

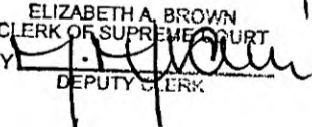
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KAELYN BROOKE KATZEN,
INDIVIDUALLY; AND MARCY L.
LUNA, INDIVIDUALLY,
Appellants,
vs.
ABRIL CUESTA-VILLA VERDE,
INDIVIDUALLY; AND MICHELLE
YAHAIRA MEDINA, INDIVIDUALLY,
Respondents.

No. 86919-COA

FILED

NOV 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Kaelyn Brooke Katzen and Marcy L. Luna appeal from a final judgment pursuant to a short trial jury verdict in a tort action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

In the proceedings below, respondents Abril Cuesta-Villa Verde and Michelle Yahaira Medina filed a tort complaint against appellants seeking damages for injuries sustained in a motor vehicle collision. The matter was assigned to the Eighth Judicial District Court Annexed Arbitration program. After an arbitrator found in favor of respondents, appellants filed a request for a trial de novo, and the matter proceeded through the short trial program. Prior to trial, respondents moved for summary judgment on the issues of liability and damages. The short trial judge granted summary judgment on liability but allowed for the issue of damages to proceed forward. Leading up to trial, appellants issued a

subpoena for Dr. David Streng, a doctor that treated respondents after the motor vehicle collision. However, at a clarification hearing held before trial, the issue of trial witnesses was discussed, and the order from that hearing expressly states that, based on the representations of defense counsel, respondents' treating providers would not be called to testify at trial. The short trial judge further ordered that only the parties would be called to testify at trial.

Given that appellants were not going to call respondents' treating providers to testify at trial, respondents renewed their motion for summary judgment on damages, which appellants did not oppose. Thus, the short trial judge granted the motion for summary judgment as to damages, although the order granting this motion did not include an award of damages. Instead, the matter proceeded to a jury trial and the jury awarded Verde \$51,811.47 and Medina \$40,108. Thereafter, the short trial judge inquired via email whether there was a stipulation for the judgment to Verde to exceed the \$50,000 cap under Nevada Short Trial Rule 26. In response, respondents' counsel acknowledged that damages awards were capped at \$50,000, exclusive of fees, costs, and interest, although counsel did not specifically address the short trial judge's question about whether there was a stipulation to exceed the cap. Appellants' counsel did not respond to the e-mail and the short trial judge therefore responded noting that there was no objection by appellants' counsel and that the judgment would get signed and filed. After the short trial judgment was entered, a final judgment was subsequently entered by the district court awarding Verde a total amount of \$60,977.42, including attorney fees, costs, and pre-

judgment interest, and Medina was awarded a total amount of \$48,129.87, including attorney fees, costs, and pre-judgment interest. This appeal followed.

On appeal, appellants argue that (1) the subpoenaed witness, Dr. Streng, was improperly excluded from testifying at trial; (2) that future damages that were awarded to respondents were not reduced to present value; and (3) that Verde was improperly awarded a judgment in excess of \$50,000, exclusive of fees, costs, and interest, which is not permitted by the short trial rules. Conversely, respondents argue that appellants have waived all their arguments as they were not raised below. In regard to the judgment awarded to Verde, respondents further argue that appellants' trial counsel failed to object to the judgment before it was entered. Nevertheless, respondents argue that, if this court finds that the issue was not waived, the judgment should be reduced to \$50,000, exclusive of fees, costs, and interest.

Given appellants' failure to raise the issue of Dr. Streng not testifying below, we decline to address this argument as it is improperly raised for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that we need not address arguments raised for the first time on appeal). Appellants' argument that the damages that were awarded were not reduced to present value is also improperly raised for the first time on appeal. *Id.* Moreover, appellants fail to provide citations to the record to support their contention that the future damages were not reduced to present value, *see* NRAP 28(e)(1); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) ("This court need

not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal."), or cogently explain how the future damages that were awarded were not, in fact, at present value, see *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the appellate courts need not consider claims that are not cogently argued). Thus, we likewise decline to reach this issue.

We next address appellants' contention that Verde was improperly awarded a judgment in excess of \$50,000. Under the Nevada Short Trial Rules, "[a] judgment arising out of the Short Trial Program may not exceed \$50,000 per plaintiff exclusive of attorney fees, costs, and prejudgment interest, unless otherwise stipulated to by the parties." NSTR 26. Here, the jury awarded Verde \$51,811.47, which exceeds the \$50,000 damages cap set forth in NSTR 26, and neither party asserts that there was a stipulation to deviate from the \$50,000 limitation.

In responding to appellants' argument regarding the award of a verdict in excess of the cap, respondents do not dispute that NSTR 26 sets forth a \$50,000 limitation, but instead argue that appellants waived this argument because they failed to object to the judgment before it was entered. However, we decline respondents' invitation to apply the waiver doctrine under the circumstances presented here.

The Short Trial Program was created through the adoption of the Nevada Short Trial Rules, which set forth the parameters of the program. See NSTR 1. By its plain language, NSTR 26 provides that, absent a stipulation of the parties, "a judgment arising out of [the program] may not exceed \$50,000 per plaintiff exclusive of attorney fees, costs, and

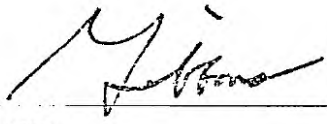
prejudgment interest.” See NSTR 26; *Morrow v. Eighth Jud. Dist. Ct.*, 129 Nev. 110, 113, 294 P.3d 411, 414 (2013) (“When a rule is clear on its face, we will not look beyond the rule’s plain language.”).

Here, the record demonstrates that the short trial judge recognized the \$50,000 damages cap imposed by NSTR 26 and inquired as to whether the parties had stipulated to allow an award in excess of that amount. While respondents’ counsel acknowledged the existence of the cap, counsel did not address or otherwise assert any stipulation existed and appellants’ counsel did not respond to the short trial judge’s inquiry. Despite this line of inquiry and the absence of any suggestion or argument that a stipulation to exceed the damages cap existed, the short trial judge nonetheless proceeded to enter a judgment in Verde’s favor that exceeded the \$50,000 limit.

Given these circumstances, we conclude that the decision to enter a judgment in Verde’s favor beyond what NSTR 26 allows in the absence of a stipulation was improper. See NSTR 26; see also *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996) (holding that the trial court erred by entering judgment on an arbitration award in excess of \$25,000 because the court annexed arbitration rule caps awards at \$25,000, the case was never exempted from the arbitration program, and there was no agreement by the parties to allow an award in excess of \$25,000). Thus, while we affirm the short trial judgment in part with regard to the judgment for Medina, we reverse the short trial judgment in Verde’s favor and remand this matter for the court to enter a \$50,000 judgment, exclusive of attorney

fees, costs, and prejudgment interest, for Verde that complies with NSTR 26.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 14
Thomas J. Tanksley, Settlement Judge
Martinez Dieterich and Zarcone Legal Group
ER Injury Attorneys
Eighth District Court Clerk

¹To the extent the parties raise other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.