

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON DEERING AND PHILLIPS
CRANE SERVICE, LLC,
Appellants,
vs.
KATHLEEN JEHOEK,
Respondent.

No. 88722

FILED

APR 15 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a tort action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Appellants Jason Deering and Phillips Crane Service, LLC (collectively, Crane Service) appeal from a jury verdict and judgment in favor of respondent Kathleen Jehorek (Jehorek). Deering, an employee of Crane Service, ran a red light after the brakes failed on the 35-ton commercial boom crane truck he was operating. The truck collided with a vehicle driven by Jehorek when she entered the intersection during a green light. Crane Service stipulated to breaching the duty of care to Jehorek, and thus the issues for trial were medical causation and damages.

Before trial, the district court granted motions in limine filed by Jehorek, which precluded Deering from testifying about his attempts to avoid the collision and excluded evidence that payment for Jehorek's medical care was backed by judgment liens. Crane Service was also prevented from using Jehorek's retention of counsel and her husband's comments at the scene of the accident in argument to the jury, and from arguing that payment for Jehorek's care was "attorney-driven." The district court also denied a motion in limine filed by Crane Service, which sought to exclude expert testimony using functional magnetic resonance imaging

(fMRI). During trial, the district court provided a concurrent-cause instruction to the jury against the objection of Crane Service. And after trial, the jury returned a verdict finding Crane Service liable to Jehorek for \$10,332,285.44, including pre-judgment interest. Crane Service appeals, arguing the district court erred in resolving the motions in limine and in providing the jury instruction. Finding no error, we affirm.

Motion in limine regarding Deering's testimony

Crane Service first argues Deering's testimony about his actions leading up to the collision should not have been excluded because it was relevant to causation. Jehorek rebuts that Crane Service failed to raise this argument below and therefore waived it on appeal. Because Crane Service did not preserve this argument below, we conclude that it is waived and cannot be raised for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev 49, 52, 623 P.2d 981, 983 (1981).

Crane Service otherwise argues that, without Deering's testimony, the jury may have wrongly believed he made no effort to avoid the collision. This argument was preserved below. Thus, we review for an abuse of discretion. *See Las Vegas Metro. Police Dep't v. Yeghiazarian*, 129 Nev. 760, 764, 312 P.3d 503, 507 (2013) (reviewing exclusion of evidence for an abuse of discretion). Crane Service's duty and breach were stipulated to and no longer in controversy at trial. Based on the stipulation, the district court found that Deering's testimony was not relevant to a material fact in controversy, such as medical causation or Jehorek's damages. *See* NRS 48.015 (“[R]elevant evidence’ means evidence having 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.”). We agree that duty and breach were stipulated and no longer in controversy.

Thus, we conclude that the district court did not abuse its discretion when it concluded that Deering's testimony was not relevant.

Motions in limine foreclosing arguments about retention of counsel and medical buildup, or attorney-driven care

Crane Service also argues that the district court erred by granting motions in limine that prevented them from using the following in closing arguments to argue that Jehorek's case lacked merit: 1) threats to sue made by Jehorek's husband, Joseph Cox (Cox), at the scene of the accident; 2) the short timing with which Jehorek retained counsel after the accident; and 3) arguments that Jehorek's medical care and diagnoses were meant to increase costs and were a product of attorney-driven care. Jehorek rebuts that these arguments were properly excluded because they were impermissible attacks on the legal system and unfairly prejudicial. "A district court's ruling on a motion in limine is reviewed for an abuse of discretion." *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005).

Attorneys commit misconduct during closing arguments when they instigate jury nullification by encouraging disdain and distrust for personal injury cases and the civil jury process. *See Lioce v. Cohen*, 124 Nev. 1, 21, 174 P.3d 970, 983 (2008). But arguments against the merits of a plaintiff's case, including "send a message" arguments, may not be misconduct if such arguments are "based on the evidence." *See Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269, 396 P.3d 783, 790 (2017) (explaining that such "send a message" arguments "are not prohibited so long as the attorney is not asking the jury to ignore the evidence").

The district court heard evidence that Cox purportedly threatened Deering with a lawsuit at the scene of the collision. And that Jehorek retained counsel very shortly after the collision. Finally, the

district court heard evidence that her attorneys referred Jehorek to medical care professionals, and her attorneys twice provided input regarding Jehorek's medical treatment.

The district court ruled that it would be improper for Crane Service to use Cox's threats and the date Jehorek retained counsel to insinuate that Jehorek's personal injury case lacked merit. Relying on *Lioce v. Cohen*, the district court found that these arguments would improperly invite the jury to harbor disdain for the legal process. *See* 124 Nev. at 21, 174 P.3d at 983 (explaining that arguments encouraging disdain for the civil jury process or "perpetuating a misconception that most personal injury cases are unfounded and brought in bad faith," are improper). The district court relied on the same reasoning when it ruled that Crane Service could not argue that Jehorek's case was a medical build-up case or that her medical care was driven by her attorneys. *See id.*

Importantly, the district court had discretion to determine whether the restricted arguments had a sufficient basis in the evidence. *See Whisler*, 121 Nev. at 406, 116 P.3d at 62. And the only evidence presented to the district court was that Cox threatened to sue, that Jehorek retained counsel shortly after the collision, and that Jehorek's counsel was directly involved with her medical care on two occasions. This evidence is not substantial enough for us to conclude that the district court abused its discretion in restricting the foregoing arguments. Thus, we conclude that the district court properly applied *Lioce* when it granted the motions in limine. *See* 124 Nev. at 121, 174 P.3d at 983.

Motion in limine regarding medical liens

Crane Service next argues that the district court should not have excluded evidence that payment for Jehorek's medical treatment was backed by judgment liens because the evidence was relevant to demonstrate

bias. Jehorek rebuts that the district court correctly excluded evidence of the liens because she was obligated to pay for her medical costs regardless of the outcome of her case. We review for an abuse of discretion. *Yeghiazarian*, 129 Nev. at 764-65, 312 P.3d at 507.

Evidence of medical liens may be relevant to show bias, but “the degree of relevance is limited” when the plaintiff is obligated to pay for their medical treatment regardless of the outcome of the legal case. *See Pizarro-Ortega*, 133 Nev. at 270, 396 P.3d at 790 (citation modified). The evidence before the district court showed that Jehorek remained personally obligated to pay for her medical care even if she did not prevail in her case. Thus, the district court acted within its discretion when it found that the probative value of the medical liens was substantially outweighed by the danger of unfair prejudice. *See* NRS 48.035(1).

Cognitive FX expert testimony

Crane Service next argues that the district court abused its discretion by denying its motion in limine and admitting expert testimony from Dr. Alina Fong of Cognitive FX, utilizing fMRI testing to diagnose Jehorek for mild traumatic brain injury (MTBI). Crane Service argues that fMRI is not the product of reliable methodology. Specifically, Crane Service challenges fMRI’s general acceptance in the scientific community, referencing a statement from the Radiological Society of North America (RSNA). RSNA’s statement submits that there is insufficient evidence to support the routine clinical use of fMRI to diagnose individual patients for traumatic brain injury. Jehorek rebuts that RSNA’s statement may be used to impeach Cognitive FX’s expert opinion but does not justify excluding the opinion, given the broad support for fMRI across the scientific community. We review “a district court’s decision to allow expert testimony for abuse of

discretion.” *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

Expert testimony must be “the product of reliable methodology” so that it may “assist the trier of fact.” *Id.* at 500, 189 P.3d at 651 (citing NRS 50.275). The district court must determine whether an expert’s opinion is the product of reliable methodology by considering “whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization.” *Hallmark*, 124 Nev. at 500-01, 189 P.3d at 651-52 (citation modified).

The district court found that the Cognitive FX expert opinion was within a recognized field of expertise, was testable and had been tested, was published and subjected to peer review, and was based on particularized facts. *See id.* As to the remaining factor, the district court reasoned that Crane Service’s motion was primarily a challenge to fMRI’s general acceptance in the scientific community. Noting correctly that this factor is not always determinative, the district court found that the RSNA statement referenced by Crane Service could be used for impeachment but did not go to the admissibility of the expert opinion. *See id.* Moreover, the record shows that Jehorek presented unrefuted documentation showing that fMRI is the subject of more than 8,000 articles in support of its various applications and had been accepted in multiple state and federal district courts. Given the record and the district court’s correct application of the *Hallmark* factors, we conclude that the district court did not abuse its discretion when it denied Crane Service’s motion in limine and admitted the Cognitive FX expert testimony.

Concurrent-cause jury instruction

Finally, Crane Service argues that the district court erroneously gave a concurrent-cause jury instruction. Crane Service contends that this instruction permitted Jehorek to inaccurately and prejudicially argue that Crane Service remained liable notwithstanding subsequent independent causes. Jehorek rebuts that the concurrent-cause instruction was appropriate because Crane Service argued that concurrent causes produced her injuries. “We review a [district court’s] decision to admit or refuse jury instructions for an abuse of discretion” *D & D Tire, Inc. v. Ouellette*, 131 Nev. 462, 470, 352 P.3d 32, 37 (2015) (citation modified).

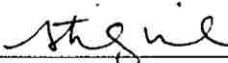
A concurrent-cause instruction is appropriate to instruct the jury that multiple causes may act at the same time to cause a plaintiff’s injuries and that a cause does not need to be the sole cause to be a proximate cause of these injuries. *See Banks v. Sunrise Hosp.*, 120 Nev. 822, 842, 102 P.3d 52, 65-66 (2004) (commenting that this instruction was appropriate in a medical tort case where conflicting testimony blamed alternatively the doctor or malfunctioning medical equipment). The district court provided the following instruction: “[a proximate cause] need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.” This is an accurate statement of the law and was appropriate because medical causation remained an issue for the jury. *See id.* Thus, we conclude that the district court did not abuse its discretion in giving this instruction.

Crane Service’s contention that Jehorek used the concurrent-cause instruction to mislead the jury is a separate argument, which was not preserved for appeal with a specific objection. *See Beccard v. Nev. Nat.*

Bank, 99 Nev. 63, 66, 657 P.2d 1154, 1156 (1983). We therefore conclude that no relief is warranted on this ground.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Lee

cc: Hon. Nadia Krall, District Judge
Lansford W. Levitt, Settlement Judge
Henriod Stern PLLC
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Eighth District Court Clerk