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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1168**

Mitchell F. Coopman,
Appellant,

vs.

Buffalo Clinic, P. A.,
Respondent.

**Filed April 30, 2012
Reversed and remanded
Hudson, Judge**

Wright County District Court
File No. 86-CV-09-6895

Daniel Sheridan Howland, Minneapolis, Minnesota; and

James E. Lindell, Lindell & Lavoie, LLP, Minneapolis, Minnesota (for appellant)

William L. Davidson, Paul C. Peterson, Lind, Jensen, Sullivan & Peterson, P.A.,
Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from judgment as a matter of law (JMOL) for respondent, appellant argues that the district court erred in granting JMOL and abused its discretion in conditionally granting a new trial should the JMOL ruling be reversed. Because the

evidence was sufficient to demonstrate that appellant's injury more probably than not was a result of defendant's actions, and the district court failed to draw all reasonable inferences in the light most favorable to the nonmoving party, the district court erred, and we reverse the district court's grant of JMOL and the award of costs to respondents. We therefore remand for entry of judgment in favor of appellant and further proceedings consistent with this decision. Additionally, the district court abused its discretion by conditionally granting a new trial, and we therefore reverse the grant of a new trial.

FACTS

On October 27, 2006, appellant Mitchell Coopman lost his footing in loose gravel in the Monticello High School parking lot and fell, fracturing his left tibia and fibula bones. That evening, orthopedic surgeon Dr. Rajan Jhanjee, an employee of respondent Buffalo Clinic, operated on appellant's leg to treat the injury, inserting metal plates affixed with screws.

About six weeks later, X-rays showed the fractures were healing, but the wound was pulling apart. The next day, appellant's parents took him to the emergency room at Monticello-Big Lake Hospital because his leg was swollen and red. Appellant's wound was treated for six weeks at the wound care clinic. After this treatment failed to heal the wound, Dr. Jhanjee recommended irrigation and debridement¹ of the wound and removal of the metal plates and screws. On January 30, 2007, Dr. Jhanjee operated on appellant, irrigating and debriding the wound, and noted that appellant had developed a persistent

¹ Debridement is a technique used to remove dead or damaged tissue in a wound. Taber's Cyclopedic Medical Dictionary 459 (16th ed. 1989).

wound infection. During the operation, Dr. Jhanjee discovered gross purulence² in the wound and removed all hardware from it. Additionally, Dr. Jhanjee found scar tissue in the joint and removed tissue until the joint was able to achieve a good range of motion. Dr. Jhanjee closed the wound tightly. A culture of appellant's wound tested positive for a staph infection, and he was prescribed antibiotics to treat the infection.

On February 7, 2007, appellant's wound was splitting open and oozed bloody discharge. Dr. Jhanjee ordered an MRI scan of appellant's ankle to rule out an active abscess. The radiology report of the MRI scan noted that osteomyelitis, or a bone infection, could not be ruled out and recommended a follow-up scan after antibiotic treatment. Dr. Jhanjee recommended only observation. On April 22, 2007, appellant was admitted to Monticello-Big Lake Hospital with an open wound draining pus. Dr. Jhanjee then diagnosed appellant with a post-operative infection with osteomyelitis of the left leg, distal tibia. Dr. Jhanjee operated again on appellant and found gross purulence and a pocket of pus. He irrigated and debrided the wound and closed it tightly. A culture of the wound again tested positive for a staph infection. Two days later, appellant's wound incision had separated over a three-centimeter area with a bloody discharge. Realizing the wound remained infected, Dr. Jhanjee referred appellant to St. Cloud Hospital for a wound consultation.

At St. Cloud Hospital, Dr. Thomas Satterberg, a plastic surgeon, examined appellant and noted that the wound was odorous, gangrenous, and coming apart with

² Purulence is "the state of containing pus." Taber's Cyclopedic Medical Dictionary at 1529.

black edges. Dr. Satterberg recommended urgent surgery that afternoon. Dr. Satterberg debrided and irrigated appellant's wound, a procedure repeated two days later. The multiple debridements eradicated the infection, but left a large defect at the surgery site which required a skin graft and muscle-flap procedure to close the wound. The attempted muscle-flap procedure was unsuccessful, and Dr. Satterberg referred appellant to the Mayo Clinic to complete the procedure. Doctors at the Mayo Clinic closed appellant's wound by using bone, muscle, and skin grafts, which left him disfigured by the skin placed on his left ankle wound and scars on appellant's left and right thighs.

Appellant sued respondent for medical malpractice by its employee, Dr. Jhanjee. Appellant sought damages for injuries caused by Dr. Jhanjee's negligent treatment of appellant's infected surgical wound, in addition to damages for past medical expenses. The one-week trial occurred in January 2011. Four doctors testified: Dr. Paul Wicklund, Dr. Thomas Satterberg, Dr. Rajan Jhanjee, and Dr. Johannes Coetzee.

Dr. Wicklund was called as appellant's expert witness. He testified that Dr. Jhanjee did not meet the standard of care in treating appellant's infection. He testified that the proper standard of care would have been to leave the wound open after the January and April surgeries and clean it a few days later rather than closing the wound tightly, as Dr. Jhanjee did. Dr. Wicklund further testified that, by closing the wound, Dr. Jhanjee created an environment for bacteria to multiply and it was therefore foreseeable that appellant's infection would persist after the January and April surgeries. Dr. Wicklund also testified that Dr. Jhanjee's failure to meet the standard of care required appellant to return for more treatment and surgeries.

Appellant also called Dr. Satterburg to testify. He testified that the partial disability of appellant's left ankle, which resulted in a limp, was caused by "the whole process of taking eight or nine months to heal, and just not having the normal activity that he would have had." He also testified that appellant's continuing difficulties with his ankle were due to the fracture and resulting soft-tissue damage.

Dr. Jhanjee was called by respondent to testify. Dr. Jhanjee testified that his care of appellant complied with the standard of care, including the decision to close appellant's wound after the January and April surgeries. He testified that appellant would not have had a better outcome if he had left the wound open in January and April, but he also testified that he failed to eliminate the infection with either surgery. Dr. Jhanjee attributed appellant's loss of range of motion and limp to the fracture and resulting soft-tissue damage.

Dr. Coetzee was called by respondent to testify as an expert witness. He testified that soft-tissue damage resulting from appellant's fracture, not the infection, was likely the cause of appellant's limited range of motion and his limp. Additionally, when asked if the complications were caused by Dr. Jhanjee's negligence, Dr. Coetzee testified "[d]efinitely not." He testified that Dr. Jhanjee met the standard of care in the January and April surgeries. However, he also testified that Dr. Jhanjee failed to halt appellant's infection with the January and April surgeries and that St. Cloud Hospital eliminated the infection. He further testified that it is critical to remove infected tissue from a wound before closing it.

When appellant rested his case, respondent moved for JMOL, arguing that appellant's expert medical witness failed to testify that appellant's damages were directly caused by Dr. Jhanjee's negligence. The district court stated that it would take the motion "under advisement" and would "rule on it after the jury verdict." Respondent again moved for JMOL at the close of all the evidence, and the district court again declined to rule on the motion.

An eight-member jury returned a 7-1 verdict, concluding that respondent was negligent, and awarding appellant damages of \$584,024. After the verdict, respondent renewed its motion for JMOL on the same grounds. The district court granted respondent's motion, concluding that respondent was entitled to JMOL at the close of appellant's case because he did not prove causation. The district court stated that "there was more than one possible source for Coopman's claimed damages—he suffered from both severe bone fractures and a severe infection." Further, the district court stated that Dr. Wicklund, appellant's expert witness, and Dr. Satterberg, one of appellant's treating physicians, offered only vague statements that appellant's limited range of motion could be attributed to the healing process and did not address whether any part of the lengthy healing process was caused by Dr. Jhanjee's negligence. The district court concluded that appellant failed to provide expert testimony that, had Dr. Jhanjee met the standard of care, (1) appellant would not have undergone the same or similar treatment, (2) appellant would not have had the same or similar disfigurement or disability, and (3) appellant's medical bills would have been any less.

Appellant moved for reconsideration; the district court denied the motion. In addition, the district court conditionally granted respondent's motion for a new trial on all issues, should the grant of JMOL be reversed on appeal. The district court stated, "The basis for this conditional order is that the damages awarded by the jury were excessive, given the absence of proof that Plaintiff's damages were caused by any negligence on the part of the Defendant or its employees." The district court also awarded respondent costs and disbursements totaling \$18,314. This appeal follows.

DECISION

I

Judgment as a matter of law "is appropriate when a jury verdict has no reasonable support in fact or is contrary to law." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007). Courts "must view the evidence in the light most favorable to the nonmoving party and determine whether the verdict is manifestly against the entire evidence or whether despite the jury's findings of fact the moving party is entitled to judgment as a matter of law." *Navarre v. S. Wash. Cnty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002). The district court must make all inferences in favor of the nonmoving party that can reasonably be drawn from the evidence. *Plutshack v. Univ. of Minn. Hosps.*, 316 N.W.2d 1, 5 (Minn. 1982). "The jury's verdict will not be set aside if it can be sustained on any reasonable theory of the evidence." *Longbehn*, 727 N.W.2d at 159 (quotation omitted). The grant of JMOL is a question of law that is reviewed de novo. *Id.*

As an initial matter, appellant asserts that the district court erred by limiting its consideration of evidence when granting JMOL to the evidence submitted by appellant

rather than all of the evidence presented during the trial. Respondent argues that because it first moved for JMOL at the close of appellant's case, the initial motion was the one ultimately decided by the district court, and therefore the district court did not err by considering only the evidence submitted by appellant. We reject respondent's argument and conclude that the district court's reservation of the initial JMOL motion, made by respondent after the close of appellant's case, was effectively a denial of the initial JMOL motion. We can find no authority, and none was presented on appeal, that provides for reserving a determination on a motion for JMOL by taking the motion under advisement and ruling on it after the jury verdict. In fact, once a case has been sent to and decided by a jury, the district court must make its JMOL determination based on all evidence submitted. *See JEM Acres, LLC v. Bruno*, 764 N.W.2d 77, 81 (Minn. App. 2009) ("Courts must determine whether the verdict is manifestly against the *entire* evidence, as viewed in the light most favorable to the nonmoving party.") (emphasis added).

Next, appellant argues that the district court erred in granting JMOL because the evidence, viewed in the light most favorable to appellant, supports the verdict. Respondent argues that the district court did not err because appellant failed to prove the element of causation. To prove a medical-malpractice claim, a plaintiff must establish: (1) the standard of care, (2) that the defendant departed from the standard of care, (3) that the departure from the standard of care was a direct cause of plaintiff's injury, and (4) damages. *Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 59 (Minn. 2000). To establish causation, a plaintiff must show, generally by expert testimony, that when the defendant breached the standard of care he directly caused the plaintiff's injuries. *Fabio*

v. Bellomo, 504 N.W.2d 758, 762 (Minn. 1993). This causation standard requires a showing that more probably than not the plaintiff's injury was a result of the defendant's actions. *Id.*

At trial, appellant's causation argument centered on Dr. Jhanjee's departure from the standard of care in treating plaintiff's surgical infection in January and April, which appellant asserted caused his continued infection and subsequent painful, disfiguring, and costly procedures. Respondent argues that the testimony from appellant's expert witness, Dr. Wicklund, was not sufficient to establish that Dr. Jhanjee's alleged negligence caused appellant's injuries or damages and that testimony from other experts demonstrated that the cause of appellant's injuries was tied to the fracture and resulting soft-tissue damage, not the infection. The district court concluded that appellant failed to prove causation and that, because of the lack of expert testimony connecting Dr. Jhanjee's failure to follow the standard of care to appellant's subsequent treatment, disfigurement, and medical bills, the jury improperly speculated in reaching its verdict on a medical topic beyond the general knowledge of lay people. *See Cornfeldt v. Tongen*, 295 N.W.2d 638, 640 (Minn. 1980) (requiring expert testimony in medical-malpractice case where needed to prevent jury from speculating if different treatment would have resulted in a cure).

After a detailed review of the record, we conclude that, although the testimony elicited could have more clearly connected Dr. Jhanjee's breach of the standard of care to appellant's injury, testimony from Dr. Wicklund, in addition to testimony from Dr. Jhanjee and Dr. Coetzee, provided sufficient evidence of causation. Dr. Wicklund testified that Dr. Jhanjee's failure to follow the standard of care by twice tightly closing

appellant's wound caused appellant to require additional treatment, including debridements, which he received from Dr. Satterberg and the Mayo Clinic. He also testified that closing appellant's wound tightly, as Dr. Jhanjee did after the January and April surgeries, carried a risk that residual bacteria would be trapped and continue to multiply and that this risk was foreseeable. Viewing the evidence in the light most favorable to appellant, appellant demonstrated that because Dr. Jhanjee did not follow the standard of care by twice tightly closing appellant's wound, appellant required additional treatment to eradicate the infection. *See Navarre*, 652 N.W.2d at 21 (stating that district court must consider evidence in light most favorable to prevailing party).

On this record, we have no trouble concluding that it was reasonable for the jury to infer that the additional treatments, including debridements to remove infected tissue and the multiple skin grafts, led to appellant's disfigurement and additional medical bills. *See Longbehn*, 727 N.W.2d at 159 (stating verdict "will not be set aside if it can be sustained on any reasonable theory of the evidence") (quotation omitted). Moreover, additional testimony supported appellant's causation theory, including Dr. Jhanjee's testimony that the surgeries he performed in January and April failed to eradicate the infection; Dr. Coetzee's testimony that the purpose of the January and April surgeries was to halt the infection, which Dr. Jhanjee was unable to do, and that it is critical to eliminate a wound's infection before closing it tightly, which Dr. Jhanjee did not do. Viewing the evidence in the light most favorable to appellant, the evidence demonstrates more probably than not that appellant's injury was a result of defendant's actions. *Fabio*, 504 N.W.2d at 762.

Respondent also contends that, because of the conflicting testimony regarding Dr. Jhanjee's negligence, appellant could not satisfy the element of causation. We disagree. Drs. Jhanjee and Coetzee testified that appellant's additional treatments by Dr. Satterberg and at the Mayo Clinic were not caused by Dr. Jhanjee's negligence. But appellant's expert witness, Dr. Wicklund, testified that, because Dr. Jhanjee did not follow the standard of care by leaving the wound open, appellant required additional treatments. This conflicting testimony simply highlights the parties' distinct theories of causation. "It is within the province of the jury to weigh conflicting testimony and determine witness credibility." *St. Paul Fire & Marine Ins. Co. v. Honeywell, Inc.*, 611 N.W.2d 51, 59 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000); *see also McKay's Family Dodge v. Hardrives, Inc.*, 480 N.W.2d 141, 147 (Minn. App. 1992) ("Although the parties' experts reached different conclusions as to [causation], it was for the jury to resolve the conflicting testimony."), *review denied* (Minn. Mar. 26, 1992).

We also conclude that respondent and the district court mischaracterized the injury upon which appellant based his medical-malpractice claim as the fracture and soft-tissue damage. The record strongly suggests that appellant's fracture was healed well before Dr. Jhanjee's first effort at wound care and that the fractures played no role in appellant's multiple wound-care treatments. And appellant never argued at trial that respondent's treatment of the fracture was negligent. Rather, appellant focused his negligence claim at trial on respondent's failure to eradicate appellant's infection. In sum, appellant's persistent infection was the injury on which the complaint was based and for which causation was proved at trial.

II

A district court's decision to grant a motion for a new trial is generally reviewed for an abuse of discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). But if the district court's ruling was based solely on a matter of law, the grant of a new trial is reviewed de novo. *Id.* The district court granted respondent's motion for a new trial conditioned on reversal of its JMOL, citing to Minn. R. Civ. P. 59.01(g) and stating that "the jury's verdict was not justified by the evidence and is contrary to law." Because the district court exercised its discretion in its determination that the evidence was insufficient to justify the verdict, we review for an abuse of that discretion. *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 687 (Minn. 2004).

We generally defer to the district court's grant of a new trial on the grounds that the evidence does not justify the verdict because a "district court is in a better position than an appellate court to assess whether the evidence justifies the verdict." *Id.* The test for determining if a new trial should be granted on this basis is whether "the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence or acted under some mistake or from some improper motive, bias, feeling or caprice, instead of honestly and dispassionately exercising its judgment." *LaValle v. Aqualand Pool Co., Inc.*, 257 N.W.2d 324, 328 (Minn. 1977). However, as determined above, we conclude that the verdict is supported by the evidence, and there is no indication that the jury failed to consider any evidence or acted by mistake. Accordingly, the district court abused its discretion in granting a new trial on this basis.

We further note that the grant of a new trial conditioned on reversal of the district court's ruling has no basis in the rules of civil procedure or our caselaw. *Cf.* Minn. R. Civ. P. 59.01 (establishing grounds for new trial), *see also Clifford*, 681 N.W.2d at 686 (stating that new trial grounds are limited to those enunciated in rule 59.01). Although the standard of review recognizes that a district court is in a better position than an appellate court to assess whether the evidence justifies the verdict, this deference does not permit a district court to grant a new trial in the event that its rulings are reversed. Accordingly, we also conclude that the district court abused its discretion by granting a new trial conditioned on reversal of its JMOL ruling.

Reversed and remanded.