

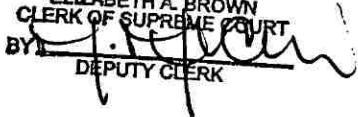
IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS FERNANDO LOPEZ CACERES,
INDIVIDUALLY,
Appellant,
vs.
BAILEE MAGEE, INDIVIDUALLY;
AND JEREMY WILLIAMS,
INDIVIDUALLY,
Respondents.

No. 86200

FILED

JUN 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a tort action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant Luis Fernando Lopez Caceres's car collided into respondents Bailee Magee and Jeremy Williams' vehicle. Magee suffered injuries and underwent disc replacement surgery. Respondents sued Lopez Caceres for negligence. About one year later, Magee was involved in a separate vehicle accident, but sustained no reported injuries and did not seek medical treatment. Thereafter, a jury trial was held on the issues of causation and damages, following a stipulation to liability by Lopez Caceres. The jury returned a unanimous verdict for Magee in the amount of \$3,485,070.86. Lopez Caceres appeals, challenging three evidentiary rulings by the district court.¹

We review a district court's evidentiary rulings for an abuse of discretion. *M.C. Multi-Family Dev. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). All relevant evidence is admissible at trial

¹Lopez Caceres does not challenge the judgment in favor of Williams.

unless otherwise excluded by law or the rules of evidence. NRS 48.025. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” NRS 48.015. Relevant evidence may be excluded if, among other things, its “probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.” NRS 48.035(1).

Lopez Caceres first argues the district court abused its discretion by excluding evidence of Magee’s subsequent accident. Although Lopez Caceres’ expert, Dr. Wang, tangentially referenced the mere existence of the subsequent crash in his medical reports and deposition, Dr. Wang did not proffer an opinion on the subsequent crash’s alleged impact on Magee. In limiting Dr. Wang’s testimony, the district court correctly found the subsequent crash was not relevant because Dr. Wang had not opined before trial that the subsequent crash had a causal link to Magee’s injuries from the subject crash.² See *Sanders v. Sears-Page*, 131 Nev. 500, 517, 354 P.3d 201, 212 (Ct. App. 2015) (explaining that NRCP 16.1(a)(2) “requires each party to provide a written disclosure of their experts *and* the contents of those experts’ testimonies, including the information each expert considered in forming an opinion, well in advance of trial”). Accordingly, the district court did not abuse its discretion in precluding testimony about the subsequent accident.

²Lopez Caceres also suggests that evidence of the subsequent crash supported Dr. Wang’s opinion that Magee should have undergone a second MRI shortly before her surgery. But aside from going to a causal connection, it is unclear how Dr. Wang’s opinion in that respect has relevance to the instant case.

Lopez Caceres next argues the district court abused its discretion by allowing testimony that Magee may require future surgery, as that testimony was overly speculative. Generally, a plaintiff seeking future medical expenses “must establish that such future medical expenses are reasonably necessary,” *Hall v. SSF, Inc.*, 112 Nev. 1384, 1390, 930 P.2d 94, 97 (1996), and that the contemplated damages are reasonably certain to be incurred, *see Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 249, 955 P.2d 661, 671 (1998) (indicating that to recover future medical expenses, a plaintiff must show “a reasonable probability that such expenses will be incurred”). Here, Dr. Wang and respondents’ experts, Dr. Garber and Dr. Oliveri, testified to a reasonable degree of medical certainty that adjacent-segment breakdown can occur in patients following an artificial disc replacement surgery. All three experts testified future operations may be a consequence, with their likelihood increasing each year. Although Dr. Wang testified that adjacent-segment breakdown occurs at a lower rate following disc replacement surgery than following disc fusion surgery, Dr. Garber’s and Dr. Oliveri’s testimonies were nonetheless relevant, and the jury was free to give credence to their testimonies over Dr. Wang’s in determining that a future surgery was reasonably certain to be incurred. *Cf. McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (“[I]t is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.”). Accordingly, the district court did not abuse its discretion in permitting evidence of future surgeries.

Lopez Caceres finally argues the district court abused its discretion when it limited testimony regarding Magee’s prior anxiety. To the extent that Lopez Caceres is challenging the district court’s order granting Magee’s motion in limine no. 7, the district court was within its

discretion to do so because Dr. Oliveri's deposition testimony did not indicate that Magee's anxiety magnified or exaggerated her pain and suffering. To the extent that Lopez Caceres complains about not being able to present evidence regarding Magee's anxiety, the district court subsequently permitted Lopez Caceres to cross-examine Magee in that regard after Magee opened the door to evidence about her anxiety, but Lopez Caceres did not meaningfully cross examine Magee or attempt to recall an expert to testify on the matter. Therefore, no abuse of discretion occurred with respect to evidence of anxiety. Accordingly, we


ORDER the judgment of the district court AFFIRMED.

 J.

Herndon

 J.

Lee

 J.

Bell

cc: Hon. Kathleen E. Delaney, District Judge
John Walter Boyer, Settlement Judge
Olson, Cannon, Gormley, & Stoberski
The Powell Law Firm
Eighth District Court Clerk