

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID D. ROBECK,

Appellant,

vs.

LUNAS CONSTRUCTION CLEAN-UP,  
INC., A NEVADA CORPORATION; AND

ORLANDO COLLINS, AN

INDIVIDUAL,

Respondents.

No. 53576

**FILED**

**MAY 27 2011**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a tort action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In this appeal, appellant David Robeck challenges the district court's judgment on a jury verdict resulting from a motor vehicle accident wherein respondent Lunas Construction Clean-up, Inc., admitted liability, and the trial was conducted solely on the issue of damages to Robeck. At the end of trial, the jury returned a verdict in favor of Lunas.

On appeal, Robeck argues that (1) Lunas's counsel improperly contacted Robeck's treating physicians, (2) one of Robeck's treating physicians gave false testimony, and (3) Lunas's counsel made improper statements in its opening and closing arguments. We conclude that none of these arguments have merit and affirm the district court's judgment.

Robeck argues that his medical privacy and the Health Insurance Portability and Accountability Act (HIPAA)<sup>1</sup> were violated when Lunas's counsel contacted his treating physicians without his consent and without him being present. Under Nevada's privilege laws there is no privilege "[a]s to written medical or hospital records relevant to an issue of the condition of the patient in any proceeding in which the condition is an element of a claim or defense." NRS 49.245(3). And, although HIPAA protects a patient's medical privacy, a health care provider may "disclose protected health information in the course of any judicial or administrative proceeding: In response to a subpoena, discovery request, or other lawful process . . . ." 45 C.F.R. § 164.512(e)(1)(ii) (2010).

Lunas asserts that it contacted Robeck's physicians to obtain Robeck's medical records and coordinate depositions, which Robeck does not controvert. Because Robeck's condition was an element of his claim

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<sup>1</sup>According to the United States Department of Health and Human services,

[t]he HIPAA Privacy Rule provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.

Understanding Health Information Privacy, available at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html> (last visited May 17, 2011) (on file with the Nevada Supreme Court clerk's office).

against Lunas, Lunas did not violate Robeck's medical privacy by contacting his physicians to obtain information regarding Robeck's condition. Additionally, Robeck failed to provide any specific information as to what private medical information was disclosed in violation of HIPPA. Therefore, we conclude that Lunas did not violate Robeck's medical privacy or HIPAA. Even if Robeck had sufficiently proven a HIPAA violation occurred, his recourse under HIPAA was to contact the health care provider's privacy officer and file a complaint. See 45 C.F.R. § 150.303(b) (2010).


Robeck next contends that one of his treating physicians falsely testified at trial when questioned about meetings he had with Lunas's counsel and about Lunas paying him \$5,000 for his testimony. However, Robeck did not lodge an objection to any line of questioning or any responses given by the physician during his testimony. Further, he failed to either move to set aside the judgment under NRCP 60(b), or file any other post-trial motions. This court has consistently held that "[a] point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal." Schuck v. Signature Flight Support, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 542, 544 (2010) (first alteration in original) (quoting Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981)). Therefore, because Robeck failed to raise these issues in the trial court, we deem them waived and decline to consider them here.

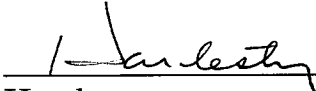
Robeck finally argues that opposing counsel made numerous improper statements to the jury during his opening and closing arguments, but again he failed to object to any of the allegedly improper statements at trial, and thus, we conclude that this issue was waived. Further, we conclude that no plain error exists because Robeck failed to

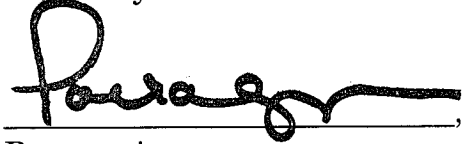
meet his burden of demonstrating that, absent the misconduct, the verdict would have been different. See Lioce v. Cohen, 124 Nev. 1, 17, 19, 174 P.3d 970, 980, 981-82 (2008). In this regard, Robeck's own treating physician testified that his injury was not caused by the accident but by a degenerative condition.<sup>2</sup>

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michelle Leavitt, District Judge  
Janet Trost, Settlement Judge  
Stovall & Associates  
Alverson Taylor Mortensen & Sanders  
Eighth District Court Clerk

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<sup>2</sup>Robeck also argues that cumulative error warrants reversal. Because we find no error on the part of the district court, we conclude this argument has no merit.