IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SURGICAL ASSOCIATES, LLP; AND CHARLES BRIAN KIM, M.D.,
Appellants/Cross-Respondents,
vs.
GLORIA D. MADDUX, INDIVIDUALLY, AS THE SPOUSE OF LARRY DALE MADDUX, DECEASED, AND AS THE SPECIAL ADMINISTRATOR OF THE ESTATE OF LARRY DALE MADDUX,
Respondent/Cross-Appellant.

No. 88474

FILED
APR 10 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART, AND REMANDING

This is an appeal and cross-appeal from a district court judgment on a jury verdict in a wrongful death and medical malpractice action. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

Larry Maddux consulted appellant/cross-respondent Charles Kim, M.D., for laparoscopic surgery to repair a hernia. A practicing Jehovah's Witness, Larry declined to give consent for blood transfusions before the operation. Dr. Kim lacerated Larry's aorta early in the surgery, leading to his death. Larry's widow, respondent/cross-appellant Gloria Maddux, sued Dr. Kim and his employer, appellant/cross-respondent Las Vegas Surgical Associates, LLP (LVSA). As to LVSA, Gloria asserted claims for general or corporate negligence and for negligent hiring, training, and supervision of Dr. Kim. She attached an expert affidavit describing Dr. Kim's negligence in performing the operation, but this affidavit did not address LVSA.

LVSA moved for summary judgment, arguing that the claims against it sounded in professional negligence and were subject to the restrictions and requirements in NRS Chapter 41A, including NRS 41A.071's affidavit requirement. Gloria countered that her claims against LVSA were for ordinary negligence rooted in LVSA's failure to properly investigate Dr. Kim's professional history and complaints made about him at another facility. The district court granted LVSA's motion as to the general or corporate negligence claim but allowed the negligent hiring, training, and supervision claim to proceed. After further motion practice, the district court concluded that the negligent hiring, training, and supervision claim fell under the common knowledge exception established in *Estate of Curtis v. South Las Vegas Medical Investors, LLC*, 136 Nev. 350, 466 P.3d 1263 (2020), *overruled in part by Limprasert v. PAM Specialty Hospital of Las Vegas LLC*, 140 Nev., Adv. Op. 45, 550 P.3d 825 (2024) (en banc), and therefore fell outside of NRS Chapter 41A's protections, including its affidavit requirement.

Gloria made an offer of judgment for $500,000, which LVSA and Dr. Kim rejected. The case proceeded to trial, and the jury returned a verdict for Gloria and against Dr. Kim and LVSA. After applying NRS 41A.035's statutory cap on noneconomic damages, the district court entered judgment against Dr. Kim for $498,323.03. Having deemed the negligent hiring, training, and supervision claim against LVSA outside NRS Chapter 41A's protections, the district court entered judgment on the jury's compensatory and punitive damage award against LVSA for $13,129,665.03.

LVSA and Dr. Kim appeal. They seek reversal of the judgment against LVSA on the grounds that the claims against it sounded in

professional negligence yet were not supported by the affidavit NRS 41A.071 requires for such claims, rendering the complaint void ab initio as to LVSA. As to Dr. Kim, they seek reversal and remand for a new trial based on evidentiary error. Gloria cross-appeals, arguing that the district court erred in denying her motion for attorney fees under NRCP 68.

NRS Chapter 41A applies to the negligent hiring, training, and supervision claim against LVSA

LVSA argues the district court erred by failing to apply NRS Chapter 41A to the negligent hiring, training, and supervision claim on the grounds Gloria's claim sounded in ordinary not professional negligence. Under NRS 41A.071, a professional negligence complaint filed without an expert affidavit of merit when one is required is "void ab initio" and must be dismissed. *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006); *accord Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d at 833 ("A complaint filed without the requisite supporting medical expert affidavit does not legally exist and cannot be amended."). Nevada law is clear that negligent hiring, training, and supervision claims fall under NRS Chapter 41A where the legal claim stems from a negligent action that "occurs during the course of the medical relationship." *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*, 141 Nev., Adv. Op. 64, 580 P.3d 756, 761-62 (2025).

The key point distinguishing ordinary negligence from professional negligence is that in ordinary negligence the harm underlying the claim "does not involve medical judgment, treatment, or diagnosis." *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 644, 403 P.3d 1280, 1286 (2017); *see also Renown*, 580 P.3d at 762 (explaining "the relevant analysis is whether the gravamen of a claim is based on allegations of a breach of duty involving medical judgment, diagnosis, or treatment" or

"the underlying allegations are inextricably linked to professional negligence") (internal quotation marks omitted); *Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d at 831 (stating that, in deciding whether a claim sounds in professional negligence, "[t]he sole inquiry is whether the claim involves a provider of health care rendering services in a way that causes injury, not whether an expert affidavit or expert testimony is needed for a jury to understand the allegations"). In other words, an ordinary negligence claim stands alone as one "based on conduct that is independent of the medical relationship." *Renown*, 141 Nev., Adv. Op. 64, 580 P.3d at 762. But "if a negligent action occurs during the course of the medical relationship, any legal claim stemming from that negligent action sounds in professional negligence, not ordinary negligence." *Id.*

Applying that reasoning to this case, Gloria's negligent hiring, training, and supervision claim is inextricably tied to Larry's injury and death during his hernia surgery, without which Gloria would have no claim against LVSA. That claim is therefore based upon professional negligence such that Chapter 41A's protections apply, including its expert affidavit and testimony requirements. And NRS 41A.017 plainly encompasses surgery centers and group practices like LVSA within its definition of "provider of health care."

This case was tried to judgment in district court before *Limprasert* and *Renown* were decided. Citing *Breithaupt v. USAA Property and Casualty Insurance Company*, 110 Nev. 31, 36, 867 P.2d 402, 406 (1994), Gloria argues that *Limprasert*'s overruling of *Curtis* should not be given retroactive effect and that under *Curtis*, the district court correctly allowed Gloria's negligent hiring, training, and supervision claim against

LVSA to proceed as an ordinary negligence claim. This argument fails for two reasons.

First, even under *Curtis*, the claim against LVSA involved professional not ordinary negligence, because it depended on proof of professional negligence that occurred during the surgery and on LVSA's allegedly inadequate hiring, training, and supervision of Dr. Kim. *Est. of Curtis*, 136 Nev. at 353, 466 P.3d at 1267 ("negligent hiring, training, and supervision claims cannot be used to circumvent NRS Chapter 41A's requirements governing professional negligence lawsuits when the allegations supporting the claims sound in professional negligence"); *accord Zhang v. Barnes*, No. 67219, 2016 WL 4926325, at *7 (Nev. Sep. 12, 2016) (Order Affirming in Part, Reversing in Part, and Remanding) ("Negligent hiring, training, and supervision claims cannot be used as a channel to allege professional negligence against a provider of health care to avoid the statutory caps on such actions."). Second, *Breithaupt* was overruled in significant part in *Nevada Yellow Cab Corporation v. Eighth Judicial District Court*, 132 Nev. 784, 792, 383 P.3d 246, 251-52 (2016). While *Nevada Yellow Cab* did not disagree with *Breithaupt*'s result, it limited *Breithaupt*'s holding to a rule that, when the legislature amends a statute to change the way the courts have interpreted it, the amendment only applies prospectively unless the legislature says otherwise. *See id.* (noting that *Breithaupt*'s "analysis should have ended" with its application of the conventional rule of statutory interpretation that unless the legislature specifies otherwise statutes have prospective, not retroactive effect). While *Nevada Yellow Cab* did not categorically disavow equitable exceptions to the retroactivity of judicial decisions, *see id.* at 791 n.5, 383 P.3d at 251 n.5, Nevada follows the general rule "that 'when an appellate court announces

a new rule of law,' the new rule ordinarily applies 'to all similar cases pending on review in which the issue had been preserved for appellate review, even if the decision constitutes a clear break with past precedent.'" *Deutsche Bank Nat'l Tr. Co. v. Collegium Fund LLC Series 16*, 142 Nev. Adv. Op. 1, 582 P.3d 617, 621 (2026), *quoting* 20 Am. Jur. 2d *Courts* § 149 (2015). Consistent with that rule, our en banc decision in *Limprasert* has been applied in *Renown* and in other pending appeals, *see, e.g.*, *Warren v. Reno Orthopaedic Clinic, Ltd.*, No. 87126, 2025 WL 1021082 at *2-3 (Nev. Apr. 1, 2025) (Order of Affirmance), and it would be inappropriate to apply *Limprasert* to some but not all similarly situated litigants. For these reasons, we conclude that the negligent hiring, training, and supervision claim sounded in professional negligence and is subject to NRS Chapter 41A.

Gloria argues that, should we agree with LVSA and Dr. Kim on this issue, the proper remedy is to reduce the judgment against LVSA and to uphold it on a vicarious liability theory premised on Dr. Kim's acts. We find the record and briefing inadequate to determine this issue in the first instance. As such, we vacate the judgment against LVSA and remand for the district court to determine the proper remedy. *See Zhang*, 2016 WL 4926325, at *7-8 (remanding when apportionment of liability was unclear and vicarious liability theory was not adequately briefed or developed on appeal).

The admission of the challenged evidence does not warrant reversal as to Dr. Kim

LVSA and Dr. Kim claim that the district court erred in admitting a letter alleging that Dr. Kim smelled of alcohol while working at another hospital and allowing Gloria's counsel to reference prior malpractice claims and lawsuits against Dr. Kim during trial. Pointing to

Rives v. Farris, 138 Nev. 138, 506 P.3d 1064 (2022), they argue this evidence was irrelevant, or in the alternative, that its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. LVSA properly preserved these issues by raising them through motions in limine. *See Richmond v. State*, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002). Because the judgment against LVSA is vacated on other grounds, this issue remains relevant only to the judgment against Dr. Kim.

A district court's decision to admit evidence is reviewed for an abuse of discretion. *Taylor v. Brill*, 139 Nev. 558, 560, 539 P.3d 1188, 1191-92 (2023). An error will not warrant reversal if it is harmless in view of the record as a whole. NRCP 61; *Boyd v. Pernicano*, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963). To warrant reversal, the appellant must show the error substantially affected his or her rights such that a different result might reasonably have been expected if not for the error. *Peterson v. Pittsburg Silver Peak Gold Mining Co.*, 37 Nev. 117, 138, 140 P. 519, 527 (1914); *see also Morrison v. Air Cal.*, 101 Nev. 233, 237, 699 P.2d 600, 603 (1985) (placing burden on appellant to show prejudice from erroneously excluding evidence). The jury is presumed to have followed the district court's instructions and to have made all reasonable inferences in the prevailing party's favor. *Krause Inc. v. Little*, 117 Nev. 929, 937, 34 P.3d 566, 571 (2001); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1261, 969 P.2d 949, 958 (1998).

The district court admitted the evidence of Dr. Kim's past misconduct for the limited purpose of proving LVSA's negligence in hiring, training, and supervising Dr. Kim, and it instructed the jury that it was not to consider this evidence in deciding the professional negligence claim

against Dr. Kim. LVSA and Dr. Kim do not claim that insufficient evidence supported the judgment against Dr. Kim, and on this record their reliance on *Rives* is misplaced. In *Rives*, evidence of a prior malpractice lawsuit against a defendant doctor was inadmissible to show that the doctor acted below the standard of care. 138 Nev. at 144-45, 506 P.3d at 1070. The present case is distinguishable because the district court admitted the evidence as relevant only to the negligent hiring, training, and supervision claim against LVSA and issued a limiting instruction to that effect, which the jury presumably followed. Admitting this evidence was not error under *Rives*, and any error would have been harmless regardless. It was undisputed that Dr. Kim pushed the Veress needle in too deep, puncturing Larry's aorta and ultimately causing his death. *Cf. Boyd*, 79 Nev. at 359, 385 P.2d at 343 (explaining that errors have more significance when there is a "sharp conflict in the evidence upon essential issues"). Evidence showed that despite multiple warning signs, Dr. Kim failed to timely take remedial measures. In light of the limiting instruction and the substantial evidence against Dr. Kim, LVSA and Dr. Kim have not met their burden of showing that any alleged evidentiary error substantially affected Dr. Kim's rights. *See Peterson*, 37 Nev. at 138, 140 P. at 527. We accordingly affirm the judgment against Dr. Kim.

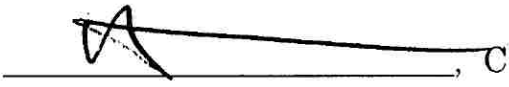
Gloria is not entitled to an award of attorney fees

Cross-appealing, Gloria claims that the district court improperly denied her NRCP 68 motion for attorney fees. Because we vacate the judgment against LVSA, and the judgment against Dr. Kim was less than the offer of judgment, Gloria is not entitled to attorney fees under NRCP 68. *See* NRCP 68(f)(1); *In re Est. & Living Tr. of Miller*, 125 Nev. 550, 554, 216 P.3d 239, 243 (2009) (holding that the relevant judgment amount under NRCP 68 is the one which remains after appeal). Nor could

any potential judgment against LVSA on a vicarious liability theory exceed Dr. Kim's liability. *See Zhang*, 2016 WL 4926325, at *7 ("[W]hen a negligent hiring, training, and supervision claim is based upon the underlying negligent medical treatment, the liability is coextensive.").

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.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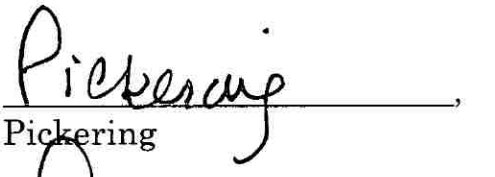
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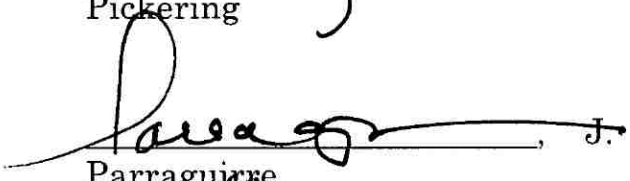
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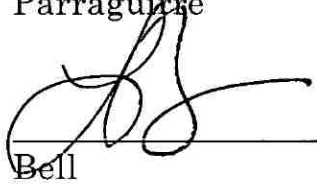
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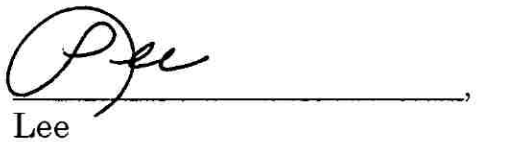
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Lee

cc: Hon. Maria A. Gall, District Judge
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