

IN THE SUPREME COURT OF THE STATE OF NEVADA

JENNIFER HUFFEY,
Appellant,
vs.
SU PHELPS,
Respondent.

No. 50343

FILED

FEB 05 2009

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent's motion for judgment notwithstanding the verdict. Eighth Judicial District Court, Clark County; Martin J. Kravitz, Judge.

In July 2003, respondent Su Phelps was driving a vehicle, following that of appellant Jennifer Huffey. When Huffey stopped for a red light, Phelps struck her from behind. Huffey filed a complaint alleging that Phelps' negligence had caused Huffey personal injuries. The case proceeded through court-annexed arbitration and Huffey was awarded \$13,712. Phelps rejected the award and requested a trial de novo.

In July 2007, the case proceeded to a short trial. At the close of Huffey's case, Phelps moved the short trial court for a directed verdict, alleging that Huffey had failed to prove causation. The court denied the motion and advised Phelps to raise the issue after the trial should the jury return an adverse verdict. The jury returned a verdict in favor of Huffey in the amount of her medical bills, \$6,350.

Phelps then filed a motion for judgment notwithstanding the verdict alleging that Huffey had not carried her burden to prove causation. Specifically, Phelps argued that the medical records admitted by Huffey failed to relate her medical treatment to the automobile accident at issue

and failed to state, to a reasonable degree of medical probability, an expert opinion on causation and the reasonableness and necessity of the treatment and the medical expenses.

The short trial court granted Phelps' motion, concluding in its September 12, 2007, decision that Huffey did not introduce the testimony of any medical provider attesting that the medical bills were reasonable and necessary or that they were causally connected to the accident at issue. The decision stated that the records Huffey had admitted did not contain such statements and that Huffey did not obtain an agreed-upon affidavit prior to trial or a supporting opinion from a treating physician that satisfied this legal requirement. The trial court relied on Moriscato v. Sav-On Drug Stores, Inc. in determining that Huffey had not met the evidentiary burden required to prove causation. 121 Nev. 153, 111 P.3d 1112 (2005). Huffey appeals.

Having reviewed the record, we conclude that the short trial court erred in granting Phelps' motion for judgment as a matter of law. Specifically, the trial court improperly applied a medical malpractice standard to a negligence action.

When reviewing a trial court's decision whether to grant a motion for judgment notwithstanding the verdict, this court applies a de novo standard, using the same standard of review as the trial court. Nelson v. Heer, 123 Nev. ___, ___, 163 P.3d 420, 424-425 (2007). The trial court may grant a motion for judgment as a matter of law under NRCP 50(a)(1), if the opposing party has failed to prove a sufficient issue for the jury, so that his claim cannot be maintained under the controlling law. Id. at ___, 163 P.3d at 424. In deciding the motion, the trial court must view the evidence and all inferences in favor of the nonmoving party. Id. "To defeat the motion, the nonmoving party must have presented sufficient

evidence such that the jury could grant relief to that party.” Id. (citing Fernandez v. Admirand, 108 Nev. 963, 968, 843 P.2d 354, 358 (1992)).

In order to establish a prima facie case of negligence, Huffey was required to satisfy the element of proximate causation. Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998). To establish proximate causation, the injury must appear to be the natural and probable consequence of the negligence, and it ought to have been foreseen in light of the attending circumstances. Id. Causation may be sufficiently established through circumstantial evidence. Jeep Corporation v. Murray, 101 Nev. 640, 644-45, 708 P.2d 297, 300 (1985), superceded by statute on other grounds as stated in Countrywide Home Loans v. Thitchener, 124 Nev. ___, 192 P.3d 243 (2008). The issues of negligence and proximate cause are generally factual issues to be determined by the trier of fact. Frances v. Plaza Pacific Equities, 109 Nev. 91, 94, 847 P.2d 722, 724 (1993). Unless a jury verdict is clearly erroneous when viewed in light of all the evidence presented, a verdict supported by substantial evidence will not be overturned. Id. Substantial evidence is evidence that reasonable minds might accept as adequate to support a conclusion. Taylor v. Thunder, 116 Nev. 968, 974, 13 P.3 43, 46 (2000).

At trial, Huffey presented medical and treatment records from which the jury inferred causation. The written records submitted to the jury included hospital records, an emergency room sign-in sheet and triage notes, radiological reports, and treatment records. These records document Huffey’s injuries as neck strain and back pain from a motor vehicle accident.

Phelps did not object to any of the submitted medical records, nor did she present any evidence challenging the causation of Huffey’s

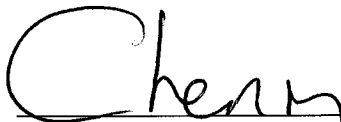
injuries. Phelps' only argument is that Huffey's medical records did not state, to a reasonable degree of medical probability, an expert opinion on causation and the reasonableness and necessity of the treatment and the medical expenses. This standard is set forth in NRS 41A.100 and "provides that expert testimony is required in medical malpractice cases to establish the accepted standard of care, a breach of that standard and causation." Banks v. Sunrise Hospital, 120 Nev. 822, 834, 102 P.3d 52, __ (2004).

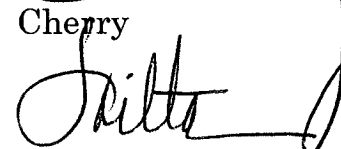
Huffey, however, was not required to meet this standard. The authority relied on by the short trial court and Phelps, NRS 41A.100 and Moriscato, applies in medical malpractice cases, not in negligence cases. This is not to say that expert opinion testimony may never be necessary in negligence cases. Had Phelps challenged the causation of Huffey's injuries with medical expert testimony or had the causation of Huffey's injuries been beyond the knowledge of the average person, expert opinion testimony may have been warranted. NRS 50.275. But Phelps did not raise either of these issues during the short trial. Accordingly, the short trial court erred in granting Phelps' motion for judgment notwithstanding the verdict on the basis that Huffey's medical records did not state, to a reasonable degree of medical probability, an expert opinion on causation and the reasonableness and necessity of the treatment and medical expenses.

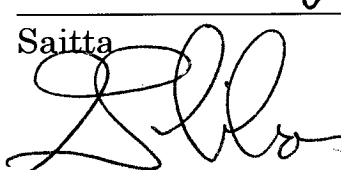
Having reviewed the information contained in the medical records in a light most favorable to Huffey, we conclude that there is evidence which reasonable minds might accept as adequate to support the

conclusion that Phelps' negligent failure to stop caused Huffey's injuries.¹ Accordingly, because Huffey presented sufficient evidence to the jury upon which it could grant her relief, we reverse the short trial court's order granting Phelps' motion for judgment notwithstanding the verdict and we remand this matter to the short trial court for further proceedings consistent with this order.²

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹Under NRAP 30(c)(1), all documents included in an appendix must bear the file stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below. We note that the appendices filed in this case were procedurally deficient as both appellant and respondent included documents that do not bear the file stamp of the district court clerk. Those documents were not considered by this court in resolving this matter; only information contained in the parties' briefs and the documents properly included in the appendices was considered. Carson Ready Mix v. First Nat'l Bk, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (noting that this court cannot consider matters not properly appearing in the record on appeal).

²In light of this order, we do not consider appellant's argument regarding the short trial rules.

cc: Martin J. Kravitz, District Judge, Pro Tem
William F. Buchanan, Settlement Judge
Victor Lee Miller
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
Eighth District Court Clerk