STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1212

Robert Calcagno,
as trustee for the next of kin of Claudia Calcagno,
Respondent,

vs.

Jennifer Barbara Emery, M. D., et al.,
Defendants,

Monticello-Big Lake Community Hospital,
Appellant.

Filed May 21, 2012
Affirmed
Kalitowski, Judge

Wright County District Court
File No. 86-CV-09-5000

Kathleen Flynn Peterson, Vincent J. Moccio, Brandon E. Thompson, Robins, Kaplan, Miller & Ciresi, L.L.P., Minneapolis, Minnesota (for respondent)

Diane B. Bratvold, Jessica J. Stomski, Briggs and Morgan, P.A., Minneapolis, Minnesota; and

Sally J. Ferguson, Paul E.D. Darsow, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for appellant)

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

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

In this medical-negligence action, appellant Monticello-Big Lake Community Hospital appeals the district court's denial of its motions for a new trial, judgment as a matter of law (JMOL), and a new trial on damages or remittitur following a jury verdict in favor of respondent Robert Calcagno, as trustee for the next-of-kin of Claudia Calcagno. We affirm.

FACTS

Ms. Calcagno was admitted to Monticello-Big Lake Community Hospital on the evening of January 17, 2008, to be induced to give birth. After several hours of unsuccessful labor, Dr. Olson, Ms. Calcagno's obstetrician, decided to perform a cesarean section. Dr. Olson delivered a healthy baby boy on January 18, 2008, at 6:50 p.m. After the birth, Ms. Calcagno was stable, but her uterus was "suggestive of atony," a condition in which the uterus muscle does not contract and continues to bleed. Dr. Olson and hospital staff administered drugs and uterine massage to address the atony.

At approximately 8:50 p.m., Nurse Adams noticed that Ms. Calcagno was bleeding heavily and contacted Dr. Emery, the on-call obstetrician. Responding to a page by telephone while she was driving to the hospital, Dr. Emery ordered staff to "type and cross" Ms. Calcagno's blood to determine her blood type and compatibility and requested two units of blood "STAT." She also requested that the operating room be placed on standby. Around 9:10 p.m., Dr. Emery spoke with Nurse Adams a second time and ordered Nurse Adams to begin transfusing blood immediately.

When Dr. Emery arrived at the hospital at 9:18 p.m., she inquired why no blood was transfusing. Hospital staff told her that the lab was "working on" the request, and because the hospital did not stock A- blood, Ms. Calcagno's blood type, no A- blood was available. At 9:30, Dr. Emery ordered two units of trauma blood, referring to O- blood, which all patients can receive in an emergency. At 9:40 p.m., Dr. Emery ordered four units of red blood cells and four units of fresh frozen plasma for transfusion, and requested that two additional units be placed on hold. Dr. Emery then requested "all the trauma blood" that the hospital had available. Ms. Calcagno continued to bleed, and Dr. Emery performed an examination and further treated the atony with massage and drugs. Also around 9:30 p.m., Dr. Emery began planning to treat the bleeding with various surgical procedures, including a hysterectomy, and discussed the possibility of a hysterectomy with Ms. Calcagno. Staff provided two units of O- blood, which began transfusing at 9:41 p.m.

Dr. Emery informed Dr. Olson about Ms. Calcagno's condition. Dr. Olson arrived at the hospital around 10:00 p.m. and requested all the blood that could be given to Ms. Calcagno, but was told no blood was available. The physicians became concerned that Ms. Calcagno's blood loss was causing her blood not to clot. Ms. Calcagno signed a consent for surgery, including a hysterectomy. Around this time, Dr. Emery contacted North Memorial Hospital to inquire about transferring Ms. Calcagno because she believed appellant did not have an adequate blood supply, and because a radiation procedure could be performed at North Memorial.

At 10:35 p.m., the physicians decided to initiate surgical procedures in attempt to stop the bleeding and transferred Ms. Calcagno to the operating room. Drs. Emery and Olson considered performing a hysterectomy, but determined that a hysterectomy could not safely be performed without more blood than they believed was available. The physicians performed an exam and inserted a balloon tamponade in Ms. Calcagno's uterus. After determining that the balloon had slowed the bleeding, the physicians decided to transport Ms. Calcagno to North Memorial. Ms. Calcagno was transported by helicopter at approximately 11:30 p.m. Her condition deteriorated during the transfer. North Memorial physicians transfused blood to Ms. Calcagno and performed an emergency hysterectomy. Shortly after her arrival, Ms. Calcagno suffered fatal cardiac arrest due to the excessive blood loss.

Respondent filed a complaint against appellant, Buffalo Clinic, and Drs. Emery and Olson alleging that each was "negligent in the care and treatment provided to Claudia Calcagno." Just prior to trial, respondent settled with Drs. Emery and Olson and Buffalo Clinic and all claims against them were dismissed.

Respondent's claims against appellant were tried to a jury in October 2010. The evidence presented at trial established that at 5:50 p.m. on January 18, 2008, a nurse signed the hospital's standing order for a cesarean section, which included an order to "type and screen" Ms. Calcagno's blood and obtain two units of type-specific blood in anticipation of surgery. The type and screen was not performed and two units of A- blood were not obtained. Evidence established that if the type and screen had been performed when ordered, two units of A- blood would have been available by at least

8:30 p.m. The evidence also established that there were four units each of A+ and O+ blood in the hospital blood bank, all of which could have been safely transfused to Ms. Calcagno. It was undisputed that the hospital's non-type-specific-blood policy provided that a person with A- blood could receive A+ and O+ blood in an emergency. Respondent also provided evidence that hospital staff failed to comply with appellant's established emergency procedures for obtaining additional blood from other hospitals and the Red Cross.

Dr. Olson testified that he and Dr. Emery believed that no blood was available when they were assessing how to treat Ms. Calcagno. He testified that if they knew blood was available, "our thought process would have been very different and very likely the hysterectomy would have been performed in Monticello." Dr. Olson testified that a hysterectomy will "stop bleeding in all situations." Additionally, Dr. Olson testified that when physicians request or order blood, they expect that hospital staff will deliver it. He stated that lab staff is responsible for informing the physicians of available suitable blood for a patient. Likewise, Dr. Emery testified that she relied on the nurses and lab staff to supply available blood. Dr. Emery asked for "all the trauma blood available" and was told by staff that the hospital had "no blood . . . that [she] [could] give the patient right now."

Respondent's expert witness Dr. Sacher testified that appellant's blood stock did not meet accepted standards of medical practice because appellant did not stock A- blood. Dr. Sacher opined that accepted medical practice would have required Nurse Adams to begin transfusing blood as soon as Dr. Emery ordered it, and stated that if the blood

transfusions were started before Dr. Emery's arrival at 9:18 p.m., it would have made a difference in Ms. Calcagno's outcome. He also testified that a person with A- blood can receive, in addition to type-specific blood, A+, O+, and O- blood and when asked whether this information is "basic knowledge for any laboratory technologist," he replied, "absolutely." Dr. Sacher opined that, under accepted standards of medical practice, "[i]f a doctor requests all available blood in a situation like this, then it is the blood bank's responsibility to provide compatible blood that is available." He opined that the hospital staff's failures to comply with accepted medical practice and its own type-and-screen and non-type-specific blood policies played a substantial part in bringing about Ms. Calcagno's death, explaining "[t]he blood that was provided by the blood bank and the lack of communication and the lack of following procedures all contributed to too little, too late."

Respondent also presented expert testimony from Dr. Landers. Dr. Landers testified that it is critical for a patient who is hemorrhaging to receive blood as soon as possible. He opined that if the hospital had followed its type-and-screen and emergency blood policies, sufficient blood would have been offered to the physicians, Drs. Emery and Olson would have performed a hysterectomy and Ms. Calcagno would not have died.

The director of the hospital lab testified that lab staff members are expected to understand and follow the hospital policies and procedures, including type-and-screen orders and non-type-specific blood. She also stated that if a physician or nurse asks for all available blood, the lab staff is responsible for communicating all blood that could be used for the patient in accordance with the non-type-specific blood policy.

Appellant presented evidence from an expert witness who testified that Drs. Emery and Olson departed from standards of accepted medical practice by not performing a hysterectomy or other procedures, and that this failure caused Ms. Calcagno's death. Appellant also presented testimony from Nurse Adams and other hospital staff who testified that Drs. Emery and Olson did not request all available blood and Dr. Emery did not order transfusions before 9:30 p.m.

The parties submitted proposed jury instructions. Appellant objected to respondent's proposed "[h]ospital's duty to patients" instruction, based on 4A *Minnesota Practice*, CIVJIG 80.37 (2006), and "[d]efinition of 'reasonable care'" instruction, based on 4A *Minnesota Practice*, CIVJIG 25.10 (2006), which respondent intended that the district court give together. The district court overruled the objection.

As indicated by the special verdict form, the jury found that: (1) appellant was negligent in the care and treatment of Ms. Calcagno; (2) appellant's negligence was a direct cause of Ms. Calcagno's death; (3) appellant was 100% at fault; and (4) Drs. Emery and Olson were each 0% at fault. The jury awarded damages of $220,108 for past economic loss; $750,000 for past loss of advice, comfort, assistance, companionship, and protection; $1,403,816 for future economic loss; and $2,250,000 for future loss of advice, comfort, assistance, companionship, and protection.

Appellant filed posttrial motions for a new trial, JMOL, and a new trial on damages or remittitur, asserting that the jury instructions were erroneous, respondent failed to present sufficient evidence as to the standard of care and causation, and the damage award was excessive. After a hearing, the district court denied the motions.

D E C I S I O N

I.

Appellant contends that it is entitled to a new trial because the district court committed reversible error by instructing the jury as to the ordinary-negligence standard of care, as described in the CIVJIG 80.37 and CIVJIG 25.10 instructions. We disagree. A new trial is warranted only if an erroneous jury instruction "destroys the substantial correctness of the charge as a whole, causes a miscarriage of justice, or results in substantial prejudice." *Domagala v. Rolland*, 805 N.W.2d 14, 31 (Minn. 2011). We review the district court's decision to deny a new-trial motion for an abuse of discretion. *Halla Nursery, Inc. v. Baumann–Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

When evaluating jury instructions, they must be viewed in their "entirety and from a practical and commonsense point of view." *Kohoutek v. Hafner*, 383 N.W.2d 295, 300 (Minn. 1986). The charge as a whole must convey to the jury a correct understanding of the law, and "[i]t is unnecessary that every possible opportunity for misapprehension be guarded against." *Id.* "The district court has broad discretion in determining jury instructions and we will not reverse in the absence of abuse of discretion." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002).

Jury Instructions

The jury was instructed, in relevant part, as follows:

> [**Introduction**]
>
> Plaintiff has alleged that Dr. Jennifer Emery, Dr. Timothy Olson, and Monticello-Big Lake Community Hospital were negligent in providing healthcare to Claudia Calcagno and

that the defendants' negligence was a direct cause of the death of Claudia Calcagno.

[**Definition of "negligence" by a professional healthcare provider** CIVJIG 80.10]

Negligence is the failure to use reasonable care under the circumstances.

Reasonable care by a doctor or other healthcare provider is care that meets an accepted standard of care a doctor or other healthcare provider, who is in a similar practice in a similar community, would use or follow under similar circumstances. A failure to provide care that meets an accepted standard of care under the circumstances would be negligence.

[**Hospital's duty to patients** CIVJIG 80.37]

A hospital must use reasonable care for the protection and well-being of its patients. In deciding whether the hospital used reasonable care, consider, among other things:

[1.] What facts the hospital knew or should have known about the physical and mental state of Claudia Calcagno
[2.] The training and experience of its employees in the type of treatment given to Claudia Calcagno
[3.] Whether these employees were, or should have been, able to anticipate and take adequate precautions for the safety of Claudia Calcagno
[4.] Whether the hospital claimed to the public and doctors that it was equipped to treat and care for a patient requiring the treatment and care used.

A hospital must use reasonable care in serving a patient. Failure to use reasonable care is negligence.

[**Definition of "reasonable care"** CIVJIG 25.10]

Reasonable care is the care a reasonable person would use in the same or similar circumstance.

> [**Hospital's duty to follow a doctor's orders** CIVJIG 80.40]
>
> A hospital has a duty to follow the orders of a patient's doctor. In doing so, it must exercise reasonable care.
>
> However, hospitals should not follow orders if it would be unreasonable to do so.
>
> [**Definition of reasonable care**]
>
> In deciding if the hospital acted reasonably in following the doctor's orders, consider, among other things:
>
> [1.] Whether the hospital knew facts about the patient's condition (including new developments) unknown to the doctor
> [2.] Whether consultation with the doctor or staff doctors or other qualified employees was readily available or practicable under the circumstances
> [3.] Whether the hospital was acting under the direct supervision of the doctor.

See 4, 4A *Minnesota Practice*, CIVJIG 25.10, 80.10, 80.37, 80.40 (2006).

In denying appellant's new-trial motion, the district court determined that CIVJIG 80.37 was applicable to various allegedly negligent acts of the hospital, and CIVJIG 25.10 defined "reasonable care" for purposes of CIVJIG 80.37, and therefore the instruction was not erroneous. We agree.

Standard of Care

The "standard of care presents a question of law because it defines a legal obligation to be determined only by the court and from which the jury may not deviate." *Blatz v. Allina Health Sys.*, 622 N.W.2d 376, 383-84 (Minn. App. 2001), *review denied* (Minn. May 16, 2001). "An ordinary person has a duty to do what a reasonable person would do under the same or similar circumstances. A person providing professional

services, however, is under a duty to exercise such care, skill, and diligence as persons in that profession ordinarily exercise under like circumstances." *Id.* (citation omitted).

Both standards of care may be applicable in an action for medical negligence. When a hospital provides routine care, the Minnesota Supreme Court has applied the ordinary-negligence standard of care. *Trepanier v. McKenna*, 267 Minn. 145, 149, 125 N.W.2d 603, 606 (Minn. 1963) ("It is well established in this state that a hospital . . . in the performance of routine care of a patient owes a duty to use reasonable care for the protection and well-being of the patient commensurate with its actual or constructive knowledge of the patient's physical and mental condition."); *Quick v. Benedictine Sisters Hosp. Ass'n*, 257 Minn. 470, 480, 102 N.W.2d 36, 44 (1960) (stating that a hospital must exercise "reasonable care for the protection and well-being of the patient as his known physical and mental condition requires or as is required by his condition as it ought to be known to the hospital in the exercise of ordinary care").

Medical professionals are subject to the medical-malpractice standard of care "when engaged in conduct requiring medical judgment or training or involving scientific judgments," but subject to the "reasonable-person standard of care when not furnishing medical treatment to patients." *Blatz,* 622 N.W.2d at 384. "[A]n action involving medical negligence that necessarily flows from a therapeutic relationship, rather than administrative or policymaking functions," is considered to fall within the purview of medical-malpractice laws. *Paulos v. Johnson,* 597 N.W.2d 316, 320 (Minn. App. 1999), *review denied* (Minn. Sept. 28, 1999). Likewise, the requirement that medical-expert testimony establish the standard of care is inapplicable "when the acts or omissions

complained of are within the general knowledge and experience of lay persons." *Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 58 (Minn. 2000) (quotation omitted); *see Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 728 (Minn. 2005) (noting that claims involving "nonmedical, administrative, custodial or routine" functions may not require a medical expert to establish the standard of care).

For example, in *Kaiser v. Memorial Blood Center of Mpls., Inc.*, acts by a blood bank's physician-employees sounded in ordinary negligence, because the physician-employees were not performing functions for which their professional licenses were required when they committed the allegedly negligent acts. 486 N.W.2d 762, 764, 767-68 (Minn. 1992); *see also Blatz*, 622 N.W.2d at 385 (concluding that when paramedics perform functions such as locating a home when responding to an emergency, professional judgment is not implicated and thus principles of ordinary negligence apply); *Henderson v. Allina Health Sys.*, 609 N.W.2d 7, 9-10 (Minn. App. 2000) (concluding that hospital employee's decision not to raise patient's bed rails required medical judgment and thus the claim amounted to medical malpractice), *review denied* (Minn. June 13, 2000).

We conclude that the district court's charge to the jury, viewed as a whole, is not an incorrect statement of the law. The introduction explains the claim that appellant was "negligent in providing healthcare," thus the jury was appropriately instructed that the CIVJIG 80.10 standard was applicable to appellant's provision of professional healthcare. The CIVJIG 80.37 instruction is consistent with precedent establishing that a hospital

owes a duty of ordinary care when providing routine care and when not furnishing medical treatment to patients.

Appellant asserts that the types of medical-negligence cases in which the ordinary-negligence standard is generally applied are distinguishable from respondent's allegations of negligence here. *See Mesedahl v. St. Luke's Hosp. Ass'n of Duluth*, 194 Minn. 198, 200, 259 N.W. 819, 820 (1935) (holding that hospital must use reasonable care to prevent suicide); *Roettger v. United Hosps. of St. Paul, Inc.*, 380 N.W.2d 856, 859 (Minn. App. 1986) (applying reasonable-care standard in a case regarding security procedures at hospital). But the district court's inclusion of the ordinary-negligence standard does not render the charge erroneous because respondent presented evidence of allegedly negligent acts that may be analyzed under ordinary-negligence principles. For example, under *Kaiser* and its progeny, acts that may be performed by persons who are not licensed professionals are not subject to the medical-negligence standard of care. And some of appellant's allegedly negligent acts did not involve the exercise of medical judgment, including hospital staff's failure to communicate with one another, and the physicians and hospital staff's failure to follow hospital policies regarding performing the type and screen, providing non-type-specific blood, and obtaining blood from other sources in emergencies.

Appellant also argues that the use note to CIVJIG 80.37 provides that the instruction should not be given when a hospital "holds itself out as a hospital providing special care and service." CIVJIG 80.37 use note. At trial, respondent presented evidence that appellant holds itself out to the public as a critical access hospital capable

of providing obstetrics services. But jury instruction guides are not binding. *See Range v. Van Buskirk Constr. Co.*, 281 Minn. 312, 314 n.3, 161 N.W.2d 645, 647 n.3 (1968). Moreover, certain of appellant's allegedly negligent acts involved omissions in the performance of routine tasks, and thus did not implicate the provision of specialty obstetrics care or services. We conclude that the inclusion of CIVJIG 80.37 and CIVJIG 25.10 did not destroy the substantial correctness of the instructions.

Substantial Prejudice

Moreover, even assuming that the CIVJIG 80.37 and CIVJIG 25.10 jury instructions were erroneous, appellant is not entitled to a new trial unless the error resulted in prejudice. *George v. Estate of Baker*, 724 N.W.2d 1, 10 (Minn. 2006). "A jury instruction is prejudicial if a more accurate instruction would have changed the outcome of the case." *Id.* Here, the district court determined that any error was not prejudicial because respondent presented extensive evidence establishing breach of the higher, medical-negligence standard of care. We agree.

Appellant argues that the CIVJIG 80.37 and CIVJIG 25.10 instructions were prejudicial because the jury may have considered its own lay experience in determining whether appellant was negligent, rather than considering the standard of care of similar healthcare providers in a similar community under similar circumstances. But appellant fails to identify any evidence before the jury that would tend to show a breach of an ordinary person's reasonable-care standard, but would not tend to show a breach of the accepted-medical-practice standard. And on appeal, appellant has not asserted that the

jury verdict would have been different if CIVJIG 80.37 and CIVJIG 25.10 were not given.

The record indicates that respondent demonstrated the elements of negligence as to the allegedly negligent acts by relying on expert testimony as to accepted medical practice. For example, Dr. Sacher testified that lab staff departed from accepted medical practice by failing to follow hospital policies, that Nurse Adams departed from accepted medical practice by failing to begin transfusing blood after receiving Dr. Emery's order, and that it was a breach of accepted medical practice for the hospital not to have sufficient type-specific blood available. Dr. Landers testified that when Drs. Emery and Olson requested all available blood, it was a breach of accepted medical practice for hospital staff not to provide all available blood. Therefore, respondent did not leave the jury to rely on its layperson understanding of "reasonable care."

Additionally, appellant failed to demonstrate prejudice because appellant requested, and has not challenged, the "[h]ospital's duty to follow a doctor's orders" instruction, CIVJIG 80.40, which includes an ordinary-negligence "reasonable care" definition. CIVJIG 80.40 correctly states the well-established law that hospital staff is obligated to follow a physician's orders. *See Mesedahl*, 194 Minn. at 206, 259 N.W. at 822 ("The great weight of authority . . . establishes the principle that nurses, in the discharge of their duties, must obey and diligently execute the orders of the physician or surgeon in charge of the patient, unless, of course, such order was so obviously negligent as to lead any reasonable person to anticipate that substantial injury would result to the patient from the execution of such order or performance of such direction.") (quotation

omitted)). Here, respondent presented evidence that hospital staff failed to follow physicians' orders and that these failures played a substantial role in bringing about Ms. Calcagno's death. The jury could have found that appellant was negligent under the CIVJIG 80.40 instruction, notwithstanding the CIVJIG 80.37 and CIVJIG 25.10 instructions.

Appellant also argues that the jury may have been confused as to which standard of care to apply. But instructing the jury as to both the ordinary-negligence and medical-negligence standard in a medical-negligence action is not improper. *See Kohoutek*, 383 N.W.2d at 300-02 (affirming jury instructions including definition of negligence, reasonable-person standard of care, and medical-negligence standard); *Kalsbeck v. Westview Clinic, P.A.*, 375 N.W.2d 861, 867-68 (Minn. App. 1985) (affirming jury instructions including definition of negligence, reasonable care, and medical-negligence standard), *review denied* (Minn. Dec. 30, 1985). And the evidence respondent presented at trial established the elements of negligence under the medical-negligence standard. On this record, we conclude that any possibility of juror confusion did not result in prejudice.

Therefore, we conclude that the district court did not err by denying appellant's new-trial motion.

II.

Appellant argues that the district court erred in denying its JMOL motion because respondent failed to present sufficient evidence as to the standard of care and causation. We disagree.

JMOL is appropriate if "there is no legally sufficient evidentiary basis for a reasonable jury to find" against the moving party. Minn. R. Civ. P. 50.01. The district court must determine whether, viewing the evidence in the light most favorable to the nonmoving party, the verdict is contrary to law or "manifestly against the entire evidence." *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 864 (Minn. 2003) (quotation omitted). When JMOL has been denied, an appellate court "must affirm if there is any competent evidence reasonably tending to sustain the verdict." *Rettman v. City of Litchfield*, 354 N.W.2d 426, 429 (Minn. 1984). This court upholds the district court's determination if the jury verdict "can be sustained on any reasonable theory of the evidence." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007) (quotation omitted).

To establish ordinary negligence, a plaintiff must prove a duty of care, breach of that duty, causation, and damages. *Johnson v. Urie*, 405 N.W.2d 887, 891 (Minn. 1987). To prove medical negligence, a plaintiff must introduce expert testimony that demonstrates three elements: a standard of care recognized by the medical community and applicable to the defendant's conduct; a departure from that standard of care; and that the departure directly caused the plaintiff's injury. *Plutshack v. Univ. of Minn. Hosps.*, 316 N.W.2d 1, 5 (Minn. 1982).

Appellant asserts that respondent was required to proffer expert testimony to demonstrate that a hysterectomy could not be performed with the blood that the hospital had on January 18, 2008, consistent with accepted medical practice. To support its argument that respondent failed to demonstrate the standard of care and causation,

appellant relies on Dr. Landers's testimony that there are types of hysterectomy procedures that cause "less blood loss" and an additional expert's testimony that Drs. Olson and Emery could have performed effective procedures without additional blood. But this argument is misplaced. Appellant presented its expert evidence at trial to persuade the jury that Ms. Calcagno's death was caused by the actions of Drs. Olson and Emery, rather than the actions of the hospital. The jury considered this evidence and found it unpersuasive. It is not the province of this court to second-guess the jury's evaluation of competing testimony.

The record supports the district court's determination that Dr. Sacher testified to the applicable standard of care for a hospital like appellant. Dr. Sacher testified that appellant's various allegedly negligent acts were deviations from accepted medical practice and opined that each was a cause of Ms. Calcagno's death. We conclude that the evidence, viewed in the light most favorable to the verdict, supports the jury's determination, and therefore the district court did not err in denying appellant's motion for JMOL.

III.

Appellant argues that the district court abused its discretion in denying its motion for a new trial or remittitur because the damage award is excessive. We disagree.

"[T]he matter of granting a new trial for excessive . . . damages rests almost wholly in the discretion of the [district] court." *Krueger v. Knutson*, 261 Minn. 144, 154, 111 N.W.2d 526, 533 (1961). The district court "has the significant advantage of viewing the entire proceedings, some of which is not apparent in a record. We should not

interfere with the court's determination unless there is a clear abuse of discretion." *Caspersen v. Webber*, 298 Minn. 93, 100, 213 N.W.2d 327, 331 (1973). Likewise, the denial of a motion for remittitur will be overturned only if the district court abused its discretion. *Sandt v. Hylen*, 301 Minn. 475, 476, 224 N.W.2d 342, 343 (1974).

A new trial may be granted for excessive damages when the damages appear "to have been given under the influence of passion or prejudice." Minn. R. Civ. P. 59.01(e). A verdict should be set aside if only if it "shocks the conscience." *Verhel v. Independent Sch. Dist. No. 709*, 359 N.W.2d 579, 591 (Minn. 1984). The district court must leave the prevailing party with the highest amount permitted by the evidence. *Newmaster v. Mahmood*, 361 N.W.2d 130, 133 (Minn. App. 1985).

The jury awarded respondent $4,623,924 in damages. Appellant challenges only the award of $2,250,000 in future noneconomic damages, arguing that the jury's award was given under the influence of passion and prejudice. Specifically, appellant argues that the jury's two-hour deliberation is suggestive of an "emotional determination" and that $2,250,000 for future loss of advice, comfort, assistance, companionship, and protection is unreasonable.

Appellant fails to set forth any evidence from which this court could conclude that the jury awarded damages under the influence of passion or prejudice. The district court carefully analyzed the jury's award of future noneconomic damages. The court noted that Ms. Calcagno was a 36-year-old woman with a successful career who was excited to become a mother, and that appellant's negligence caused respondent to become a widower with an infant son, and caused respondent's son to be without a mother. The

district court noted that the jury's request for a calculator was reasonable, and that the jury spent at least two hours of its deliberations considering damages. The district court determined that "the evidence in this case would have sustained an even higher award and is justified by the evidence." We conclude that the district court appropriately exercised its discretion after having viewed the entire proceeding, and the jury award of future noneconomic damages does not warrant a new trial or remittitur.

Finally, appellant challenges the damage award on the ground that the damages were not adjusted to present cash value. But in *Youngquist v. W. Nat'l Mut. Ins. Co.*, 716 N.W.2d 383, 386 (Minn. App. 2006), this court held that the issue of discounting an award of future noneconomic loss to present cash value is discretionary. Moreover, appellant did not request a jury instruction on the adjustment of future damages, and respondent's damages expert presented calculations reduced to present value. Therefore, the district court did not abuse its discretion by denying appellant's posttrial motion for a new trial or remittitur.

Affirmed.