

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN PIERSON, INDIVIDUALLY,

No. 35350

Appellant,

vs.

ADAM SCHWARTZ,

Respondent.

FILED

JAN 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment pursuant to a jury verdict and an order awarding attorney fees, costs, and interest. After an arbitrator awarded Adam Schwartz \$10,000.00 in damages arising out of an automobile accident between the parties, Dean Pierson requested a trial de novo. At trial, a registered physical therapist testified regarding the nature and cause of Schwartz's injuries. The jury awarded Schwartz \$4,310.00. The district court subsequently granted Schwartz's motion for fees and costs in full, totaling \$37,213.00.¹

1. Expert testimony

Pierson first contends that the district court abused its discretion by allowing Don Nobis, a registered physical therapist, to give expert testimony concerning the cause and nature of Schwartz's injuries. Pierson argues that, because Nevada statutes preclude physical therapists from diagnosing physical disabilities or otherwise practicing medicine, Nobis was disqualified from testifying about the cause of Schwartz's injury.

Because the district court enjoys wide latitude in admitting expert witness testimony, we will not disturb the district court's decision absent a clear abuse of discretion.² "The district court is better suited to rule on the qualifications of persons presented as expert witnesses[,] and

¹The district court awarded \$28,200.00 in attorney fees, \$7,906.84 in costs, and \$1,106.16 in interest on past damages.

²Mulder v. State, 116 Nev. 1, 12-13, 992 P.2d 845, 852 (2000) (citing Smith v. State, 100 Nev. 570, 572, 688 P.2d 326, 327 (1984)).

we will not substitute our evaluation of a witness's credentials for that of the district court absent a showing of clear error."³

Although physical therapy does not include diagnosing physical disabilities and therapists are statutorily prohibited from practicing medicine,⁴ Pierson offers no authority supporting his contention that these statutes necessarily preclude physical therapists like Nobis from giving expert testimony regarding medical causation. We have unambiguously held that expert witnesses need not be licensed in a specific professional field in order to give testimony regarding that field.⁵ In Brown v. Capanna, we noted that the fact that a medical provider offers an opinion regarding a procedure that he has never performed "goes to the weight, not the admissibility, of the evidence."⁶

These decisions make clear that the sole question a district court must consider is whether a proposed expert witness's "special knowledge, skill, experience, training or education" provides sufficient foundation to qualify him to "testify to matters within the scope of such knowledge."⁷ The record amply demonstrates that the issues about which Nobis testified were well within the scope of his knowledge. Therefore, the district court did not abuse its discretion in permitting Nobis to offer expert medical testimony pursuant to NRS 50.275.

2. Attorney fees

Pierson also contends that the district court abused its discretion in awarding Schwartz over \$28,000.00 in attorney fees. In its order, the district court erroneously failed to support the fee award with

³Hanneman v. Downer, 110 Nev. 167, 179, 871 P.2d 279, 287 (1994).

⁴See NRS 640.024(2)(a); NRS 640.190.

⁵See, e.g., Freeman v. Davidson, 105 Nev. 13, 15, 768 P.2d 885, 886 (1989) ("[a]n expert witness need not be licensed to testify as an expert, as long as he or she possesses special knowledge, training and education"); Wright v. Las Vegas Hacienda, 102 Nev. 261, 263, 720 P.2d 696, 697 (1986) ("[a] witness need not be licensed to practice in a given field . . . to be qualified to testify as an expert"); see also Brown v. Capanna, 105 Nev. 665, 671, 782 P.2d 1299, 1303 (1989) ("a proposed expert should not be scrutinized by an overly narrow test of qualifications") (quoting People v. Whitfield, 388 N.W.2d 206, 209 (Mich. 1986)).

⁶Brown, 105 Nev. at 671, 782 P.2d at 1303-04.

⁷NRS 50.275.

findings or a specific basis for the award. Failure to state a basis for an award of attorney fees is an arbitrary and capricious action by the district court, and, therefore, an abuse of discretion.⁸ The absence of a stated basis prevents this court from determining the propriety of the district court's award.⁹ The district court must, therefore, state the basis for any fee award it ultimately grants.

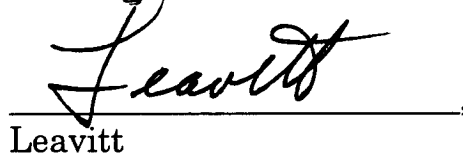
A trial court should generally consider four factors in calculating attorney fees: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the lawyer; and (4) the result.¹⁰

Because the district court failed to make written factual findings, or to hold an evidentiary hearing, we are unable to determine the reasonableness of the fee award. Having considered the parties' arguments, we

AFFIRM the judgment of liability and damages on the jury verdict, REVERSE the order awarding attorney fees, and REMAND for a determination of what, if any, attorney fees should be granted, with instructions to state the basis for such an award.

 J.
Young

 J.
Agosti

 J.
Leavitt

cc: Hon. Valorie Vega, District Judge
Ashby & Emerson, LLP
Simon Law Office
Clark County Clerk

⁸See Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998) (citing Integrity Ins. Co. v. Martin, 105 Nev. 16, 19, 769 P.2d 69, 70 (1989)).

⁹See Integrity Ins. Co., 105 Nev. at 19, 769 P.2d at 70.

¹⁰See Hornwood v. Smith's Food King No. 1, 107 Nev. 80, 87, 807 P.2d 208, 213 (1991) (citing Brunzell, 85 Nev. at 349, 455 P.2d at 33)).