IN THE SUPREME COURT OF THE STATE OF NEVADA

ALECIA STACY,
Appellant,
vs.
ALLAN P. LONG, D.C.; AND ALLAN P. LONG, LTD.,
Respondents.

No. 57442

FILED

JAN 17 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingram
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a chiropractic malpractice action. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Appellant challenges the district court's order granting a motion in limine to exclude appellant's expert witness from testifying regarding the standard of care for a chiropractor and a subsequent order granting summary judgment. We review the order excluding appellant's expert testimony for an abuse of discretion, Hallmark v. Eldridge, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008), and the order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

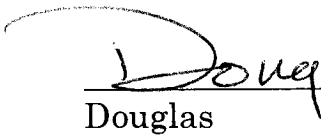
Having reviewed the briefs and appendices on appeal, we affirm the district court's order excluding expert testimony and the order granting summary judgment. The district court did not abuse its discretion in ruling that appellant's expert, a non-chiropractor, was not

qualified to offer expert testimony regarding the applicable standard of care for a chiropractor. See NRS 41A.100(2) (requiring that medical expert testimony be given by an expert "who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged negligence"); Bronneke v. Rutherford, 120 Nev. 230, 237-38, 89 P.3d 40, 45 (2004) (applying NRS 41A.100 to actions against chiropractors).

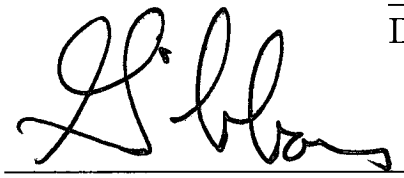
Based on the lack of expert testimony after appellant's expert was excluded from testifying as to the standard of care, the district court properly granted summary judgment. See Bronneke, 120 Nev. at 238, 89 P.3d at 45-46 (stating that expert testimony is necessary to establish chiropractic malpractice). Appellant's argument that summary judgment was inappropriate because expert testimony was unnecessary is unavailing. While appellant may be correct in asserting that it is within the knowledge of a layperson that treatment for a broken bone involves stabilization and not chiropractic manipulation, appellant never established that she had a broken bone prior to treatment from respondents, and in fact, she argued that either she had a broken bone prior to treatment or that the treatment by respondents caused the broken bone. Thus, her argument fails, as expert testimony would still be necessary to establish that respondents failed to properly diagnose the broken bone or to establish that respondents' treatment fell below the standard of care and caused appellant's injury. Id.; Wood, 121 Nev. at 729, 731, 121 P.3d at 1029, 1030-31 (setting forth the requirements for summary judgment and recognizing that the nonmoving party may not rest upon general allegations and conclusions, but must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a

genuine issue of material fact for trial to avoid summary judgment). Accordingly, we

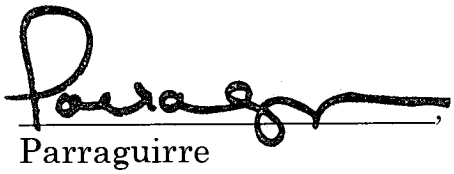
ORDER the judgment of the district court AFFIRMED.[1]



_____, J.
Douglas



_____, J.
Gibbons



_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Leonard I. Gang, Settlement Judge
Law Office of Daniel Marks
Backus, Carranza & Burden
Eighth District Court Clerk

[1]We conclude that appellant's arguments that the motion for summary judgment was untimely or that it was improper because it was the second summary judgment motion filed by respondents lack merit.