

IN THE SUPREME COURT OF THE STATE OF NEVADA

AVA LANDERS-DAVIS,  
Appellant,  
vs.  
FRANK SILVER, M.D.,  
Respondent.

No. 40331

**FILED**

APR 06 2004

ORDER OF AFFIRMANCE

JANETTE H. ELCOCK  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This appeal is taken from a final judgment in a medical malpractice action. In that action, Ava Landers-Davis alleged that Frank Silver, M.D., negligently fired a GIA surgical stapling device into her right ureter while performing a hysterectomy on her. Landers-Davis claimed that as a result, her right ureter was obstructed, leading to a condition called hydronephrosis and the need to remove her right kidney. Following a two-day bench trial, the district court entered judgment in favor of Dr. Silver.

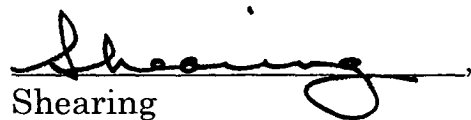
On appeal, Landers-Davis argues that the district court erred because she clearly demonstrated that Dr. Silver was negligent under a res ipsa loquitur theory. We disagree.

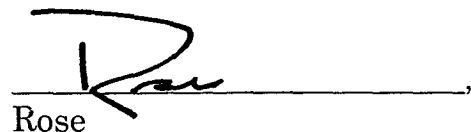
There was conflicting evidence presented regarding whether the obstruction in Landers-Davis' ureter was actually caused by a staple. We are not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the

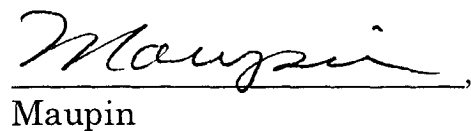
prevailing party.<sup>1</sup> Further, the credibility of witnesses and the weight to be given their testimony is within the sole province of the trier of fact.<sup>2</sup>

We conclude that based on the evidence presented, the district court could have reasonably found that Landers-Davis' condition did not result from Dr. Silver's negligence. Accordingly we,

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

cc: Hon. Lee A. Gates, District Judge  
Raleigh, Hunt & McGarry, P.C.  
John H. Cotton & Associates, Ltd.  
Clark County Clerk

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<sup>1</sup>Quintero v. McDonald, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2001).

<sup>2</sup>Id. at 1184, 14 P.3d at 524.