. Anthony Serfustini.⁷ Third, the Gaddins' counsel failed to object to any other testimonial or evidentiary references to Mrs. Gaddin's workers

⁴The Gaddins argue that this admission violated Nevada Administrative Code 616C.021.

⁵See Proctor v. Castelletti, 112 Nev. 88, 911 P.2d 853 (1996) (holding that evidence of payments to a personal injury plaintiff from a collateral source is inadmissible as a matter of public policy).

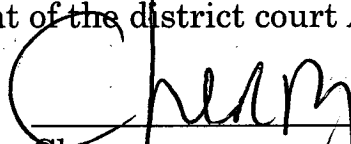
⁶It is well-established that "a failure to object in the trial court bars the subsequent review of the objection." Fick v. Fick, 109 Nev. 458, 462, 851 P.2d 445, 448 (1993). In addition, Mrs. Gaddin herself testified to the workers compensation payments she received.

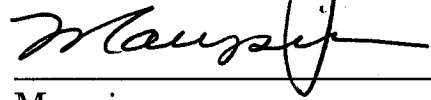
⁷The Gaddins' counsel filed a motion in limine objecting to any discussion of Mrs. Gaddin's previous injuries but subsequently agreed to admit Dr. Kudrewicz's report by stipulation. We also note that the report was admissible in conjunction with the testimony of Dr. Serfustini under NRS 50.285.


compensation payments.⁸ And finally, the PPDR report contains Dr. Kudrewic's conclusions reached in his deposition that certain injuries were sustained as a result of the accident in question. We therefore conclude that the district court did not abuse its discretion in admitting the above-referenced testimonial or documentary evidence.⁹

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

⁸These payments were properly admitted in any event under NRS 50.285 and under, Kramer v. Peavey, a special exception to the collateral source rule. 116 Nev. 575, 3 P.3d 665 (Nev. 2000).

⁹Johnson v. Egtegar, 112 Nev. 428, 436, 915 P.2d 271, 276 (1996) (holding that the scope of a witness' testimony is subject to an abuse of discretion standard).

¹⁰Because we affirm the judgment of the district court and the Gaddins do not appeal the verdict in his favor, we do not review Diefenderfer's argument that he is not a party in interest to this appeal.

cc: Hon. Douglas W. Herndon, District Judge
Janet E. Gaddin
Joseph W. Gaddin
Barron & Pruitt, LLP
Olson, Cannon, Gormley & Desruisseaux
Haines & Krieger, LLC
Eighth District Court Clerk