

IN THE SUPREME COURT OF THE STATE OF NEVADA

KERRY MALIN, PA-C; DAVID WIKLER,  
D.O.; AND WIKLER FAMILY  
PRACTICE ASSOCIATES,

Appellants,

vs.

KIMBERLY AMADOR, RITA PAINTER,  
AND NICOLE AMADOR,  
Respondents.

No. 49595

**FILED**

**APR 30 2009**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court final judgment in a wrongful death action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondents, Kimberly Amador, Nicole Amador, and Rita Painter, filed a medical negligence wrongful death action in connection with the death of their father.<sup>1</sup> The jury awarded damages only to Alexandra Amador, the deceased's minor child. The Amador family filed a motion for additur, or in the alternative, a motion for new trial. The district court gave appellants, Kerry Malin, PA-C, and Dr. David Wikler the choice of accepting the additur, or facing a new trial on the issue of

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<sup>1</sup>Michelle Amador, individually as the deceased's wife, and as guardian ad litem of Alexandra Amador, was part of the underlying cause of action, and original appeal. Michelle Amador moved to dismiss her appeal; later, the parties stipulated to dismiss the appeal of Michelle as guardian ad litem of Alexandra Amador. Therefore, only the deceased's three adult daughters are part of this appeal. For simplicity, when referring to the trial proceedings, we refer to respondents as "the Amador family."

damages. Malin and Dr. Wikler accepted the additur. This appeal followed.

On appeal, Malin and Dr. Wikler argue that the district court abused its discretion when it granted respondents' motion for additur. Additionally, Malin argues that the district court abused its discretion when it denied Dr. Wikler's motion, in which Malin joined, for post-verdict reduction of damages. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

#### Standard of review

The district court has broad discretion in determining motions for additur and post-verdict reduction of damages, and we will not disturb the district court's determinations unless there is an abuse of discretion. Lee v. Ball, 121 Nev. 391, 394, 116 P.3d 64, 66 (2005); Harris v. Zee, 87 Nev. 309, 311, 486 P.2d 490, 491 (1971) (providing standard of review in remittitur).

#### Additur

We have long observed there "is no essential difference between the procedures appropriate for remittitur and additur." Drummond v. Mid-West Growers, 91 Nev. 698, 712, 542 P.2d 198, 208 (1975). Further, we have held that when a plaintiff consents to an order reducing damages by filing a remittitur, then the plaintiff cannot appeal the order. L.A. & S.L.R. Co. v. Umbaugh, 61 Nev. 214, 244, 123 P.2d 224, 237 (1942). Conversely, we now conclude that when a defendant accepts additur, as Malin and Dr. Wikler did in the instant case, that defendant cannot appeal the order awarding additur.

Because we hold that a party's acceptance of additur precludes appellate review, we do not reach the merit of appellants' argument that


the district court abused its discretion in granting respondents' motion for additur.<sup>2</sup>


Post-verdict reduction of damages

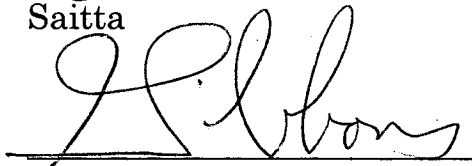
We now turn to Malin's argument that the district court abused its discretion when it denied Dr. Wikler's motion for post-verdict reduction of damages.

We conclude that, because Malin consented to and accepted the additur, which precludes appellate review, he lacks standing to challenge the damage award, and the district court did not abuse its discretion in denying the motion for post-verdict reduction of damages. Accordingly, because we hold that appellants may not challenge the order awarding additur, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

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<sup>2</sup>Dr. Wikler also argues that the district court erred by refusing to consider two juror affidavits offered by Dr. Wikler and Malin to help explain the verdict. Because we conclude that acceptance of additur precludes appellate review, and accordingly, respondents' lack standing to challenge the jury award, we do not reach the merits of Dr. Wikler's claim.

cc: Hon. Mark R. Denton, District Judge  
Ara H. Shirinian, Settlement Judge  
Alverson Taylor Mortensen & Sanders  
Mandelbaum, Schwarz, Ellerton & McBride  
Schuering Zimmerman Scully Tweedy & Doyle LLP  
Laxalt & Nomura, Ltd./Reno  
Jerry H. Mowbray  
Eighth District Court Clerk