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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1423**

Ronald Jones, et al.,
Appellants,

vs.

Michael Allard,
Respondent,

Blazin Wild Wings, Inc.,
d/b/a Buffalo Wild Wings Grill & Bar,
Respondent.

**Filed May 18, 2010
Affirmed
Crippen, Judge*
Concurring specially, Klaphake, Judge**

Anoka County District Court
File No. 02-C9-05-004633

Wilbur W. Fluegel, Fluegel Law Office, Minneapolis, Minnesota (for appellants)

Paul J. Rocheford, Arthur Chapman Kettering, Minneapolis, Minnesota (for respondent Michael Allard)

Matthew D. Sloneker, William L. Davidson, Lind, Jensen, Sullivan & Peterson, Minneapolis, Minnesota (for respondent Blazin Wild Wings, Inc.)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge;
and Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellants Ronald and Rosa Jones dispute the district court's exercise of discretion in placing limits on closing arguments of the parties. Because the court's decision falls within the breadth of its discretion, and because there is no merit in appellant's dispute with admission of expert testimony, we affirm.

FACTS

Appellants brought suit against respondents Michael Allard and Blazin Wild Wings, Inc., d/b/a/ Buffalo Wild Wings Grill & Bar (BWW) for personal injuries sustained by Ronald Jones. On April 24, 2004, while driving under the influence of alcohol, respondent Allard caused serious injuries to Jones. Although Allard consumed at least fifteen drink equivalents while patronizing BWW from approximately 10:00 p.m. on April 23, 2004 until 1:00 a.m. on April 24, 2004, the collision causing Jones' injuries occurred at approximately 10:00 a.m. on April 24, 2004, more than nine hours from the time of Allard's last drink at BWW. After leaving BWW, Allard went to an after-party, at which he consumed "an indeterminate amount of additional alcohol"

Appellants pursued a negligent driving claim against Allard and a dram shop claim against BWW. Before the start of the trial, Allard entered a guilty plea to criminal vehicular injury and admitted that his grossly negligent and reckless driving conduct was a direct cause of the accident and injuries. The only liability issues for the jury to decide were the dram shop claim against BWW and, if such liability was found, the apportionment of fault between BWW and Allard, and the amount of damages.

The trial of this case was one of several matters assigned to a civil trial calendar during the week of September 15, 2008; during the three years the case was pending, none of the parties requested that it be assigned particularly for the calendar of a designated judge. A few weeks before the trial was scheduled, the district court received its first notice from one of the parties that the trial would last longer than one week. The district court immediately convened a conference call, during which all counsel agreed that the trial would likely go beyond two weeks; at most, two-and-one-half weeks.

At this stage, counsel requested that the trial be assigned to a particular judge. On the understanding, without objection of counsel, for a trial of up to three weeks, that judge confirmed that she made the necessary arrangements to open up her schedule, and agreed to have the case assigned to her. Before trial began, counsel again assured the district court that the trial would culminate, at the latest, on Wednesday, October 1, 2008. As a result, the jury was told that the trial would conclude on either Wednesday, October 1 or Thursday, October 2, and that deliberation could go into Friday, October 3, so that jury members could make arrangements in their schedules accordingly.

The trial lasted 14 days, starting September 15, 2008, and as the third week of trial began, it became clear that the trial would not be finished by October 1. Still, the parties agreed that it would be well within their means to finish on October 2.

The district court judge determined at the start of proceedings on Thursday, October 2, 2008, that trial would conclude at 6:15 p.m. that day. Dr. Richard Kingston, BWW's expert toxicologist, was called to testify on that last day of trial. After Dr. Kingston's testimony, the district court noted that the parties, throughout trial and in

particular with Dr. Kingston, had exceeded their initial representations as to the length of examinations and cross-examinations. The district court then determined that 20-25 minutes was sufficient for each party's closing argument. Although appellants' counsel objected to the time limitations placed on closing arguments, counsel finished his closing argument in 22 minutes, concluding at 6:12 p.m. without any prompting from the district court. The jury deliberated on Friday, October 3, 2008. The jury awarded over \$8,000,000 in damages to appellants, found that BWW illegally sold alcohol to Allard, but found that BWW's sale of alcohol to Allard was not a direct cause of the accident. The jury apportioned all fault to Allard.

Appellants moved for a new trial, arguing that the district court erred by limiting the parties' closing arguments and by permitting the expert testimony of Dr. Kingston. The motion was denied, and this appeal followed.

D E C I S I O N

The appellate courts are not to set aside a jury verdict on appeal from a district court's denial of a motion for a new trial unless the verdict "is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Navarre v. S. Wash. County Schs.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted). The district court has discretion to grant a new trial, so this court will not disturb a decision absent a clear abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

1.

A district court has broad discretion in trial management decisions. *Lundman v. McKown*, 530 N.W.2d 807, 829 (Minn. App. 1995), *review denied* (Minn. May 31, 1995). Even when a court commits errors in its evidentiary rulings or other decisions concerning trial management, the party seeking a new trial must demonstrate prejudice. *Id.* In managing crowded dockets, district court judges not only may but must exercise their discretion to strictly control the length of trials. *Johnson v. Ashby*, 808 F.2d 676, 678 (8th Cir. 1987) (quoting *Flaminio v. Honda Motor Co., Ltd.*, 733 F.2d 463, 473 (7th Cir. 1984)).

Appellants argue that the district court erred in limiting their closing argument to 20-25 minutes. Limiting closing arguments is a trial management decision specifically within the sound discretion of the district court. *State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992) (holding limitation of three hours not an abuse of discretion); *see also United States v. Alaniz*, 148 F.3d 929, 935 (8th Cir. 1998) (holding limitation of 16 minutes not an abuse of discretion); *United States v. Bednar*, 728 F.2d 1043, 1049 (8th Cir. 1984) (limitation of 20 minutes not an abuse of discretion). An abuse of discretion occurs if a party is unable to fully and fairly present their case. *Bednar*, 728 F.2d at 1049.

In reviewing this matter, we are assisted by the thorough memorandum accompanying the district court's order denying appellants' motion for a new trial. The district court discussed the progression of the trial, from its original assignment to a one-week civil trial calendar, to the parties' agreement that the trial would last two weeks, then, at most, two-and-a-half weeks, until finally, for the sake of judicial necessity and

time management, the district court imposed a 6:15 p.m. end time on October 2, 2008, which was the final, agreed-upon end date for the trial.

The district court also reached the conclusion that a 22-minute closing argument did not cause appellants to suffer prejudice for several reasons that are supported by the record. First of all, appellants agreed to the time frame for the trial well in advance; and the district court specifically determined that appellants had failed to skillfully manage their use of time, “repeatedly” and “throughout trial.” The final day of trial, which was to be October 2 as agreed upon by the parties, was a focus of time management throughout the trial. Secondly, as the district court observed, there were only two dominant issues for the jury to decide in this relatively straightforward tort action: BWW’s liability and damages.

The record indicates that the district court adequately reviewed the admitted testimony and evidence, the parties’ opening statements, and the jury instructions to reach the conclusion that the 20-25 minute limit on arguments was necessary and sufficient.

Lastly, and most evident in the district court’s rationale for denying appellants’ motion for a new trial, is the singular observation, which by itself compels upholding the district court’s exercise of discretion: Appellants failed to identify for the district court any matter that would have been argued but was omitted from their closing argument because of time constraints. Appellants have failed to show that they were prejudiced by the time limitations on closing arguments. Although appellants, on appeal, indicate what they would have addressed in their closing argument had they had more time, they never presented this information to the district court at trial or in their motion for a new trial.

The district court did not abuse its discretion in limiting the time allotted for closing arguments.

2.

Appellants also argue on appeal that Dr. Kingston's expert testimony lacked the requisite foundation because Dr. Kingston testified both (1) that it was impossible to accurately calculate Allard's blood-alcohol concentration because of the passage of time and the fact he had consumed chicken wings, and (2) that "to a degree of medical certainty, [he did not] have any doubt" that "the alcohol Mr. Allard consumed at BWW was eliminated from his system" by the time of the crash.

Deciding whether to exclude expert-witness testimony is an evidentiary ruling that we will not reverse unless the district court based its ruling on an erroneous view of the law or abused its discretion. *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760 (Minn. 1998). The district court abuses its discretion if its decision is "against logic and the facts on record." *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). Erroneous rulings do not constitute error unless prejudice is shown; an evidentiary error is prejudicial if it "might reasonably have changed the result of the trial." *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 51 (Minn. App. 1998).

An expert's opinion must be based upon facts "sufficient to form an adequate foundation for an opinion." *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 155 (Minn. 1982). An expert opinion has sufficient foundation if it is based on readily ascertainable facts. *Whitney v. Buttrick*, 376 N.W.2d 274, 277 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986). "[A]n opinion based on speculation and conjecture has no

evidentiary value.” *Id.* The district court is “given wide latitude in determining whether there is sufficient foundation upon which an expert may state an opinion.” *Benson v. N. Gopher Enters., Inc.*, 455 N.W.2d 444, 446 (Minn. 1990).

The purpose of expert testimony is to assist the fact-finder in appropriately assessing the facts in evidence in order to reach a correct conclusion. *Albert Lea Ice & Fuel Co. v. U.S. Fire Ins. Co.*, 239 Minn. 198, 202, 58 N.W.2d 614, 617 (1953). “When conflicting opinions of expert witnesses have a reasonable basis in fact, the trier of fact must decide who is right.” *Thomas v. Thomas*, 407 N.W.2d 124, 126 (Minn. App. 1987). The opinions of expert witnesses are only advisory; the jury may draw its own conclusions by weighing the expert testimony “in the light of all the facts and opinions presented to it.” *Hous. & Redevelopment Auth. v. First Ave. Realty Co.*, 270 Minn. 297, 306, 133 N.W.2d 645, 652 (1965).

Dr. Kingston testified on the ultimate question before the experts, which was the effect of the food Allard ate at BWW on the alcohol he consumed and the rate at which it may or may not have exited his bloodstream. Appellants argue that Dr. Kingston’s ability to assess this ultimate question is undermined by his testimony that Allard’s blood-alcohol concentration at the time of the accident could not be accurately measured. But Dr. Kingston’s statements do not necessarily contradict each other, as appellants suggest. These statements were part of a larger discussion in Dr. Kingston’s testimony that a determination of blood-alcohol concentration depends upon the circumstances and is thus case-specific. Dr. Kingston also testified thoroughly to the manner in which he determined his calculations and conclusions. In addition, the record makes it clear, and

the parties do not dispute, that Dr. Kingston had the requisite background, knowledge, and experience to be considered an expert in these matters. The record demonstrates an adequate foundation for admitting the testimony of Dr. Kingston. Furthermore, discrepancies in Dr. Kingston's testimony, if any, would affect his credibility, not the admission of his expert testimony. The credibility of an expert witness is for the jury to determine. *Rainforest Cafe, Inc. v. State of Wis. Inv. Bd.*, 677 N.W.2d 443, 451 (Minn. App. 2004). The district court did not err in admitting Dr. Kingston's testimony.

Even if the record suggested questionable exercise of district court discretion either in placing time limits on closing arguments or admitting Dr. Kingston's testimony, the error was harmless on the record before us. The jury's factual findings show that respondent Allard left BWW nine hours before the accident, and that fact alone lends substantial support to the jury's verdict that BWW was not the cause of the accident. Moreover, during the nine hours after Allard left BWW he consumed at least one or two drinks, possibly more, at an after-party. The district court did not err in denying appellants' motion for a new trial.

Affirmed.

KLAPHAKE, Judge (concurring specially)

In this 15-day tort trial, the jury heard testimony from 36 witnesses, including 8 expert witnesses, in a case that addressed complex scientific issues pertaining to the physiological effects of alcohol consumption and burn-off. On the beginning of the last day of trial, the district court informed the attorneys that it would adjourn for the day at exactly 6:15 p.m., but also assured plaintiff's counsel during a midday break that he would have at least 50 minutes for closing argument. The court then rigidly adhered to its planned adjournment time, even though the court miscalculated the time available for each party's argument and respondents ran over their allotted argument time and into the time allotted for appellants' closing argument. As a result, appellants received 22 minutes for closing argument, and respondents received 38 minutes for closing argument.

While the district court has discretion to govern and manage its calendar, including limiting closing argument, that discretion is not unfettered. In *United States v. Bednar*, 728 F.2d 1043, 1049 (8th Cir. 1984), the Eighth Circuit approved a federal district court's decision to limit closing arguments to 20 minutes as a proper exercise of the district court's discretion when the defendant "did not show he was unable to fully and fairly present his case." That case involved a six-day trial to prove whether the defendant made false material declarations before a grand jury and false entries on the books and records of a company. *Id.* at 1045. This state's supreme court followed *Bednar* in *State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992), which held that a two-hour closing argument time limit in a first-degree murder case was not an abuse of discretion. Here, the trial was much longer, involved more complicated legal issues

than the trials in either *Bednar* or *Richards*, and the time granted to respondents for closing argument was significantly longer than the time granted to appellants, even though appellants bore the burdens of production and proof. While the court referenced a juror's need to leave at 6:20 p.m., the rigid 6:15 p.m. adjournment deadline gave appellants' counsel half of the 50 minutes he had been promised earlier in the day for closing argument and did not allow counsel to even briefly summarize the testimony of each of the 36 trial witnesses, much less weave their testimony into a compelling argument favoring appellants' theory of the case. When it was obvious that there was insufficient time to conduct closing arguments, the district court could have, and should have, recessed for the day and held closing arguments the following day, followed by jury deliberations. The district court's method of time management had the effect of depriving appellants of their fundamental right to a fair trial and calling into question the integrity of the whole proceeding. In other jurisdictions, this type of limitation has been held to constitute an abuse of the district court's discretion. *See, e.g., Stockton v. State*, 544 So.2d 1006, 1009 (Fla. 1989) (reversing when district court allowed 30-minute closing argument after trial involving 15 witnesses); *State v. Clair*, 3 Utah 2d 230, 243, 282 P.2d 323, 332 (1955) (reversing, in part, because district court's allotment of only 40 minutes for closing argument would not permit defense counsel enough time to address facts, theories of law, or conclusions to be drawn from them); *Kelty v. Fisher*, 105 Or. 696, 696-97, 210 P. 623, 623 (1922) (summarily reversing when district court limited plaintiff's counsel to half as long for closing argument as defense counsel); *State v. Kay*, 12 Ohio App.2d 38, 51-52, 230 N.E.2d 652, 662 (1967) (reversing for abuse of judicial

discretion because of “the arbitrary limitation of defendant’s closing argument to forty-five minutes”).

In appellants’ motion for a new trial, however, they did not identify how they were prejudiced by the foreshortened closing argument. The record suggests that appellants spent most of their allotted 22 minutes on the issue of damages and had little time to address the issue of liability, which ultimately was not decided in their favor. But because appellants have not met their burden of showing that the district court’s error in limiting closing argument would have changed the trial outcome, we cannot conclude that appellants suffered prejudice. *See Qualley v. Clo-Tex Int’l, Inc.*, 212 F.3d 1123, 1128 (8th Cir. 2000). For this reason, I concur in the result but write separately to caution the district courts to fairly apply their discretion in allotting time for closing argument to ensure the parties’ rights to a fair trial and to uphold the integrity of the proceedings.