

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY CARTER, INDIVIDUALLY;
AND GLENN CARTER,
INDIVIDUALLY
Appellants,
vs.
KATRINA DUNCAN, AN INDIVIDUAL,
Respondent.

No. 58445

FILED

DEC 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a personal injury action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellants Gregory and Glenn Carter were involved in an automobile collision with respondent Katrina Duncan. After the accident, Duncan underwent eight months of chiropractic care, and an orthopedic surgeon indicated that Duncan had probable disc disruption. Duncan stopped treatment for five months, but then returned to the hospital after an incident that occurred while changing a light bulb. Duncan recalled using a three-rung stepladder to remove a light bulb. The next thing she remembered was her husband trying to wake her up while she was on the floor. Duncan's foot was still on the ladder when her husband found her. The Carters contend that Duncan's back injuries were caused by what they perceive as her apparent fall from the ladder.

Hospital records from this incident indicate that Duncan suffered an electrical shock, but do not mention a fall from a ladder or any complaint of back pain. Several months after the incident, Duncan underwent back surgery and filed a complaint against the Carters. The Carters stipulated to liability for causing the automobile accident, and the case proceeded to trial regarding damages only.

The first trial ended in a mistrial. In the second trial, the jury awarded Duncan \$50,000. Duncan appealed, arguing that the district court abused its discretion in limiting the testimony of one of her experts, Dr. Kabin. This court agreed and reversed and remanded the matter for a new trial. *See Duncan v. Carter*, Docket No. 51673 (Order Affirming in Part, Reversing in Part and Remanding, Dec. 14, 2009). In the third trial, the district court excluded all evidence related to the alleged ladder fall and any causation opinions as too speculative. The jury awarded Duncan \$390,434.26, which the district court amended to \$522,268.10 to include damages, costs, and prejudgment interest. The Carters now appeal.

On appeal, the Carters argue that because Duncan failed to object to the admission of circumstantial evidence regarding the alleged ladder fall in the first two trials, she should not have been able to argue for its exclusion in the third trial. When this court orders a retrial, the case is to be retried de novo subject only to limitations imposed by the court in its order. *See LoBue v. State ex rel. Dep't of Highways*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976); *Gordon v. Nissan Motor Co.*, 88 Cal. Rptr. 3d 778, 784 (Ct. App. 2009) (reiterating that “[t]he effect of an order granting a new trial is to . . . place the parties in the same position as if the case had never been tried.”). Accordingly, we reject the Carters’

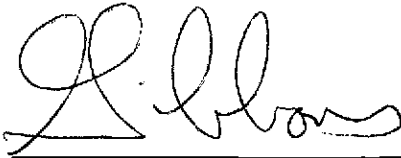
contention that Duncan waived her opportunity to argue for the exclusion of this evidence.¹

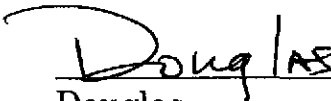
Additionally, the Carters argue that the district court abused its discretion by excluding evidence, including testimony from Dr. Rosen that Duncan's injuries were caused by the alleged ladder fall. This court reviews a district court's decision to admit or exclude evidence for abuse of discretion. *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). After reviewing the record and hearing oral argument, we determine that the district court was not required to admit Dr. Rosen's testimony or other evidence related to the Carters' alternative causation theory. Pursuant to NRS 48.035, the district court has discretion to exclude this evidence for being too speculative (i.e., risking unfair prejudice, confusion of the issues, or misleading the jury). Therefore, we conclude that the district court did not abuse its discretion.² Accordingly, we

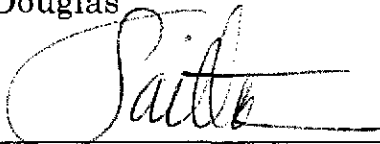
¹Note that pursuant to this court's previous order, Dr. Kabin's testimony was properly admitted by the district court.

²We also reject the Carters' argument that the district court erred in denying their request for a mistrial based on attorney misconduct.

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Ronald J. Israel, District Judge
Robert F. Saint-Aubin, Settlement Judge
Schuetze & McGaha, P.C.
Christensen Law Offices, LLC
Eighth District Court Clerk