

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALYSSAN RYAN STICKNEY,
Appellant,
vs.
VALLEY HEALTH SYSTEM, LLC D/B/A
VALLEY HOSPITAL MEDICAL
CENTER, A DELAWARE LIMITED
LIABILITY COMPANY,
Respondents.

No. 54996

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment on a jury verdict in a medical malpractice action and from a post-judgment order denying a new trial motion. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Alyssan Ryan Stickney alleged that respondent Valley Hospital Medical Center caused her personal injury when her intravenous line was not checked prior to the insertion of dye for a computed tomography (CT) scan, resulting in the dye going into her arm tissue and not into her vein. At trial, the district court precluded Stickney's treating physician, Dr. Wari Wabara, from testifying on what caused Stickney's injury because Stickney only disclosed Dr. Wabara as a treating physician and Dr. Wabara was not present when Stickney's injury occurred.¹ The jury returned a verdict for Valley Hospital.

¹The record reflects that Stickney's counsel wished to question Dr. Wabara regarding whether extravasation can only occur when an IV is not in the vein. After Valley Health's counsel objected, the district court only
continued on next page . . .

Stickney now appeals, arguing that the district court erred in precluding Dr. Wabara from testifying as to causation.² We agree and reverse the district court's judgment and direct the district court to conduct further proceedings consistent with this order. Because the parties are familiar with the facts and procedural history in this case, we do not recount them further except as is necessary for our disposition.

The district court abused its discretion when precluding Dr. Wabara from testifying about what caused Stickney's injury

Stickney argues that the district court abused its discretion by refusing to allow Dr. Wabara to testify as to what caused Stickney's injury because Dr. Wabara was Stickney's treating physician and treating physicians do not need to be designated as expert witnesses to testify as to causation of an injury. We agree.

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allowed Dr. Wabara to testify as to what may generally cause extravasation.

²Stickney also contends that the district court improperly admitted evidence of her insurance benefits by applying NRS 42.021 retroactively. Stickney's cause of action accrued when her injury occurred, Jain v. McFarland, 109 Nev. 465, 477, 851 P.2d 450, 458 (1993), which was approximately six months before NRS 42.021 became effective in November 2004. As statutes are generally applied prospectively and there is no authority supporting that this statute was to be applied retroactively, the district court erred in doing so.

Stickney also argues that the district court abused its discretion when denying her renewed motion for judgment notwithstanding the verdict. We do not have jurisdiction to address this issue because such a decision by the district court is not appealable. See Krause Inc. v. Little, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001).

The scope of witness testimony and whether a witness can testify as an expert is within the district court's discretion. Johnson v. Egtedar, 112 Nev. 428, 436, 915 P.2d 271, 276 (1996). "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge." NRS 50.275. Regardless of admissibility, an expert may rely on facts learned at or before trial if they are the type of facts reasonably relied upon by experts in that field. NRS 50.285. A district court's exclusion of evidence constitutes error if it affects the substantial rights of the party. See NRS 47.040(1).

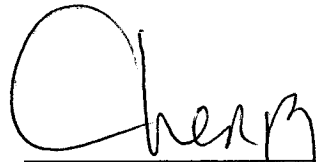
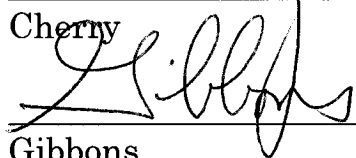
In Johnson, we held that a district court erred by prohibiting a treating physician from testifying regarding causation when the physician's records contained notes concerning causation. 112 Nev. at 436, 915 P.2d at 276. A treating physician's opinion on causation is part of the ordinary care of a patient, and he or she may testify regarding causation without an expert report. Elgas v. Colorado Belle Corp., 179 F.R.D. 296, 298 (D. Nev. 1998). Unlike lay witnesses, physicians need not actually witness an injury occurring to determine the cause of the injury. See id. at 299 (noting that physicians often express opinions as to causation and diagnosis based on their treatment of the patient).

Because Dr. Wabara was Stickney's treating physician, the district court abused its discretion by precluding Dr. Wabara's testimony regarding causation. We conclude that the district court's abuse of


discretion affected Stickney's substantial rights, as Dr. Wabara would have testified as to the causation of her injury, and warrants reversal.³

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁴


_____, J.
Cherry

_____, J.
Gibbons

I respectfully dissent.


_____, J.
Pickering

³In its answering brief, Valley Health requests that, in the interests of fairness, if we reverse and remand this issue, we also reverse the district court's decision to limit the testimony of CT technician Dale Eggleston to information included in the medical records. By limiting his testimony to evidence found in the medical records, the district court precluded his testimony because Stickney's time in the CT room was never charted. As Eggleston's testimony is central to this case, on remand, the district court should allow Eggleston to give his account of what occurred in the CT room, without limiting his testimony to what is available in the medical records.

⁴Because we conclude that the district court committed reversible error by precluding Dr. Wabara from testifying regarding causation, we do not address the other issues raised on appeal. Further, the Appellant's motion to supplement the record on appeal is granted.

cc: Hon. Linda Marie Bell, District Judge
M. Nelson Segel, Settlement Judge
Law Office of William R. Brenske
Wilson, Elser, Moskowitz, Edelman & Dicker, LLC
Eighth District Court Clerk