IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIA MARTINEZ, INDIVIDUALLY AND AS PARENT AND NATURAL GUARDIAN OF J.J., A MINOR,
Appellant,
vs.
IRWIN G. GLASSMAN, M.D.; GLASSMAN, KRAMER & SCARFF, P.C.; AND VALLEY HOSPITAL MEDICAL CENTER,
Respondents.

No. 57535

FILED

OCT 31 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a medical malpractice action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

On December 2, 2006, appellant Maria Martinez, who was around six months pregnant, arrived at respondent Valley Hospital Medical Center. Martinez complained of abdominal pain, frequent urination, burning with urination, and leaking fluids. After an evaluation for preterm premature rupture of membranes (PPROM) came back negative, respondent Irwin G. Glassman, M.D., an obstetrician and gynecologist (OB/GYN), who was an associate of Martinez's primary OB/GYN, ordered an additional test to evaluate Martinez's risk of preterm labor, but also allowed Valley Hospital to discharge Martinez before receiving the results of this additional test. The test came back positive, but Martinez apparently was not notified of the results. On December 4, 2006, Martinez met with her primary OB/GYN at the office of respondent

Glassman, Kramer & Scarff, P.C. (GKS). After an examination, Martinez's primary doctor admitted Martinez to Valley Hospital again, where further testing eventually revealed that Martinez was suffering from PPROM and her baby was in the breech position. Martinez's doctor recommended delivery by C-section. Soon thereafter, Martinez gave birth to her daughter, J.J., who now suffers from various physical and mental disabilities.

On November 30, 2007, Martinez filed a medical malpractice action on J.J.'s behalf against Dr. Glassman, GKS, and Valley Hospital. Martinez later disclosed Dr. James G. Tappan, an OB/GYN, as her only causation expert and Dr. Harvey E. Cantor, a pediatric neurologist, as her only rebuttal expert. Dr. Glassman, GKS, and Valley Hospital then filed a motion in limine to exclude Dr. Tappan's testimony on causation and life care plans on the ground that such testimony was outside Dr. Tappan's qualifications, which the district court granted. Because Martinez did not have another expert to testify on causation during her case-in-chief, the district court later granted summary judgment in favor of Dr. Glassman, GKS, and Valley Hospital.

Martinez now appeals, arguing that the district court (1) abused its discretion by excluding Dr. Tappan's testimony on causation and life care plans because Dr. Tappan has extensive experience in these areas, and (2) improperly granted summary judgment based on the previous, erroneous ruling.[1] We disagree, and therefore, affirm the

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[1]Martinez also argues that the district court abused its discretion by not allowing her to re-designate rebuttal expert Dr. Cantor as a causation

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district court's order granting summary judgment in favor of Valley Hospital, Dr. Glassman, and GKS. The parties are familiar with the facts and procedural history of this case, and we do not recount them further except as necessary for our disposition.

The district court did not abuse its discretion by excluding Dr. Tappan's testimony on causation and life care plans

Martinez argues that the district court abused its discretion by excluding Dr. Tappan's testimony on causation because the district court applied the wrong standard of review. In particular, Martinez contends that the district court wrongly excluded Dr. Tappan's testimony based on the court's conclusion that only a pediatric neurologist or someone in a substantially similar field could testify as to causation in this case. Martinez argues, however, that the district court should have

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. . . continued

expert for the case-in-chief. Martinez never filed a motion in district court requesting that Dr. Cantor be allowed to testify on causation during her case-in-chief. Martinez also never specifically requested that Dr. Cantor be allowed to testify during her case-in-chief at the various hearings before the district court. Furthermore, Martinez never made an offer of proof concerning the substance of Dr. Cantor's testimony. See Morrison v. Air California, 101 Nev. 233, 237, 699 P.2d 600, 603 (1985) (stating that an offer of proof serves to save the point on appeal). As a result, the district court never made any express ruling concerning Dr. Cantor's testimony during the hearings or in a written order. Therefore, we conclude that Martinez waived any argument that Dr. Cantor should have been allowed to testify during her case-in-chief. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

found Dr. Tappan to be qualified to testify as to causation because, regardless of his practice field, he has extensive knowledge and experience relating to the proper care of pregnant women in order to prevent babies from being born with disabilities, like the conditions from which J.J. suffers. Martinez also asserts that the district court abused its discretion by excluding Dr. Tappan's testimony on life care plans because he did have familiarity and experience reviewing life care plans as part of his prior experience as a forensic expert witness.[2] We disagree.

Martinez's argument that the district court applied the wrong legal standard in excluding Dr. Tappan's testimony is a legal question that this court reviews de novo. Staccato v. Valley Hospital, 123 Nev. 526, 530, 170 P.3d 503, 505-06 (2007). We examine a district court's decision

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[2]Martinez further argues that Dr. Glassman, GKS, and Valley Hospital waived any argument precluding Dr. Tappan's testimony on causation and life care plans because they failed to raise Dr. Tappan's lack of qualifications as an affirmative defense in their answers to Martinez's complaint. Martinez failed to raise this argument before the district court. Therefore, we conclude that Martinez waived any argument relating to the failure of Dr. Glassman, GKS, and Valley Hospital to raise Dr. Tappan's lack of qualifications as an affirmative defense. See Old Aztec Mine, Inc., 97 Nev. at 52, 623 P.2d at 983 ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

Martinez also argues that, at the hearing on the motion in limine, the district court made a remark which exhibited prejudice toward Dr. Tappan's testimony. We conclude that Martinez waived this argument as well by failing to object to the district court's comment during the hearing. See id.

relating to the admission of expert testimony for an abuse of discretion. Hallmark v. Eldridge, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

Among other things, in order to testify as an expert, a witness must have qualifications within an area of "'scientific, technical, or other specialized knowledge.'" Id. (quoting NRS 50.275). When examining whether a witness meets this qualification requirement, a district court should consider several factors, including "(1) formal schooling and academic degrees, (2) licensure, (3) employment experience, and (4) practical experience and specialized training." Id. at 499, 189 P.3d at 650-51 (footnotes omitted). However, a district court may consider additional factors that are applicable to a case and may weigh each factor differently. Id. at 499, 189 P.3d at 651. We conclude that the district court did not abuse its discretion by excluding Dr. Tappan's testimony on causation. As an initial matter, the district court specifically recognized and applied the correct legal standard: that the proposed testimony had to be helpful and based on specialized knowledge. While Dr. Tappan has over thirty years of experience as an OB/GYN and has diagnosed and treated patients like Martinez who are suffering from PPROM, no evidence was presented that Dr. Tappan has any experience diagnosing patients like J.J., who are dealing with disabilities that are not gynecological in nature, or that he has any specialized knowledge or training as to what causes the types of disabilities that J.J. has. Furthermore, Dr. Tappan admitted that his care for a baby generally ends after delivery, and he would refer a patient like J.J. to a pediatric neurologist for additional care and treatment. Thus, Dr. Tappan does not possess the requisite specialized knowledge, as demonstrated by his education, training, and experience, necessary to provide testimony on the cause of J.J.'s various disabilities.

We further conclude that the district court did not abuse its discretion by finding that Dr. Tappan was not qualified to testify on life care plans. Dr. Tappan admitted that he has no practical experience in any capacity with life care plans. Instead, Dr. Tappan's sole experience with life care plans stems from his review of these plans as an expert witness in the context of litigation. C.f. Borger v. Dist. Ct., 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004) (prohibiting testimony based upon knowledge solely obtained for the purpose of the litigation under medical malpractice affidavit requirements). Thus, Dr. Tappan has no experience, training, or formal schooling that would qualify him to testify as an expert on life care plans. Accordingly, the district court did not abuse its discretion by excluding Dr. Tappan's testimony regarding life care plans.[3] See Hallmark, 124 Nev. at 498, 189 P.3d at 650.

The district court properly granted summary judgment in favor of Dr. Glassman, GKS, and Valley Hospital

Martinez argues that because the district court abused its discretion by excluding Dr. Tappan's testimony on causation and J.J.'s life care plan, the district court also improperly granted summary judgment in favor of Dr. Glassman, GKS, and Valley Hospital. We disagree.

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[3]In light of this conclusion, we need not reach the question of whether Dr. Tappan's testimony satisfied the other requirements necessary for a witness to testify as an expert. See Hallmark, 124 Nev. at 498, 189 P.3d at 650 (explaining that an expert witness must meet the qualification, assistance, and limited scope requirements before a district court may admit the testimony); see also NRS 50.275.

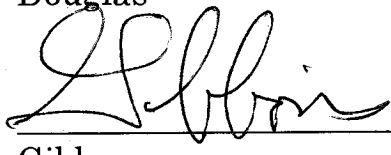
This court reviews a district court's order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Id. When deciding a summary judgment motion, a court must view all evidence in a light most favorable to the nonmoving party. Id. However, the nonmoving party bears the burden of demonstrating that a genuine issue of material fact exists. Id. at 732, 121 P.3d at 1031. General allegations and conclusory statements do not create genuine issues of material fact. Id. at 731, 121 P.3d at 1030-31.

In a medical malpractice action, a plaintiff must demonstrate the doctor's conduct legally caused the plaintiff's injuries. See Prabhu v. Levine, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (1996); see also NRS 41A.100(1). Expert medical testimony is generally required to establish causation in a medical malpractice action. NRS 41A.100(1). We conclude that Martinez failed to demonstrate the existence of any genuine issue of material fact regarding causation. At the summary judgment hearing, Martinez did not dispute that she had no expert witness to testify as to causation after the district court's ruling excluding Dr. Tappan's testimony on causation. Martinez also did not dispute that she had only disclosed Dr. Cantor as a rebuttal expert. Without a medical expert to testify in her case-in-chief on causation, Martinez could not prove the causation element of the medical malpractice suit. See NRS 41A.100(1).

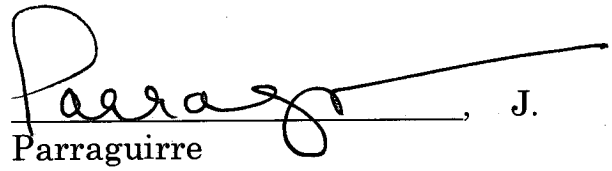
Therefore, the district court properly granted summary judgment in favor of Dr. Glassman, GKS, and Valley Hospital.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Douglas



_____, J.
Gibbons



_____, J.
Parraguirre

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[4]In the district court, Martinez moved for a continuance in order to permit her to file a petition for extraordinary writ relief prior to the beginning of trial. Martinez now argues that the district court abused its discretion by denying the motion for a continuance. Having considered this issue, we conclude that the district court did not abuse its discretion by denying the motion. Moreover, to the extent that appellant argues that she should have been granted time to conduct additional discovery or develop a new causation expert, she did not oppose the motion for summary judgment under NRCP 56(f).

Martinez mentions in her opening brief under the heading "Salient Procedural Facts" a host of other errors she claims the district court committed. However, Martinez fails to develop any legal argument on these issues in her appellate briefs. Therefore, we conclude Martinez waived these arguments on appeal. See NRAP 28(a)(9)(A); Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that this court need not consider arguments not cogently made or not supported by citations to salient authority).

cc: Hon. Elissa F. Cadish, District Judge
Stephen E. Haberfeld, Settlement Judge
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Eighth District Court Clerk