IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LOURDES REYES, INDIVIDUALLY,
Appellant,
vs.
ROSILYN NIEVES, INDIVIDUALLY,
Respondent.

No. 69724

FILED
FEB 28 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment entered after a short trial in a negligence action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.[1]

In the underlying case, respondent Rosilyn Nieves sought damages from appellant Lourdes Reyes for injuries sustained in a vehicle accident.[2] On appeal, Reyes argues the short trial judge erred by granting Nieves' motion in limine prohibiting Reyes from 1) asserting a low-impact defense, 2) cross-examining Nieves on whether her treatment was reasonable and necessary, and 3) introducing any evidence that Nieves' medical treatment was subject to a lien. We affirm the district court for the reasons set forth below.

Reyes argues she should have been allowed to advance a low-impact defense without providing supporting expert testimony. In *Rish v. Simao*, the Nevada Supreme Court recently reversed an order from a district court that excluded a low-impact defense on these same grounds,

[1]The short trial judge, Robert Goldstein, made the ruling at issue in this appeal, and the district court ultimately affirmed the verdict.

[2]We do not recount the facts except as necessary to our disposition.

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clarifying that a defendant is generally not required to present expert testimony as a prerequisite to advancing a low-impact defense. 132 Nev. ___, ___, 368 P.3d 1203, 1208-09. Here, similarly, the trial court abused its discretion by prohibiting Reyes from presenting a low-impact defense absent supporting expert testimony, but we do note that the *Rish* decision was issued subsequent to the trial in this case.[3]

However, we cannot say that this error necessitates reversal here. Reyes admitted liability, and the appellate record does not show Reyes intended to present any testimony beyond her own to contest either causation or damages. Critically, because Reyes did not provide this court with either the trial transcript or an NRAP 9(c)(5)(d) statement in lieu of the trial record, we cannot ascertain the extent to which the trial court's decision harmed Reyes' defense at trial. *See* NRCP 61 (this court must disregard errors that do not affect the parties' substantial rights). Further, we presume missing portions of the record weigh against reversal. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (appellant bears the burden of presenting this court with an adequate appellate record, and we presume missing portions of the record support the district court's decision). Because we are unable to determine if the error affected Reyes' substantial rights, we cannot conclude the trial court's decision warrants reversal.

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[3]Additionally, unlike the present case involving the district court's granting of a motion in limine, the supreme court reversed in *Rish* because the district court struck the defendant's answer, resulting in a default judgment in favor of the plaintiff in that case. *Id.* at ___, 368 P.3d at 1205-06.

We next consider whether the trial court abused its discretion by prohibiting Reyes from cross-examining Nieves regarding the reasonableness and necessity of her medical treatment and costs. The trial court has wide discretion in determining whether to admit evidence. *State ex rel. Dep't of Highways v. Nev. Aggregates & Asphalt Co.*, 92 Nev. 370, 376, 551 P.2d 1095, 1098 (1976). Nevada law is clear that a party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). Resolving the reasonableness and necessity of Nieves' medical treatment and costs required knowledge beyond that which a layperson would possess. To support her case, Nieves put forth competent evidence establishing her medical expenses were necessary and reasonable, and that her injuries were caused by the accident to a reasonable degree of medical probability. Therefore, the short trial judge's granting of Nieves' motion in limine was proper because Reyes failed to present *any* competent evidence countering Nieves' medical evidence.

Last, we consider whether Reyes should have been allowed to present evidence to the jury that Nieves' medical treatment was provided subject to a medical lien. The trial court correctly recognized the collateral source rule does not bar this evidence,[4] but nevertheless concluded the evidence was not relevant and was, therefore, inadmissible. Generally the trial court should allow parties to present evidence exposing witness bias. *See Robinson v. G.G.C., Inc.*, 107 Nev. 135, 143, 808 P.2d 522, 527 (1991) ("The trier of fact has the right to take business associations into account

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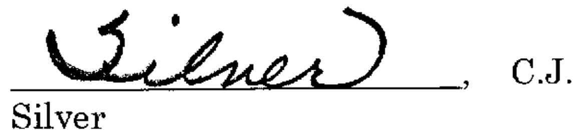
[4]*See Khoury v. Seastrand*, 132 Nev. ___, ___, 377 P.3d 81, 93-94 (2016) (holding the collateral source rule does not bar evidence of medical liens).

when determining the credibility of witnesses and the weight to give their testimony."). And, medical liens may demonstrate bias on the part of treating or testifying health care providers. *See, e.g.*, *Taylor v. Cottrell, Inc.*, 795 F.3d 813, 818-20 (8th Cir. 2015) (noting a treating physician's medical lien could evince bias).

Reyes did not contest liability, only causation and damages. As a result, evidence that Nieves' medical treatment was provided for by a medical lien was relevant to bias. Thus, the district court abused its discretion by excluding this evidence from the jury. But, because Reyes failed to include the trial transcript or an NRAP 9(c)(5)(d) statement in lieu of transcript, we are again unable to ascertain whether this decision actually harmed Reyes' defense and warrants reversal. *See* NRCP 61; *Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Accordingly, we

ORDER the judgment of the district court AFFIRMED.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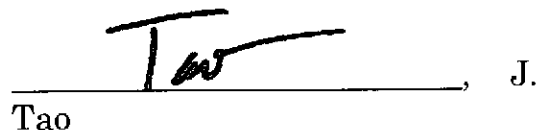
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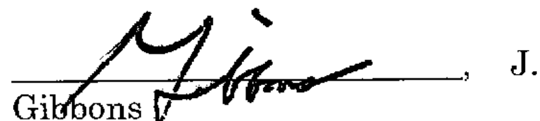
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Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Eva Garcia-Mendoza, Settlement Judge
Yvette Y. Freedman
The702Firm
Eighth District Court Clerk