

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSE MADRUGA,
Appellant,
vs.
RENE AGUILAR, INDIVIDUALLY AND
AS NATURAL PARENT AND
GUARDIAN OF ADAM AGUILAR, A
MINOR,
Respondent.

No. 48548

FILED

FEB 26 2009

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment on a jury verdict in a personal injury case and an award of attorney fees. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

As the parties are familiar with the facts, we do not recount them except as necessary.

Appellant Rose Madruga and respondent Rene Aguilar were involved in a motor vehicle accident in which appellant hit respondent's car. In district court, appellant admitted striking respondent's vehicle, but argued that her liability for damages was limited because respondent had preexisting injuries that substantially contributed to his condition. In January 2004, respondent made an offer of judgment for \$1,700,000, which appellant rejected. The jury rejected appellant's argument regarding preexisting injuries and awarded respondent over \$6,000,000 for damages and pain and suffering.

On appeal, appellant argues, among other claims, that (1) the district court abused its discretion when it excluded evidence of respondent's alleged failure to file and pay income tax returns; (2) the district court abused its discretion when it excluded evidence that

respondent applied for social security disability benefits with two different social security numbers because it determined that the evidence was prohibited pursuant to the collateral source rule; (3) the district court abused its discretion when it allowed respondent to cross-examine Anthony B. Serfustini, M.D. about his testimony in past personal injury cases; (4) the district court abused its discretion when it awarded respondent attorney fees based upon an offer of judgment; and (5) the district court judge's failure to disclose who contributed to his campaign created an appearance of impropriety.

The district court did not abuse its discretion when it decided to exclude or admit evidence

Appellant argues that the district court made three errors regarding the admissibility of evidence. We disagree. "The trial court is vested with broad discretion in determining the admissibility of evidence." Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219, 226 (2005) (quoting State ex rel. Dep't Hwys. v. Nev. Aggregates, 92 Nev. 370, 376, 551 P.2d 1095, 1098 (1976)). Therefore, this court will not reverse a trial court's determination to admit or exclude evidence absent manifest error. Baltazar-Monterrosa v. State, 122 Nev. 606, 613-14, 137 P.3d 1137, 1142 (2006).

First, appellant argues the district court abused its discretion when it excluded evidence of respondent's alleged failure to file and pay income tax returns. Appellant contends the district court's decision was contrary to Nevada law as established in Henry v. Baber, 75 Nev. 59, 334 P.2d 839, (1959). In Henry, this court found that the district court committed prejudicial error when it excluded Baber's failure to file income tax returns where Baber was making a wage loss claim. Id. at 62, 334

P.2d at 840. We conclude that Henry is distinguishable and inapplicable here because, unlike the instant case, Henry involved a wage loss claim. Accordingly, we determine that no error occurred because it was within the district court's discretion to decide whether to admit evidence of respondent's alleged failure to pay income taxes.

Second, appellant argues the district court abused its discretion when it excluded evidence that respondent applied for social security disability benefits with two different social security numbers. The district court excluded the evidence because it determined its admission would violate the collateral source rule,¹ which per se prohibits the admission of evidence regarding a collateral source of payment for a loss or injury for any purpose. Procter v. Castelletti, 112 Nev. 88, 90, n.1, 911 P.2d 853, 854, n.1 (1996). This court has stated that collateral source evidence must be excluded because of the likelihood that such evidence will prejudice the jury thereby reducing plaintiff's award. Bass Davis v. Davis, 122 Nev. 442, 454, 134 P.3d 103, 110 (2006) (citing Castelletti, 112 Nev. at 90, 911 P.2d at 854). While this evidence may have been relevant for impeachment purposes, we conclude that the district court did not abuse its discretion. See NRS 48.035 (indicating that a district court may exclude relevant evidence if it determines that "its probative value is substantially outweighed by the danger of unfair prejudice").

Third, appellant argues the district court abused its discretion when it allowed respondent to cross-examine Dr. Serfustini about his testimony in past personal injury cases. An expert witness's bias and

¹It appears the district court also excluded the evidence because it was irrelevant. We conclude so doing was not an abuse of discretion.

motivation is a proper subject matter for cross-examination. Robinson v. G.G.C., Inc., 107 Nev. 135, 143, 808 P.2d 522, 527 (1991). Accordingly, we conclude that the district court did not abuse its discretion when it permitted respondent to question Dr. Serfustini about his testimony in past personal injury cases.

The district court properly awarded attorney fees

Appellant argues the district court abused its discretion when it awarded respondent attorney fees and costs based upon an offer of judgment. The district court has discretion to award attorney fees. See NRCP 68. Pursuant to Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983), the district court must weigh the following four factors when deciding whether to award attorney fees based upon an offer of judgment:

- (1) whether the plaintiff's claim was brought in good faith;
- (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount;
- (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
- (4) whether the fees sought by the offeror are reasonable and justified in amount.

While the Beattie factors assume the defendant is the offeror and the plaintiff is the offeree, when the roles are reversed and the plaintiff is the offeror and the defendant is the offeree, the first Beattie factor is considered in light of "whether [the defendant's] defenses were litigated in good faith." Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). Unless the district court's exercise of discretion when evaluating the Beattie factors is arbitrary or capricious, this court will not disturb the district court's decision. Yamaha Motor Co., 114 Nev. at 251, 955 P.2d at 672.

In this case, respondent made an offer of judgment for \$1,700,000, which appellant rejected. Appellant argues the district court abused its discretion when it analyzed the offer in terms of whether “[respondent]’s claim was brought in good faith.” We agree that the district court should have evaluated whether appellant’s defenses were litigated in good faith. However, because there was a sufficient basis for the attorney fees and because the amount is reasonable, we will not reverse the district court’s decision to award attorney fees because it was neither arbitrary nor capricious.

Appellant further argues the district court abused its discretion because it did not find her decision to reject the offer was grossly unreasonable or in bad faith. Instead, the district court found appellant’s decision to reject the offer of judgment was “unreasonable, given the information available to her at the time of the Offer, the reasonableness of the Offer, and the substantial risk of a larger verdict.” Appellant argues the offer of judgment was served before she knew certain evidence would be excluded, including the evidence that respondent had two social security numbers and allegedly failed to pay income taxes.

We acknowledge that the district court did not employ the correct analysis when evaluating the third Beattie prong. Nevertheless, because we have determined the district court did not abuse its discretion when it excluded the evidence appellant contends was necessary to decide whether to accept the offer of judgment, we also conclude the district court did not abuse its discretion when it found appellant’s decision to reject the offer of judgment was unreasonable.

The district court was not required to disclose campaign fund sources

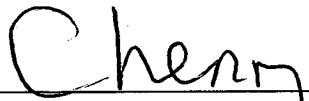
Appellant argues the district court judge's failure to disclose who contributed to his campaign created an appearance of impropriety, in violation of the Nevada Code of Judicial Conduct (NCJC) Canons 2 and 3. NCJC Canons 2 and 3 require a judge to act with integrity and disqualify himself when his impartiality might be questioned. Pursuant to NCJC Canon 5(C)(2), a judicial candidate may "solicit or accept campaign contributions." NRS 294A requires judicial candidates to report campaign contributions and this information is readily available to the public on the Internet.² Furthermore, the mere receipt of campaign contributions by a judge from an attorney or witness is not grounds for disqualification. See NCJC Canon 3(E)(1) cmt.; Las Vegas Downtown Redev. v. Dist. Ct., 116 Nev. 640, 644, 5 P.3d 1059, 1062 (2000). Accordingly, we find the district court judge did not err when he did not disclose to the parties who had contributed to his campaign.³


²See

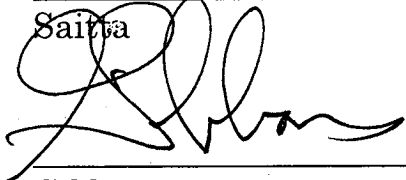
<http://nvsos.gov/SOSCandidateServices/AnonymousAccess/ReportSearch/EntityDetails.aspx?pgf92=uC303hHt3Duvpfy%252bQQpvKg%253d%253d> (last visited February 2, 2009).

³We have reviewed the other issues raised on appeal—whether the district court erred by redacting portions of Dr. Sander's report; and whether the district court erred by failing to grant a new trial due to appellant's former counsel's actions during trial—and find them without merit. Further, because we find the district court did not abuse its discretion, we need not reach the cumulative error argument.

For the foregoing reasons, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Timothy C. Williams, District Judge
Stephen E. Haberfeld, Settlement Judge
Emerson & Manke, LLP
Lemons Grundy & Eisenberg
Vannah & Vannah
Eighth District Court Clerk