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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2358**

Marcelino Delgado,
Appellant,

vs.

Neurosurgical Associates, Ltd., et al,
Respondents,

Allina Hospitals & Clinics, et al.,
Defendants.

**Filed April 29, 2008
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CV-05-003938

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Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This case involves a patient's medical-malpractice allegations arising from spinal
surgery in February 2001. The district court dismissed several claims, and a jury found

that Christine Cox, M.D., was not negligent in the care she gave Marcelino Delgado. Delgado appeals, arguing that the case should be remanded to address the dismissed claims and urging that we remand for a new trial because of claimed improper evidentiary rulings, improper pretrial decisions, and bias on the part of the district court. Because the district court acted within its discretion and consistent with the law, and because Delgado does not convince us that the district court was biased, we affirm.

FACTS

Marcelino Delgado is a painter and forklift operator whom Christine Cox, M.D., examined in November of 2000 because of Delgado's neck and shoulder pain. Dr. Cox, a neurosurgeon who performed approximately 170 spinal surgeries annually, recommended physical therapy. But Delgado's condition rapidly deteriorated between November 2000 and February 2001. After more tests, Dr. Cox determined that Delgado's spinal canal was too narrow, and she recommended surgery.

Dr. Cox surgically expanded Delgado's spinal canal, but he continued to experience pain. Within two months after his surgery, Delgado returned to his painting business. He returned to work as a forklift operator a year after the surgery. But he had two additional surgeries, one on his lower back and one on his knees. He quit his job as a forklift operator in 2004. Delgado sued Dr. Cox for malpractice under multiple theories of breached duties of care, claiming that she negligently recommended and performed the surgery.

The district court dismissed Delgado's malpractice claims that depended on five theories of negligence, concluding that the pleadings did not support them. These

theories were that Dr. Cox had failed to obtain pre-operative informed consent, failed to act diligently and professionally during the surgery, failed to disclose a surgical complication, failed to inform Delgado of developing complications, and failed to document the medical records.

The remaining theories of negligence were tried to a jury. At trial, Delgado's medical expert opined that Dr. Cox was negligent because Delgado's test results did not support her recommendation for surgery. He also criticized Dr. Cox's choice of procedure, and in his affidavit alleged that Dr. Cox chose an antiquated form of surgery. Dr. Cox and her medical expert ardently disagreed with Delgado's expert's assessment, testifying that Dr. Cox provided reasonable care.

The jury found that Dr. Cox was not negligent. The district court denied Delgado's motion for judgment as a matter of law and entered judgment in Dr. Cox's favor. Delgado appeals, arguing that the court improperly dismissed portions of his suit. He contends that a new trial is necessary to correct the district court's erroneous pretrial and evidentiary rulings. And he maintains that the district court acted with bias against him.

DECISION

I

Delgado argues that the district court erred by rejecting, before trial, five of his eight theories of negligence. To survive a pretrial motion to dismiss, a medical-malpractice plaintiff must produce a medical expert's affidavit stating the expert's identity, substance of testimony, and summary of grounds of the expert's opinion. Minn.

Stat. § 145.682, subd. 4(a) (2006); *see also Teffeteller v. Univ. of Minn.*, 645 N.W.2d 420, 428 (Minn. 2002). “Failure to comply with subdivision 4 because of deficiencies in the affidavit or answers to interrogatories results, upon motion, in mandatory dismissal with prejudice of each action as to which expert testimony is necessary to establish a prima facie case.” Minn. Stat. § 145.682, subd. 6(c) (2006). An expert affidavit is insufficient if it presents merely a list of conclusory failures without connecting those failures to a standard of care or an injury. *Sorensen v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 191 (Minn. 1990). We review a dismissal under section 145.682 for an abuse of discretion. *Teffeteller*, 645 N.W.2d at 427.

The district court dismissed five of Delgado’s theories of liability because Delgado failed to satisfy the requirements of section 145.682. Specifically, the court reasoned that Delgado failed to identify the standard of care or failed to identify Dr. Cox’s acts or omissions that breached the standard of care. The district court’s rulings are well reasoned.

Delgado’s first dismissed theory of negligence was that Dr. Cox failed to obtain informed pre-operative consent. But Delgado signed an informed consent form acknowledging as follows:

... I have discussed the condition(s) which require(s) treatment and the alternative means of therapy for such condition(s) with my physician. The risks and benefits of the procedure(s) have been explained to me to my satisfaction and I understand the possibility of both foreseen and unforeseen complications resulting from or following the operation and/or other procedures.

Delgado asserts that Dr. Cox failed to inform him of alternative surgeries. But Delgado's expert's stated standard of care did not require that Dr. Cox must offer alternative *surgeries*, only that she must explain alternatives *to* surgery. The district court dismissed the informed-consent theory of liability because Delgado's expert did not state how Dr. Cox breached the duty to obtain informed consent, as the statute requires. Delgado's expert affidavit stated that "Dr. Cox failed to fully discuss the risks and benefits of the operation. The standard of care required her to fully discuss these issues." Because the record indicates that Dr. Cox did discuss the risks of surgery with Delgado, the district court did not abuse its discretion by dismissing this theory of negligence.

Delgado states that the district court should not have dismissed his four other theories, but he does not explain why. He does not contend that he identified any of Dr. Cox's acts or omissions that breached the standards of care related to the other dismissed theories. Because Delgado failed to meet the statutory requirements to establish a *prima facie* case of medical malpractice on these five theories of negligence, we affirm the district court's dismissal.

II

Delgado also contends that the district court erroneously denied his motion for judgment as a matter of law, or, alternatively, for a new trial. We review *de novo* a district court's denial of a motion for judgment as a matter of law. *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998). We will affirm the denial if the jury received any competent evidence that would sustain the verdict. *Id.* The principal issue for the jury to determine was whether Dr. Cox was negligent. *See Bondy v. Allen*, 635

N.W.2d 244, 248 (Minn. App. 2001) (explaining that negligence is a question of fact). The jury heard hours of conflicting testimony from qualified professionals on the issue of reasonable medical care, and those substantial portions of the evidence presented against the allegations of negligence provided a sufficient basis for the district court to deny Delgado's motion. Both Dr. Cox and her medical expert testified in detail explaining why Dr. Cox had not been negligent. The jury had ample grounds to agree. We therefore affirm the district court's denial of Delgado's motion for judgment as a matter of law.

Delgado contends that the district court improperly denied his motion for a new trial. We review a denial of a motion for a new trial for an abuse of discretion. *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995), *review denied* (Minn. June 14, 1995). Delgado offers two principal theories to support his argument that the district court abused its discretion by denying his motion. He argues that the district court made improper evidentiary rulings and that it exhibited bias and partiality. We address both.

Evidentiary Rulings

Evidentiary rulings are within a district court's discretion. *Benson v. N. Gopher Enters.*, 455 N.W.2d 444, 445 (Minn. 1990). An appellant must show prejudice caused by an improper evidentiary ruling before being entitled to a new trial on that ground. *George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). Specifically, "before an error in the exclusion of evidence may be grounds for a new trial, it must appear that such evidence might reasonably have changed the result of the trial if it had been admitted." *Hansen ex rel. Hansen v. Smith*, 373 N.W.2d 349, 352 (Minn. App. 1985).

Evidence of Prior Malpractice Lawsuits

Delgado argues that he should have been allowed to introduce evidence of other malpractice lawsuits against Dr. Cox. A district court may exclude evidence if its probative value is substantially outweighed by the risk of unfair prejudice or confusion of the issues. Minn. R. Evid. 403. The possible prejudicial effect of evidence of prior malpractice suits against a defendant physician is obvious. The district court should weigh the potential prejudice against the probative benefit of the evidence. Delgado argues that he wished to present evidence of other malpractice suits as allowed under Minnesota Rule of Evidence 404(b) to show knowledge, absence of mistake, intent, and opportunity, among other exceptions. But he does not show how evidence that Dr. Cox previously has been accused of medical malpractice establishes relevant knowledge, absence of mistake, intent, or opportunity, and the district court was in the best position to balance these objectives against the concern that the jury would apply the evidence improperly. Delgado also argues that he sought to admit “direct evidence of [Dr. Cox’s] inability to reliably perform a task.” But this is an attempt to prove a trait and “action in conformity therewith” in violation of Rule 404(b). The district court had discretion to weigh the evidence’s probative value against its risk of unfair prejudice, and the record suggests that it acted within that discretion. Delgado is not entitled to a new trial on this basis.

Dr. Cox’s Medical Condition

Delgado sought to assert that Dr. Cox’s personal medical condition contributed to her negligence. He therefore argues that the district court erred by not compelling

Dr. Cox to disclose her own medical records. The district court denied Delgado's motion to compel because his motion was not timely served. The Minnesota Rules of Civil Procedure provide that parties have 30 days in which to respond to interrogatories. Minn. R. Civ. P. 33.01(b). The discovery deadline was February 15, 2006, and Delgado served his request for Dr. Cox's medical records on January 17, 2006. The district court correctly determined that Delgado's interrogatories were untimely filed because his service did not afford Dr. Cox 30 days to respond.

Delgado's contention that Dr. Cox's medical condition after the surgery was admissible also fails on the merits because Delgado did not have any negligence claims relating to his post-operation treatment by Dr. Cox. Dr. Cox had no symptoms of her own medical condition until seven months after she operated on Delgado. Because evidence of Dr. Cox's medical condition would have had little probative value regarding Delgado's claims, in comparison to the potential for unfair prejudice the evidence would create, the district court did not abuse its discretion by excluding it. *See* Minn. R. Evid. 403.

Admission of the Videotape

Delgado contests the district court's treatment of a videotape of Delgado's post-operative activities. Dr. Cox hired a private investigator to videotape Delgado while he worked as a painter. This videotape depicted Delgado climbing a ladder. Delgado's lawyer was first to mention the tape at trial when he asked Delgado, "[W]ere you aware of the fact that apparently defendants or defense counsel had some sort of private investigator following you around and videotaping you?" The district court had not

previously ruled on the tape's contested admissibility, but it decided that Delgado's attorney had "opened the door" for Dr. Cox to show the tape.

Delgado argues that the admission of this videotape was unfair surprise because it had not been disclosed sufficiently before trial. He contends that Dr. Cox's private investigator was presented as an expert witness. But the record does not support that characterization and the investigator testified only to his first-hand observations of Delgado. Delgado's legal support for his theory of "unjust surprise" is inapposite. *See, e.g., Dorn v. Home Farmers Mut. Ins. Ass'n*, 300 Minn. 414, 419, 220 N.W.2d 503, 506 (1974) (finding no unjust surprise when a party had not previously decided to call undisclosed witness); *Phelps v. Blomberg Roseville Clinic*, 253 N.W.2d 390, 393 (Minn. 1977) ("[There is a] continuing obligation of a party who has responded to a request for discovery to keep his opponent apprised of any changes in circumstances which make it necessary to call witnesses or to introduce evidence not previously disclosed."). Delgado does not claim that Dr. Cox should have produced the videotape in response to his discovery requests, and even if he had made appropriate discovery requests, he cannot show prejudice in support of a new trial. "[F]ailure to suppress [new evidence] is not an abuse of discretion where the opposing party does not seek a continuance and fails to show prejudice from having had only brief notice of the appearance." *Phelps*, 253 N.W.2d at 394. Delgado did not request a continuance, and he does not argue that he was prejudiced by the lack of pre-trial disclosure. To the contrary, Delgado's counsel admitted that the videotape was *not* prejudicial: "I see absolutely nothing in [the unedited tapes] that constitutes impeachment. There is nothing I saw in them that is any different

than the plaintiff's testimony." Delgado's counsel also stated, "[n]ow that I have seen them, it's hard for me to see what conceivable impeachment value they have. . . . [I]t's exactly to what the plaintiff testified." Because Delgado did not move for a continuance, because he acknowledged that the videotape was not prejudicial, and because he opened the door to the videotape's admittance, it was not an abuse of discretion for the district court to admit the videotape into evidence.

Delgado's Employment Records

Delgado challenges the district court's admission of his employment records, arguing that they were irrelevant and distracting to the jury. Although Delgado now argues that he was not seeking to recover for lost wages, he told the district court that he was seeking to recover for lost earnings over five years from the time of surgery. The district court did not abuse its discretion by admitting these relevant records.

Bias and Partiality

Delgado's most serious charge of error is that the district court failed to be impartial and acted with such bias that he ought to be granted a new trial. The record reveals the tension between Delgado's counsel and the district court that gives rise to the allegations, and we will consider each concern. We note that Delgado offers the instances of alleged bias without challenging the substance of the district court's decisions, except as previously discussed. We review the totality of circumstances regarding the claim of judicial bias.

The supreme court has cautioned that "the extraordinary prestige of the trial judge . . . creates in turn an extraordinary obligation to refrain from any act [that suggests] a

predisposition on the part of the court toward one side or the other in connection with the legal controversy.” *Hansen v. St. Paul City Ry.*, 231 Minn. 354, 361, 43 N.W.2d 260, 265 (1950). To this end, judges should act in a manner that “assure[s] that parties have no reason to think their case is not being fairly judged.” *Pederson v. State*, 649 N.W.2d 161, 164–65 (Minn. 2002). We consider Delgado’s claims under these principles.

Refusal to Show Jury Instruction

Delgado’s first and most persuasive allegation of bias stems from a jury instruction given in response to a juror question during voir dire. Dr. Cox wore a back brace. A juror asked about the brace. The district court had an off-the-record discussion with Dr. Cox’s and Delgado’s lawyers and then excused the jury. Dr. Cox’s lawyer asserted that Dr. Cox wears a back brace for the side effects of treatment she was receiving for her medical condition—the same condition that arose seven months after her operation on Delgado. Dr. Cox offered a proposed jury instruction that stated that she wore the brace for a chronic medical condition that was unrelated to the issues in the lawsuit. Delgado’s lawyer stated that he did not object to the court saying that Dr. Cox has a medical condition, but he would object if the district court implied that Dr. Cox’s medical condition was irrelevant to her operation on Delgado. Delgado’s counsel maintained that Dr. Cox’s medical condition related to her negligence in operating on Delgado. He requested a short recess to write a proposed jury instruction regarding Dr. Cox’s brace and medical condition.

After the recess, Delgado’s counsel stated “[T]here has been no medical information provided by [Dr. Cox] to justify a ruling by the Court as to whether

[Dr. Cox] is or is not affected medically, and it would essentially be a judicial notice of the fact that there's no basis for judicial notice." The following exchange occurred between the district court and Mr. Cooper, Delgado's attorney, after Mr. Cooper asked how the court would advise the jury:

THE COURT: You don't know my ruling.

MR. COOPER: I know. That's why I asked what it was.

THE COURT: Well, you'll find out in a moment.

MR. COOPER: Ok.

(The jury is present)

...

THE COURT: In response to the question [about the brace] counsel and the Court have conferred, and this is the information. . . . Defendant Christine Cox has a chronic medical condition that developed almost one year after the surgery that is the subject of this lawsuit. [Her] medical condition is not at issue in this lawsuit. As a result of her medical condition, she wears a brace. . . .

MR. COOPER: For the record, Your Honor, I'd like to object to that instruction.

THE COURT: That's fine. You may do that.

MR. COOPER: Thank you.

THE COURT: Although, it comports with all facts in this case.

MR. COOPER: I'd object to that comment as well, Your Honor.

THE COURT: Okay.

Delgado highlights and challenges this exchange for several reasons: (1) he notes that the district court said that Dr. Cox's condition arose one year after Delgado's surgery, when, according to Delgado, the condition actually arose seven months after the surgery; (2) the instruction assumes judicial notice of the contested fact that Dr. Cox's condition had nothing to do with Delgado's surgery; (3) the court stated as a fact that the brace was medically necessary and arose from a medical condition; (4) Delgado was still a patient of Dr. Cox when her medical condition arose; (5) by saying "counsel and the Court have conferred" the district court wrongly implied that Delgado had discussed the

instruction with the court or knew its contents and then rebuked Delgado's counsel in the jury's presence based on that false premise.

District courts must show proposed instructions to counsel before giving them to the jury. *See* Minn. R. Civ. P. 51.02(a). Although the district court's statement that "counsel and the Court have conferred," is factually accurate, the jury could reasonably have understood this to mean that they conferred *and agreed*, which is not accurate. Compounding that implied inaccuracy, the district court's open correction of counsel indicating that the ruling "comports with all facts" implies further that counsel had unreasonably objected after just conferring and agreeing to the fact as stated in the instruction. The district court should have shared its ruling with counsel, as required by Minn. R. Civ. P. 51.02(a). And the court should have avoided commenting on the quality of trial counsel's objection so as to suggest unreasonableness while ruling on it. But even considered in context with the occasional disagreements between the court and counsel, we conclude that the comment does not reflect bias against Delgado, although it may reflect exasperation with counsel.

Delgado's other examples are less significant. Delgado is correct that the district court said "almost one year" when it would have been more accurate to say "seven months," but it is unclear how any prejudice would result from this imprecision; in either case, Dr. Cox's condition arose after the events that led to Delgado's claims. Because the district court had already ruled that Delgado would not be allowed to argue that Dr. Cox's later medical condition affected Delgado's surgery, it was not an abuse of discretion for the district court's instruction to reflect that ruling. Delgado's argument that the district

court should not have noted that the brace was necessary and arose from a medical condition is without weight because Delgado's attorney had previously told the district court, "I have no problem with the Court saying something along the lines [of] she has a condition that requires a back brace." And we are not persuaded that the instruction was otherwise improper. None of Delgado's claims relate to Dr. Cox's treatment after Delgado's surgery and so her post-surgical treatment of Delgado was not an issue. Although the instruction was based on imprecise facts, it does not prove bias.

Criticism Heard by Jury

Delgado also cites as evidence of alleged bias an exchange in which the court called his attorney to the bench after his questioning of a potential juror during voir dire. Delgado claims that the jury pool overheard the court's chastisement. The juror was a transcriptionist who had transcribed some notes for physicians at Abbott Northwestern Hospital, which is the hospital where Delgado's surgery occurred. The juror recognized the name of one of the witnesses, a neurologist. Delgado's counsel asked the juror if she could be objective and how it would affect her judgment to hear testimony from other physicians "from Abbott," implying that the neurologist practiced at Abbott. The juror stated that she would prefer not to be on a case that involved Abbott. The court excused the juror, and then called Delgado's attorney to the bench. According to the transcript, "[t]he following took place at the bench outside the hearing of the jury":

THE COURT: Mr. Cooper, I will not let you mislead this jury. [The neurologist] is located in Cambridge. She's not associated with Abbott Northwestern.

MR. COOPER: [S]he's been associated with a number of hospitals and she's associated with Abbott. She lives in Cambridge.

THE COURT: You said she worked at a number of facilities, including Allina, but she is based in Cambridge, Minnesota. I will not allow you to continue to mislead the jury. You're not going to say somebody is affiliated with Abbott when they're from a different location.

MR. COOPER: I said she works there.

THE COURT: That was not fair and let's go on to the next juror.

(End of bench conference.)

The district court seems to have inferred that because the neurosurgeon lived in Cambridge, she was not associated with Abbott. But according to the neurologist's deposition, although she lives in Cambridge, she works at Abbott and the Cambridge Medical Center. The district court's conclusion that Delgado's counsel was misleading the jury by indicating that the neurologist worked at Abbott was incorrect.

Delgado maintains that the rebuke was within the hearing of the jury. But all other indications belie the contention. The district court repeatedly stated that the microphones were off and that the jury did not hear the exchange. The transcript indicates that the bench conference occurred "outside the hearing of the jury." And Dr. Cox's lawyer stated that she had difficulty hearing the discussion, and she was closer to it than the jury. We will rely on the trial record, which indicates that the jury was not privy to the exchange. Additionally, the district court's apparent mistaken understanding rather than apparent bias seems to have been the basis for the court's comments.

Disparate Juror Treatment

Delgado also argues that the district court's disparate treatment in excusing potential jurors shows its bias. Specifically, he argues that the district court excused a juror sua sponte when that juror showed an antiphysician bias, but that the court only reluctantly excused jurors with a prophysician bias. Delgado contends that Dr. Cox was

given greater latitude to rehabilitate jurors with a prodefense bias. Both the anti-physician and the pro-physician jurors were ultimately excused.

Early in voir dire, a potential juror admitted to having “a bias against medical doctors” and stated that she avoids seeking medical care because of a negative experience with a physician. The district court excused her from the case immediately.

But when a juror with a potentially pro-physician perspective was asked if it might be better for her to serve on a different case, she answered “Maybe.” She also indicated that she “might believe [doctors] more.” When Delgado’s attorney asked that the juror be excused, Dr. Cox’s attorney requested a chance to rehabilitate, which the district court allowed. During rehabilitation, the juror indicated that she recognized names of witnesses. Dr. Cox’s attorney objected to striking the juror, and the court did not immediately remove her. The juror admitted that she recognized the name of a neurologist who worked at Abbott, and she stated that she felt she ought to be excused. Still, the court did not remove her. The court asked her if she could be impartial, and the juror expressed her belief that she would be better off on a case that did not involve Abbott. The court then excused her.

The district court did treat these two potential jurors differently, and it gave Delgado and Dr. Cox differing opportunities to rehabilitate. But the different treatment may be understood as motivated by something other than bias. These two jurors gave different expressions of their degree of objectivity. The first juror stated, “I think I do have a bias against medical doctors.” The second juror qualified her objectivity, couching her answers in terms of “maybe” and “might.” The district court explained that

it had not dismissed the first juror sua sponte. Rather, the court stated that Dr. Cox's attorney had gestured to the court, which it interpreted as a request to excuse the juror. The juror had stated she could not be fair, and the district court noted that Delgado did not object to the removal, never requested a bench conference, and never indicated to the court that Delgado thought that the juror could be rehabilitated. We have no basis to conclude that the district court was motivated by bias, and we observe that no prejudice resulted because both jurors were excused.

Refusal to Correct Erroneous Statement of Counsel

Delgado also cites the district court's failure to correct an inaccurate statement to potential jurors made during voir dire by Dr. Cox's lawyer asserting that Dr. Cox "does all sorts of different surgeries." But Delgado did not object to that statement. And because the issue in the case was whether Dr. Cox was negligent in operating on Delgado, her current practice would have no apparent bearing on the jury's factual considerations. The district court showed no apparent bias on this point and the challenged failure to correct the inaccuracy resulted in no prejudice.

Granting Dr. Cox's Motions While Denying Delgado's Motions

Delgado also argues that the district court's granting of all three of Cox's motions in limine, while denying Delgado's motion, shows bias. We have reviewed the substance of these evidentiary decisions, above, and determined that they were made within the district court's discretion. The decisions do not establish bias.

Sua Sponte Objections

Delgado contends that the district court repeatedly interrupted his attorney during his examination of Dr. Cox, showing bias. The record indicates that the district court interrupted Delgado's attorney repeatedly for asking questions he had already asked, reading records aloud instead of asking questions, and assuming facts to which that his expert did not testify. Delgado does not challenge the substance of these district court objections; he argues that they show that the court assumed the role of an advocate by making them.

But a district court is obligated to keep a trial moving forward. *Cf. Minneapolis Star & Tribune Co. v. Kammeyer*, 341 N.W.2d 550, 559 (Minn. 1983) (“[A] trial court must have control of its courtroom.”). A court's own objections and admonishments do not necessarily require a new trial. *See Gum v. Medcalf Orthopaedic Appliance Co.*, 380 N.W.2d 916, 920 (Minn. App. 1986) (finding that trial judge's repeated sua sponte objections did not constitute prejudicial error). We cannot say the district court acted with bias in preventing Delgado from reading records aloud instead of asking questions or asking questions that were cumulative or that assumed facts to which Delgado's expert did not testify.

General Hostility

Delgado argues that the district court's refusal to have chambers conferences once trial began shows the court's hostility. But the district court explained its practice that “once a trial begins, the Court never goes off the record ever and will never invite you folks back into chambers.” Delgado does not suggest that the district court applied its

trial-management policy to the parties differently. The district court did not act with bias by adhering to its trial policy.

Inviting Objection to Closing Argument

Delgado also argues that the district court showed its bias when it stated for the record that Delgado's closing argument had implied that Dr. Cox should have shown the jury a website that she used to impeach Delgado's expert. After the jury recessed, the district court reminded Delgado that Dr. Cox was not required to show the jury impeachment evidence. The court invited Dr. Cox's attorney to address that comment. Delgado characterizes this exchange as judicial interference that prevented a fair trial.

We conclude that it was not improper for the district court to remind Delgado, with the jury absent, that Dr. Cox was not required to show the jury the impeachment evidence. We do not see the court's involvement here as an indication of bias.

Evidence of Impartiality

The record gives some insight for the district court's procedural vigilance. In one instance, Delgado's attorney attempted to introduce a set of summaries of medical bills that was generated after the close of evidence. In another, Delgado's counsel asked his expert witness if the standard of care was to "take accurate and complete medical records" even after that theory of liability had been dismissed before trial.

We also observe that the record shows instances when the district court acted in Delgado's favor. The court offered Delgado's attorney several chances to object to a question or an offer of evidence by Dr. Cox. At other times, the court overruled

Dr. Cox's evidentiary objections. The record does not show that the district court uniformly or unfairly favored either side in its discretionary rulings.

It cannot be overlooked that the record shows occasional tension between the district court and Delgado's attorney, at times in the jury's presence. And we do not suggest that Delgado's concerns are facially without merit. But disagreements between court and counsel, even heated disagreements, do not necessarily imply wrongful judicial bias. District courts are no strangers to occasional frustration and impatience with counsel, and judges carry the extra burden to remain patient, dignified, and courteous. And a district court has broad discretion to control its courtroom. *See Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995). Delgado was "entitled to a fair trial, not a perfect trial," *Gum*, 380 N.W.2d at 920, and, despite occasional tension between his counsel and the court, he has not shown that his trial was unfair.

III

Delgado argues also that the district court abused its discretion in awarding costs to Dr. Cox. The district court may award costs to a prevailing party. Minn. Stat. § 549.04, subd. 1 (2006). The district court did so. We review an award of costs under section 549.04 for an abuse of discretion. *Romain v. Pebble Creek Partners*, 310 N.W.2d 118, 123 (Minn. 1981). Delgado argues that the award amount is excessive and causes a hardship. But hardship is not the standard by which we review an award of costs. *Id.* And Delgado cites to no authority that counsels us to conclude that a district court abuses its discretion by awarding statutory costs. *See Schoepke v. Alexander Smith & Sons*

Carpet Co., 290 Minn. 518, 519–20, 187 N.W.2d 133, 135 (1971) (noting that a claim of error based on “mere assertion” and not supported by argument or authority is waived unless error is obvious). The district court considered Dr. Cox’s request for \$33,037.13 in costs. The district court reviewed the bases for the request and awarded only \$12,534.02. We have no reason to hold that the district court abused its discretion by awarding these costs under section 549.04.

Affirmed.