

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELBA MONTESDEOCA,
Appellant,
vs.
STEVEN V. KOZMARY, M.D.; AND
KOZMARY CENTER FOR PAIN
MANAGEMENT,
Respondents.

No. 49813

FILED

JAN 09 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a medical malpractice action. Eighth Judicial District Court, Clark County; David Wall, Judge.¹

Appellant Elba Montesdeoca instituted the underlying action against respondents Steven V. Kozmary, M.D., and the Kozmary Center for Pain Management, alleging that Dr. Kozmary negligently administered a cervical epidural injection, which caused Montesdeoca injuries. Before trial, respondents filed a motion in limine to prevent Montesdeoca from presenting evidence that showed that some time after Montesdeoca's incident, Dr. Kozmary changed his injection method.

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Montesdeoca opposed the motion in limine. Ultimately, the district court granted respondents' motion, excluding any evidence that Dr. Kozmary changed his injection method following Montesdeoca's procedure.

The matter proceeded to a jury trial where Montesdeoca was allowed to present evidence to support her position that Dr. Kozmary should have used a different injection technique when administering the injection into Montesdeoca and that his failure to do so was negligent. The only evidence that Montesdeoca was not permitted to establish was that some time after Montesdeoca's procedure, Dr. Kozmary changed his injection method. The jury returned a verdict in favor of respondents. Montesdeoca timely filed this appeal, challenging the district court order granting respondents' motion in limine.


The district court has broad discretion to determine what evidence should be admitted before the jury. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219, 226 (2005). Thus, this court will not overturn a district court's evidentiary ruling absent a showing that the district court palpably abused its discretion. Id.

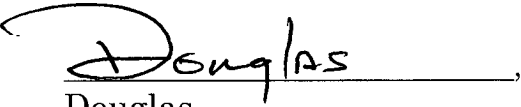
Under NRS 48.095(1), evidence of subsequent remedial measures, which are measures taken after an event that would have made the event less likely to occur, is not admissible to prove liability in connection with the event. Such evidence may be admissible when offered to show feasibility of precautionary measures or for impeachment purposes. NRS 48.095(2).

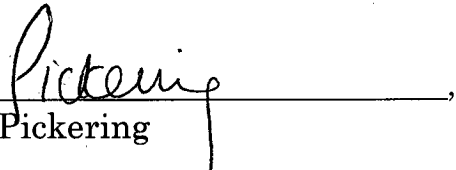
Having reviewed the parties' appellate arguments and the record presented on appeal, we conclude that the district court did not

palpably abuse its discretion when it granted respondents' motion in limine. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David Wall, District Judge
Eugene Osko, Settlement Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Jennings, Strouss & Salmon, PLC
Eighth District Court Clerk