IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HOSPITAL MEDICAL CENTER, A NEVADA CORPORATION,
Appellant,
vs.
LEONA LAWYER, AS SUCCESSOR TO FOSTER LAWYER,
Respondent.

No. 36903

FILED

AUG 21 2002

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

ORDER OF AFFIRMANCE

Valley Hospital appeals a judgment against it for negligence. We conclude that Valley's arguments are without merit, and accordingly, we affirm the district court's judgment.

First, Valley argues that Lawyer's counsel's misconduct should have resulted in a mistrial. Lawyer's counsel asked a witness, in violation of an order in limine, about nurse understaffing at Valley. Valley's motion for a mistrial was made after a hospital representative reportedly observed a juror's "extreme reaction" to the offending question. Valley's motion was denied.

Improper comments made by an attorney before a jury warrant reversal when the attorney's misconduct ""sufficiently permeate[s] an entire proceeding to provide conviction that the jury was influenced by passion and prejudice in reaching its verdict."[1] Here, one unanswered question over the course of a four-day trial was not so pervasive as to warrant the conclusion that the verdict was the product of taint or the result of passion or prejudice. Further, the district court

[1]Barret v. Baird, 111 Nev. 1496, 1515, 908 P.2d 689, 702 (1995) (quoting Kehr v. Smith Barney, Harris Upham & Co., Inc., 736 F.2d 1283, 1286 (9th Cir.1984) (quoting Standard Oil of California v. Perkins, 347 F.2d 379, 388 (9th Cir. 1965))).

offered to admonish the jury or give a jury instruction to ignore the question. Valley chose to have the jury instructed not to speculate about any insinuations suggested by a question from counsel. Accordingly, the district court did not abuse its discretion in denying Valley's motion for a mistrial, and reversal is not warranted.

Second, Valley argues that Lawyer's arguments at trial exceeded the scope of her pleadings, thereby warranting reversal. Valley claims that Lawyer argued medical malpractice due to the fluctuations in Lawyer's blood sugar levels. Since this claim was not alleged in either the district court complaint or the Medical-Legal Screening Panel complaint, Valley argues that a reversal is warranted.

"'Nevada is a notice pleading jurisdiction and we liberally construe pleadings to place matters into issue which are fairly noticed to the adverse party.'"[2] Further, "'a complaint need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and the relief sought.'"[3] Here, the Medical-Legal Screening Panel complaint stated that Lawyer was suffering from hypoglycemia, a condition causing abnormally low levels of sugar in the blood. The complaint did allege that Lawyer was receiving food intravenously, which could affect his blood sugar level. Valley could have easily determined from its own records that Lawyer's intravenous feeding was closely related to hypoglycemia. Additionally, Valley did not object to any of the questions posed to

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[2]Hall v. SSF, Inc., 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996); (quoting Pittman v. Lower Court Counseling, 110 Nev. 359, 365, 871 P.2d 953, 957 (1994)); see also NRCP 8(a).

[3]Id. (quoting Pittman, 110 Nev. at 365, 971 P.2d at 957).

witnesses concerning hypoglycemia. We conclude therefore that Valley was on notice that the issue of Lawyer's blood sugar levels could have been an issue at trial. Accordingly, reversal is not warranted.

Third, Valley argues that Lawyer's expert was not properly qualified to testify to the standard of care. Byron Arbeit testified on Lawyer's behalf as an expert on operating health care facilities. Arbeit teaches health care administration courses at the University of Central Florida and consults with various health care facilities as well as the United States Department of Justice. He testified as to the standard of care required at health care facilities.

Whether a witness is qualified to offer an opinion as an expert is within the discretion of the trial court, and will not be disturbed absent an abuse of discretion.[4] Additionally, this court has determined that:

> [t]he threshold test for the admissibility of testimony by a qualified expert is whether the expert's specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue. The goal of course, is to provide the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinary laity.[5]

Here, Arbeit testified that Valley breached the standard of care when it failed to respond to Lawyer's complaints of a broken bed. Arbeit suggested alternatives, such as placing Lawyer in a working bed or placing a mat on the ground next to Lawyer's bed. This testimony concerned hospital administration. Given the evidence regarding his qualifications in this

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[4]Prabhu v. Levine, 112 Nev. 1538, 1547, 930 P.2d 103, 109 (1996).

[5]Id. (quoting Townsend v. State, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987)).

area, the court's decision to permit his testimony was not an abuse of discretion.

Fourth, Valley argues that the verdict of $243,800.00 was excessive, thereby warranting remittitur. Valley argues that Lawyer did not proffer any medical expenses to support the amount of the award, that the jury failed to consider Lawyer's age and long history of physical ailments, that other jurisdictions have awarded less for similar scenarios and that other jurisdictions have permitted remittitur in cases of medical malpractice even though Nevada has not.

We have previously noted that awards based on "pain and suffering are wholly subjective," and therefore, fall within the province of the trier of fact.[6] The jury's award was premised on pain and suffering, based on the fact that Lawyer broke his elbow, reinjured his back and was eventually rendered almost completely blind. Further, Lawyer suffered depression over the remaining five years of his life, requesting $50,000.00 for each year. The jury could have reasonably concluded that Lawyer suffered his injuries as a result of Valley's failure to exercise the proper standard of care. Additionally, the jury was aware of Lawyer's age and physical ailments when he entered Valley, and received ample evidence as to the severity and cause of Lawyer's injuries and the effect the fall had on his remaining five years of life. Therefore, we cannot conclude that the jury's verdict was the result of passion or prejudice.

Finally, Valley argues that the submission of Jury Instructions No. 26 and No. 27 to the jury warrants reversal. The jury

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[6]Stackiewicz v. Nissan Motor Corp., 100 Nev. 443, 455, 686 P.2d 925, 932 (quoting Brownfield v. Woolworth Co., 69 Nev. 294, 296, 248 P.2d 1078, 1079-80 (1952), reh'g denied, 69 Nev. 297, 251 P.2d 589 (1952)).

instructions contained innocuous language from the Nevada Patients' Bill of Rights, NRS 449.720(1) and (5).[7] Valley argues for reversal because Nevada does not recognize a private cause of action for a violation of the rights enumerated in NRS 449.720, that Lawyer's complaint did not allege negligence per se, as would be required for a violation of NRS 449.720, that the instructions were confusing to the jury and that Lawyer failed to offer expert testimony regarding the standard of care.

Within the context of this case, these two jury instructions were properly given. We have acknowledged, at least implicitly, that the Patients' Bill of Rights may establish the standard of care in a suit against medical professionals.[8] In Smith v. Cotter, we stated that the district court correctly found that a doctor had failed to comply with the Patients' Bill of Rights by failing to inform a patient of "'significant medical risks'" prior to obtaining consent to operate.[9] Moreover, Lawyer used the Patients' Bill of Rights to establish the standard of care which Valley's expert acknowledged and said had been met by Valley. Jury Instruction No. 25, which informed the jury that the plaintiff is owed a duty of reasonable care, is not inconsistent with Instructions No. 26 and No. 27. Further, Instruction No. 25 told the jury that a violation of Valley's duty of reasonable care is negligence. Instructions No. 26 and No. 27, which referred to Valley's obligation to be respectful and considerate in providing

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[7]Instruction No. 26 informed the jury that a patient has a right to receive considerate and respectful care. Instruction No. 27 informed the jury that a patient has a right to have any reasonable request for services satisfied, considering the facility's ability to do so.

[8]Smith v. Cotter, 107 Nev. 267, 810 P.2d 1204 (1991).

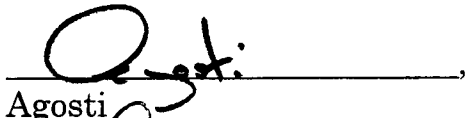
[9]Id. at 272, 810 P.2d at 1207 (quoting NRS 449.710(6)).

care and its obligation to satisfy Lawyer's reasonable requests for services, contain no such language that a violation of these obligations is negligence. We therefore conclude that Lawyer need not have pleaded negligence per se and that there is no merit to Valley's argument concerning negligence per se.

Our review of the record leads us to conclude, ultimately, that the standard of care was not the heart of this conflict. The parties primarily focused upon whether Lawyer's bed was broken, whether Lawyer's own negligence in trying to climb over a bed rail in the "up" position caused his injuries, the extent of Lawyer's injuries and the cause of Lawyer's blindness. We therefore conclude that even if it were error to give Instructions No. 26 and No. 27, and we hold in the context of this case that it is not, any such error would be harmless. Finally, we observe that both parties' experts acknowledged the standard from the Patients' Bill of Rights. We conclude that these instructions were helpful to the jury in establishing a medical facility's duty to a patient. Accordingly, reversal is not warranted.

We conclude that none of Valley's arguments has merit. Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Mark R. Denton, District Judge
Alverson Taylor Mortensen Nelson & Sanders
Kravitz Schnitzer & Sloane, Chtd.
Clark County Clerk