



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WOMEN'S HEALTH ASSOCIATES OF
SOUTHERN NEVADA-MARTIN PLLC;
AND OLGA DORLON, PA-C,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOSEPH HARDY, JR., DISTRICT
JUDGE,

Respondents,

and

FRANCESCA C. LOMBARDO,
Real Party in Interest.

No. 92067-COA

*ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR A
WRIT OF MANDAMUS*

Women's Health Associates of Southern Nevada and Olga Dorlon, Physician's Assistant-Certified, petition for a writ of mandamus challenging a district court order excluding their life care planning expert.

This matter arises from a tort action, in which real party in interest Francesca C. Lombardo presented to Women's Health Associates of Southern Nevada (hereinafter "WHASN") for an endometrial biopsy performed by Dorlon. After the procedure, Lombardo said that she "felt weak" from the procedure and was about to pass out. Dorlon had Lombardo lie down on the

examination table and left the room, leaving Lombardo unattended. Subsequently, Dorlon and her supervising physician heard a “loud crash” emanating from the examination room, at which point they rushed in to discover that Lombardo had fallen face down on the floor. Lombardo was unresponsive and had a laceration above her right eye. Paramedics transported her to the emergency room where she was treated, including a repair of the eyebrow laceration.

Lombardo subsequently filed suit against WHASN and Dorlon (collectively “petitioners”). In her complaint, Lombardo alleged that she suffered a traumatic brain injury from the fall and asserted claims for negligence, medical malpractice, respondeat superior, and negligent hiring, training, supervision and policies/procedures. As part of her claimed damages in the underlying action, Lombardo sought to recover approximately three million dollars in future medical costs for treatment for a traumatic brain injury, posttraumatic stress disorder, cervical spine reconstruction, physical therapy, and for surgical revision of the scar that resulted above her right eyebrow.

Petitioners, in challenging Lombardo’s future medical expenses, produced medical experts who disputed the necessity of Lombardo’s proposed future medical treatment. Petitioners also retained Reg Gibbs, a certified life care planner with more than 20 years of experience in life care planning and rehabilitation, to testify as to Lombardo’s future medical expenses. Relying on petitioners’ medical experts, who deemed all of the future treatments and expenses recommended by Lombardo’s experts unnecessary, Gibbs assigned zero-dollar cost values to each of these treatments. However, petitioners’ medical experts acknowledged that some alternative medical treatments could be necessary in the future, including a series of cardiology appointments, over

the counter headache treatments, and more limited treatment for posttraumatic stress disorder, if the jury found these alternative treatments were warranted. Therefore, Gibbs's report also indicated that Lombardo's future medical expenses would be in the range of \$5,906.02 to \$11,013.10 to account for these proposed alternative treatments.

In his deposition, Gibbs explained that, to project future costs for the alternative treatments that petitioners' medical experts recommended, he used databases from FAIR Health and Context 4 Healthcare (C4H), which compile data from private healthcare insurance claims. Gibbs also reported using pricing data from Amazon, Walmart, and Walgreens for vitamin B2 riboflavin supplements to treat her headaches. In his deposition, Gibbs defended his reliance on the FAIR Health database but indicated that he was contractually prohibited from discussing its methodology in detail. His deposition testimony went into much less detail about the C4H database, with Lombardo's attorney stating that there was no need to "[go] through the same thing for [C4H]." Gibbs also explained in his deposition that he placed a zero value next to each of Lombardo's future treatment items because he collaborated with petitioners' medical experts, who deemed the treatments unnecessary.

Lombardo subsequently filed a motion in limine to preclude Gibbs from testifying at trial, which petitioners opposed. The district court ultimately granted the motion on four grounds. First, the court found that Gibbs's expected testimony assigning zero-dollar values for each of the future treatments that Lombardo seeks merely served to "parrot or bolster" the opinions of petitioners' medical experts and did not provide an expert opinion that would assist the trier of fact. Second, the court found that "Gibbs is not a medical provider, treater, or doctor." Third, the court found that Gibbs's use

of databases that relied on insurance data violated the collateral source rule because “the information from which they source their data is derived from insurance companies, and these values are submitted to insurance companies for third-party reimbursement.” Fourth, and finally, to the extent that the collateral source rule allows expert reliance on these databases, the district court found that the databases lacked foundation, given Gibbs’s inability to substantiate their methodology during his deposition.

Petitioners subsequently moved for reconsideration of this decision, which Lombardo opposed. In support of their motion, petitioners provided an affidavit from a Senior Director of Data Management for FAIR Health, describing the compilation of the database and how it is used. However, the district court denied the motion to reconsider, finding that petitioners failed to present “any new evidence, law, or clear error” to support reconsideration.

This petition for a writ of mandamus followed. Lombardo filed an answer, as directed, and petitioners filed a reply. Additionally, the Nevada Justice Association (NJA) filed an amicus brief supporting Lombardo’s position that writ relief should be denied.

Mandamus relief is appropriate

A writ of mandamus is available to compel the performance of an act that the law requires or “to control a manifest abuse or arbitrary or capricious exercise of discretion.” NRS 34.160; *Price v. Second Jud. Dist. Ct.*, 141 Nev., Adv. Op. 17, 567 P.3d 319, 321 (2025). A manifest abuse of discretion is a “clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” *Price*, 141 Nev., Adv. Op. 17, 567 P.3d at 321 (internal quotation marks omitted). Writ relief is generally unavailable where petitioners have “a plain, speedy and adequate remedy in the ordinary course

of law.” NRS 34.170; *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

Because evidentiary determinations, including those involving expert testimony, can ultimately be corrected on appeal, our supreme court has elaborated that, in evidentiary contexts mandamus relief should only be considered where “(1) an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction; (2) the issue is one of first impression and of fundamental public importance; or (3) resolution of the writ petition will resolve related or future litigation.” *Torremoro v. Eighth Jud. Dist. Ct.*, 138 Nev. 578, 579, 512 P.3d 765, 767 (2022) (internal quotation marks omitted) (granting writ review but declining to provide relief from a district court order allowing substitution of an expert witness). In addressing these factors, “[u]ltimately . . . our analysis turns on the promotion of judicial economy.” *Williams v. Eighth Jud. Dist. Ct.*, 127 Nev. 518, 525, 262 P.3d 360, 365 (2011) (adopting these factors and applying them to reach the merits of a mandamus petition and partly granting relief from a district court order setting parameters for a nurse’s expert testimony).

The factors set forth in *Williams* and *Torremoro* for evidentiary writ relief are, by their terms, disjunctive, thus it suffices for one factor to be satisfied for us to reach the merits of such a petition. See *Coast Hotels & Casinos, Inc. v. Nev. State Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) (“The word ‘or’ is typically used to connect phrases or clauses representing alternatives.”). Here, the petition raises evidentiary issues justifying writ review, namely, whether a life care planner is required to be a “medical provider, treater, or doctor” to provide the testimony at issue here, and whether the collateral source rule prohibits reliance on insurance-derived databases for projecting costs for future medical treatment or, as an

alternative, Gibbs's lack of foundation regarding these databases should exclude his testimony. Finally, we address the propriety of the district court's exclusion of the remainder of Gibbs's testimony. We conclude that the issues presented to us are of sufficient importance to warrant our review as permitted by *Williams* and *Torremoro*.

Moreover, this case has been in pretrial litigation for going on five years, and the interests of judicial economy are best served by addressing the issues presented by this case now, rather than addressing them in any subsequent appeal. *See Prop. Nine Dev., LLC v. Eighth Jud. Dist. Ct.*, 2025 WL 1859290, No. 89579-COA (Nev. Ct. App. Jul. 3, 2025) (Order Granting Writ Relief in Part and Denying in Part) (granting writ relief in a case that had been languishing in the pretrial stage for "more than three years"); *D.R. Horton v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 475, 168 P.3d 731, 736 (2007) (doing the same in a case that had been pending in pretrial litigation for two and a half years). Thus, while an appeal may provide a speedy remedy for the issues petitioners raise, under the circumstances presented here such a remedy would not be adequate. Because we conclude that the district court erred in excluding Gibbs as an expert based on his lack of medical credentials, concluding that the collateral source rule was implicated by his testimony, and for other reasons set forth herein, we exercise our discretion to consider the merits of petitioners' arguments for mandamus relief. *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

Gibbs's lack of medical credentials was not a proper basis to exclude his expert testimony

To admit expert testimony, the district court must find that the proposed: (1) expert is qualified; (2) testimony will assist the trier of fact; and (3) testimony is limited to the scope of the witness's expertise. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008). Expert qualification

factors under the first prong are broad, including reliance on formal schooling and academic degrees, licensure, employment experience, and practical experience and specialized training. NRS 50.275; *Hallmark*, 124 Nev. at 499, 189 P.3d at 650-51.

In excluding Gibbs as an expert, the district court found that Gibbs was “not a medical provider, treater, or doctor.” While not expressly stated as such, the most reasonable implication of such a finding is that the court determined Gibbs was not qualified to testify as a life care planner based on his lack of qualification under *Hallmark*. In challenging the court’s exclusion of Gibbs as an expert witness, petitioners argue that there is no requirement that a life care planner be a “medical provider, treater, or doctor” in order to provide testimony regarding the costs of future medical treatments. Importantly, we further observe that while Lombardo vigorously contested Gibbs’s qualifications below, her answer abandons this point and does not contest petitioners’ contention that a life care planning expert need not be a medical doctor, thereby forfeiting any argument to the contrary.¹ See *Bates v. Chronister*, 100 Nev. 675, 681-82, 691 P.2d 865, 870 (1984) (treating the failure of a respondent to oppose a contention in an appellant’s opening brief as a confession of error on appeal).

¹In her answer, Lombardo points to the district court’s statement at the hearing on the motion in limine that “[g]enerally speaking . . . the fact that he’s not a medical doctor does not necessarily mean that he can’t opine as to life care,” as demonstrating that the court did not in fact exclude Gibbs’s testimony on this ground. However, the district court’s written order explicitly makes this finding in support of its exclusion of Gibbs’s testimony, and the contents of a written order control over conflicting oral statements made at a hearing. *Eby v. Johnston Law Office, P.C.*, 138 Nev. 660, 670, 518 P.3d 517, 526-27 (Ct. App. 2022).

Further, while the Nevada appellate courts have not yet directly addressed this issue, a review of authority from other jurisdictions demonstrates that courts routinely admit evidence from life care planners without medical backgrounds. *See, e.g., Cuevas v. Contra Costa County*, 217 Cal. Rptr. 3d 519, 525 (Ct. App. 2017) (noting that the task of a life care planner is “not to make care recommendations, but only to determine how much the recommended services will cost,” and describing the life care planners in that case as economists rather than doctors); *North v. Ford Motor Co.*, 505 F. Supp. 2d 1113, 1119-20 (D. Utah 2007) (allowing a life care planner without medical credentials to testify under the *Daubert* standard). And neither the district court’s order nor Lombardo’s briefing of this issue before the district court cited any authority to the contrary. *See generally Brown v. Capanna*, 105 Nev. 665, 671, 782 P.2d 1299, 1304 (1989) (noting that differences in qualifications between the plaintiff and defense experts “goes to the weight, not the admissibility, of the evidence”).

Given the forgoing, and because Lombardo has not otherwise challenged Gibbs’s qualifications, we conclude that the district court manifestly abused its discretion to the extent it excluded Gibbs as an expert on the ground he lacked the requisite medical credentials. *See Price*, 141 Nev., Adv. Op. 17, 567 P.3d at 321 (recognizing that a district court manifestly abuses its discretion when it makes a “clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule”).

Gibbs’s reliance on insurance-based databases in projecting future medical costs does not violate the collateral source rule

In his report, and as explained in his deposition testimony, Gibbs assigned cost values for the additional treatments that petitioners’ medical experts recommended for Lombardo using information contained in the FAIR Health and C4H databases. But the district court excluded this, finding that

Gibbs’s use of these databases to compile his future cost estimates violated the collateral source rule “because the information from which they source their data is derived from insurance companies, and these values are submitted to insurance companies for third-party reimbursement.” The court reasoned that such testimony, if admitted, would violate the collateral source rule.

Petitioners assert that the district court fundamentally misunderstood and misapplied the collateral source rule because Gibbs’s future cost projections relied on billed charges set out in the FAIR Health and C4H databases, rather than on negotiated reimbursement rates. In turn, Lombardo argues that the district court did not commit a manifest abuse of discretion in the absence of controlling caselaw on this specific question, and the NJA argues that, because the data collected by these databases comes from insurance companies, any expert testimony or opinions relying on that data necessarily violates the collateral source rule. We agree with petitioners.

The collateral source rule bars the admission of evidence showing that a plaintiff received payment or reimbursement from third-party sources, such as insurers. *Winchell v. Schiff*, 124 Nev. 938, 945-46, 193 P.3d 946, 951 (2008). The basis for this rule is to prevent jury prejudice, “because it greatly increases the likelihood that a jury will reduce a plaintiff’s award or damages because it knows the plaintiff is already receiving compensation.” *Proctor v. Castelletti*, 112 Nev. 88, 90, 911 P.2d 853, 854 (1996). In other words, this rule simply “prevents the jury from learning about collateral income.” 25 C.J.S. Damages § 179 (2022).

In this case, the district court in its order determined that, because the database information was “derived from insurance companies,” its use necessarily violated the collateral source rule. But the collateral source rule is limited to prohibiting the admission of evidence that reflects third-party

reimbursements or payments that were, or could be, received by a plaintiff. While the rule would bar evidence that a plaintiff had insurance or received payments from the same, *Proctor*, 112 Nev. 88 at 90-91, 911 P.2d at 853, the mere fact that an expert's testimony or opinion is derived from data obtained from insurance companies does not, in and of itself, violate the collateral source rule.

Indeed, in an analogous context, our supreme court confirmed that evidence which does not reduce the plaintiff's potential recovery by indicating a specific source of recovery from an unrelated third party does not implicate the collateral source rule, even if the underlying evidence could be used to violate the collateral source rule if presented in a different way. *See Khoury v. Seastrand*, 132 Nev. 520, 538-39, 377 P.3d 81, 93-94 (2016) (holding that, while medical lien amounts are inadmissible to contest a plaintiff's claimed damages, the mere existence of those liens is admissible for the separate purpose of arguing witness bias).

Here, Gibbs made clear in his deposition that he relied on amalgamated data from the FAIR Health and C4H databases to assign cost values for the future treatments recommended by petitioners' experts, which were derived solely from direct billing information and reflected "the billed-out amount" submitted to insurance companies for payment rather than the negotiated "allowed amount." And Lombardo critically failed to offer any arguments or evidence to suggest that Gibbs's statements in this regard violated the collateral source rule. Under these circumstances, there is nothing Lombardo identifies in the record to suggest that this data includes any information related to reduced or written-off amounts that will be paid by an insurance company sometime in the future. As a result, Gibbs's reliance on the data from the FAIR Health and C4H databases falls outside the scope of

the prohibited evidence of “payments showing medical provider discounts, or write downs, to third-party insurance providers” that the supreme court recognized in *Khoury* as implicating the collateral source rule.² *Khoury*, 132 Nev. at 538, 377 P.3d at 94.

Given the forgoing analysis, we conclude that the district court manifestly abused its discretion in excluding Gibbs’s expert testimony based on his reliance on the FAIR Health and C4H databases when determining the *future* costs associated with *future* treatments for Lombardo as violating the collateral source rule. *See Price*, 141 Nev., Adv. Op. 17, 567 P.3d at 321 (recognizing that a district court manifestly abuses its discretion when it makes a “clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule”).

The district court erred in excluding Gibbs’s testimony that relied on the databases for lack of foundation

The district court also found that, even if the collateral source rule did not apply, Gibbs’s testimony that relied on the databases would be excluded for lack of foundation. Yet, this alternative ground for excluding Gibbs’s testimony is also unpersuasive. Nevada’s overall approach to expert testimony supports allowing experts to rely on such databases. NRS 50.285(2) expressly provides that, “[i]f of a type reasonably relied upon by the experts in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.” And it is well established in Nevada that “experts may, and

²Given that Gibbs’s uncontroverted deposition testimony stated that he was using only the “billed-out amount” and our supreme court’s pronouncements regarding the collateral source rule in *Khoury*, 132 Nev. at 538, 377 P.3d at 94, we are not persuaded by the extrajurisdictional authority relied on by Lombardo and the NJA to suggest that the information Gibbs relied on violates the collateral source rule, including *Verci v. High*, 161 N.E.3d 249 (Ill. App. Ct. 2019).

commonly do, rely on hearsay when making expert opinions.” *In re Guardianship of Rubin*, 137 Nev. 288, 292, 491 P.3d 1, 5 (2021).

As such, expert witnesses are given broad discretion to testify when their testimony is “the product of reliable methodology” under the factors elaborated by our supreme court in *Hallmark*, 124 Nev. at 500-01, 198 P.3d at 651-52. Problematically, the district court here has not addressed the reliability of these databases under the *Hallmark* framework, which the court must do in the first instance. *See Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (noting that “[a]n appellate court is not particularly well suited to make factual determinations in the first instance”). Moreover, to the extent that parties may criticize the methodologies on which an expert seeks to rely, we note that these challenges will typically go to weight rather than admissibility. *See, e.g., Mathews v. State*, 134 Nev. 512, 516, 424 P.3d 634, 639 (2018); *Mulder v. State*, 116 Nev. 1, 13, 992 P.2d 845, 852 (2000) (providing that “[i]t is a function of the jury, not the court, to determine the weight and credibility to give such testimony” once a witness qualifies as an expert).

We therefore conclude that the district court manifestly abused its discretion when it summarily excluded Gibbs’s expert testimony based on the conclusion that his reliance on the databases lacked foundation.³

The district court’s reasoning for excluding the remainder of Gibbs’s testimony is also unpersuasive

The district court also found that Gibbs’s testimony would merely “parrot or bolster the testimony of other retained experts and offer no

³We further note that Gibbs did not even rely on these databases for all of his projected costs but instead included certain costs from publicly available pricing data from Amazon, Walmart, and Walgreens, rather than from the databases that the court found required the exclusion of Gibbs’s testimony.

independent value to the jury.” But here, petitioners’ medical experts rejected the future medical treatments proposed by Lombardo’s experts, proposing certain alternative treatments. Gibbs is the only witness who provided projected costs for these alternative treatments proposed by petitioners’ medical experts. Thus, the district court’s conclusion that Gibbs’s testimony would not assist the jury and merely parroted or bolstered petitioners’ other experts is belied by the record. By excluding Gibbs’s testimony of these future costs, the district court improperly excluded evidence that would arguably assist the jury. *See Leavitt v. Siems*, 130 Nev. 503, 510, 330 P.3d 1, 6 (2014) (allowing rebuttal expert testimony to “contradict the plaintiff’s expert,” and noting that “even if portions of his testimony were speculative, it was for the jury to assess the weight to be assigned to his testimony”).

Additionally, the district court found that the portions of Gibbs’s testimony that valued the future medical treatments sought by Lombardo at zero dollars would not add value for the jury, merely parroted or bolstered the testimony of petitioners’ other experts, and required no “specialized or technical skill or knowledge.” To the extent that Gibbs’s testimony is intended to respond to future cost calculations from Lombardo’s experts, we remind the court that when one party opens the door by entering their own evidence before the jury, the other side generally has the right to rebut, including with expert testimony where appropriate. *See S. Pac. Co. v. Watkins*, 83 Nev. 471, 489, 435 P.2d 498, 510 (1967) (holding that when a defendant railroad introduced an exhibit detailing the dangers of a railroad crossing, they were in no position to object when the plaintiff introduced expert testimony elaborating on the dangers of that same crossing); *see also Carr v. Paredes*, 2017 WL 176591, No. 60318 at *2 (Nev. Jan. 13, 2017) (Order of Affirmance) (stating that expert

witnesses are properly admitted, within the court's discretion, "if they contradict or rebut the subject matter of the original expert witness").

Generally, life care planners serve a complementary role in litigation; where medical experts determine future care needs, life care planners "determine how much the recommended services will cost" in the future. *Cuevas*, 217 Cal. Rptr. at 525. Taken as a whole, Gibbs's testimony is more than the sum of its parts; by rejecting the future medical treatments sought by Lombardo and projecting the costs of the treatments recommended by petitioners' medical experts, Gibbs provides an alternative cost projection for the jury to consider when determining Lombardo's future care needs. For this reason, "[c]ourts routinely have accepted life care planners as experts qualified to testify regarding future medical costs, fully accepting that life care planners rely on the medical opinions of physicians who have expertise that the life care planners do not." *Woodall v. W. Express, Inc.*, 2025 WL 1191783, No. 1:23-cv-00862 (D.N.M. Apr. 24, 2025) (Memorandum Opinion and Order Denying Defendants' Motion to Exclude the Opinions of Todd Capielano). Because of these errors raised in the petition, we grant mandamus relief and direct the district court to determine whether Gibbs should be permitted to testify as an expert witness in accordance with this order. Nothing in our order prevents Lombardo from raising other issues to preclude or restrict the admission of Gibbs's testimony at trial. *See Smith*, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we

ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS directing the district court to vacate its grant of Lombardo's motion in limine excluding Gibbs as an expert and to reevaluate whether Gibbs qualifies as an expert in accordance with this order, AND DENIED IN PART to the extent petitioners

request that we direct the district court to allow Gibbs to testify as this will need to first be properly determined by the court.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Bailey Kennedy

Claggett & Sykes Law Firm

Ladah Law Firm

Lemons, Grundy & Eisenberg

McBride Hall

Joseph Hardy Jr., District Judge

The Eighth Judicial District Court of the State of Nevada, in and for the
County of Clark, District Court Clerk