STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1910

Matthew Koob,
Appellant,

vs.

Abdulahi Assair Salad,
Respondent.

Filed September 15, 2009
Affirmed
Lansing, Judge

Stearns County District Court
File No. 73-C9-06-006045

Stephen D. Gabrielson, Stephen D. Gabrielson, Ltd., Suite 200, 18 Riverside Avenue South, Sartell, MN 56377 (for appellant)

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Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

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

LANSING, Judge

This appeal from judgment and posttrial motions following a jury trial in a personal-injury action presents an issue on the district court's latitude in reconciling the

jury's answers in a special verdict and two evidentiary issues relating to impeachment. Because the district court properly reconciled the special-verdict answers and acted within its discretion in admitting impeachment evidence, we affirm.

F A C T S

Matthew Koob and Abdulahi Salad were both driving on Division Street in St. Cloud in stop-and-go traffic after a Friday night parade in July 2004. When Koob stopped his car at the intersection of Division and 31st Street, Salad's car hit it from behind. Koob sued Salad for injuries sustained in the accident.

During the course of the jury trial, Koob and his chiropractor both testified about injuries that Koob had previously sustained in an April 2003 accident in which Koob was a passenger in a car that was hit from behind. The district court, over objection, allowed Salad's attorney to impeach Koob with the contents of a demand letter that his attorney sent to the defendant in the 2003 accident. The district court also allowed Salad's attorney, again over objection, to impeach Koob's chiropractor with statements from a letter that the chiropractor submitted in an arbitration proceeding related to the 2003 accident.

In answers to special-verdict questions, the jury found that Koob was not negligent in the operation of his vehicle. The jury found that Salad was negligent but that his negligence was not a direct cause of the accident. Notwithstanding that answer, the jury's response to a later question attributed one-hundred percent of the "direct cause of the accident" to Salad. The jury also found that Koob did not sustain a permanent injury

and that no sum of money was required to compensate him for future damages. The jury assessed Koob's damages as totaling $14,900 up to the date of trial.

The district court, in its findings of fact, conclusions of law, and order for judgment, determined that the jury was inconsistent in finding that Salad was not a direct cause of the accident and that "Salad's negligence comprised [one-hundred percent] of the fault that contributed as a direct cause of the accident." Reasoning that the jury's finding Salad negligent and Koob not negligent reflected the jury's rejection of Salad's theory that Koob's sudden stop made the collision unavoidable, the district court reconciled the inconsistent answers on Salad's causal negligence. The district court "amend[ed] the jury's answers so that it consistently reflects that . . . Salad's negligence was a direct cause of the . . . accident."

Salad and Koob both filed posttrial motions. Koob moved for judgment as a matter of law on the issue of damages and tort thresholds and for a new trial on evidentiary issues. Salad moved, primarily, to "reinstate" the jury's verdict finding that he was not a direct cause of the accident. The district court denied both sets of motions. Koob now appeals the district court's evidentiary rulings on impeachment, and Salad, by notice of review, challenges the district court's findings reconciling the special-verdict questions.

D E C I S I O N

I

We address, first, Salad's challenge to the district court's reconciling the jury's inconsistent findings that Salad's negligence was not a direct cause of the accident and

that one-hundred percent of the "fault that contributed as a direct cause of the accident" was attributable to Salad.

A jury's answers to special-verdict questions are binding on the court. *Orwick v. Belshan*, 304 Minn. 338, 343, 231 N.W.2d 90, 94 (1975). But the district court retains authority to reconcile the jury's answers when the evidence, as a matter of law, requires the change. *Id.* (observing that district court may partially direct verdict to reconcile jury's special-verdict answers). When interpreting inconsistent answers, the test is whether they "can be reconciled in any reasonable manner consistent with the evidence and its fair inferences." *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 662 (Minn. 1999) (quoting *Reese v. Henke*, 277 Minn. 151, 155, 152 N.W.2d 63, 66 (1967)). When the district court resolves inconsistent findings by deciding a fact question as a matter of law, review is de novo. *See Haugen v. Int'l Transport, Inc.*, 379 N.W.2d 529, 531 (Minn. 1986). Otherwise, review is for abuse of discretion. *Id.*

The Minnesota Supreme Court has previously decided a case that presents the same issue of inconsistent responses to the jury's special-verdict questions on causal negligence and attribution of causal negligence. *See Orwick*, 304 Minn. at 343-44, 231 N.W.2d at 94-95 (reconciling, as matter of law, inconsistent answers on causal negligence and attribution of causal negligence). In *Orwick* the supreme court held that when the jury's inconsistent answers find that a party's negligence is not causal but attribute a portion of the total causal negligence to that party and the evidence establishes causal negligence, the district court must set aside the jury's answer that the "negligence was not causal and insert an affirmative answer." *Id.* at 344, 231 N.W.2d at 94-95.

The same reasoning applies to the facts of this case. The jury found Salad negligent, found his negligence was not a direct cause, but apportioned to him one-hundred percent of the "fault that contributed as a direct cause" to the accident. And, as the district court concluded, the jury's finding Salad negligent establishes that the jurors rejected his defense that Koob's sudden stop made the collision unavoidable. Thus the direct causal connection between Salad's negligence and the ensuing collision is logically inescapable. Neither Koob nor Salad advanced an intervening or alternative cause and the special-verdict form, which was approved by both parties, provided for division of contributing fault only between the two parties.

We conclude that the district court's order is a reasonable reconciliation of the jury's answers. The reconciled responses give effect to the intention of the jury and logically harmonize its answers to the questions. *Reese*, 277 Minn. at 155, 152 N.W.2d at 66.

We reject, for two reasons, Salad's argument that this court's opinion in *Strauss v. Waseca Vill. Bowl*, 378 N.W.2d 131 (Minn. App. 1985), would require a different result. First, the appeal in *Strauss* was taken from a district court order denying a *Schwartz* hearing and, alternatively, a new-trial motion based primarily on claims of jury misconduct. *See Schwartz v. Minneapolis Suburban Bus Co.*, 258 Minn. 325, 104 N.W.2d 301 (1960) (permitting examination of jurors when facts indicate jury misconduct). The *Strauss* analysis must be read in that context. *See Skelly Oil Co. v. Comm'r of Taxation*, 269 Minn. 351, 371, 131 N.W.2d 632, 645 (1964) (cautioning against applying holding that is directed "toward the solution of a different problem").

Second, *Strauss*'s reference to the district court's acceptance of the answers to the "simplest and most important" questions was directed at buttressing the principle that the "jury's allocation of negligence between parties . . . is [generally] determinative." 378 N.W.2d at 133. In the context of *Strauss*, the effect of the jury's allocation of negligence and its finding of no causal negligence resulted in the same outcome. *See Nadeau v. Melin*, 260 Minn. 369, 375, 110 N.W.2d 29, 34 (1964) (stating that "[a] decision must be construed in light of the issue before the court"). The result in *Strauss* is consistent with the district court's action in reconciling the jury's answers in this case.

II

The remaining issue involves two letters that pertain to Koob's injuries in the 2003 accident in which he was a passenger in a car struck from behind. In the current litigation on the 2004 accident, Koob and Salad disputed the degree of Koob's injury that was attributable to each accident. One letter, written by Koob's chiropractor, was used to impeach her testimony in the current trial. The other letter, written by Koob's lawyer, was used to impeach Koob's testimony. Koob contends that the district court erred in allowing the letters to be used for impeachment and the error requires a new trial. We review evidentiary rulings for abuse of discretion. *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977).

In the current trial, Koob's chiropractor testified that the injuries Koob sustained in the 2004 accident worsened his condition and required treatment. In November 2005 Koob's chiropractor submitted a summary of accident-related treatments to the arbitrator who was conducting a proceeding on the 2003 accident. The letter stated:

> All care rendered in this office was reasonable, necessary, and directly related for treatment of injuries sustained in the motor vehicle collision of April 6, 2003.

Because this letter was written after the 2004 accident and included treatments provided both before *and after* the 2004 accident, Salad contended that the statement appears to assign the 2003 accident as the cause of all treatment, including treatment that occurred *after* the 2004 accident.

On re-direct examination, Koob's attorney elicited from the chiropractor that the letter referred only to treatment before the 2004 accident. The attorney did so by establishing that treatments after the 2004 accident were not at issue in the arbitration on the 2003 accident because they had been paid by Koob's insurer.

Koob characterizes this as a hearsay issue. We disagree. Hearsay, which is generally inadmissible, is an out-of-court statement offered for the truth of what it asserts. *See* Minn. R. Evid 801(c) (defining hearsay). Two distinct categories of prior inconsistent statements by a witness are not subject to the hearsay bar. A prior inconsistent statement made under oath is considered reliable and can be admitted for its truth, even though it would otherwise be barred as hearsay. Minn. R. Evid. 801(d)(1)(A) (designating statement as one not treated as hearsay). And an unsworn, prior, inconsistent statement can be allowed for impeachment because it is not hearsay: it is not a statement being offered *for its truth*, but only as a means of evaluating the credibility of the witness. *See Olson v. Mork* (*In re Estate of Olson*), 227 Minn. 289, 301, 35 N.W.2d 439, 447 (1948) (stating that witness's prior statement about given fact "simply shows what she said, not what the fact was"). The district court admitted the chiropractor's

letter as impeachment evidence and instructed the jury according to the standard instruction on impeachment in 4 *Minnesota Practice*, CIVJIG 12.25 (2006).

Minn. R. Evid. 607 allows impeachment of any witness. It is well established that "a witness who has testified to material facts in a case may be impeached by showing that he has previously made statements relating to those facts which are contrary to his present testimony." *Carroll v. Pratt*, 247 Minn. 198, 203, 76 N.W.2d 693, 697 (1956); *see also Brace v. St. Paul City Ry.*, 87 Minn. 292, 293-94, 91 N.W. 1099, 1099 (1902) (affirming use of letter, as bearing on credibility, in which personal-injury plaintiff described injuries received in accident occurring before accident at issue). To use a prior inconsistent statement for impeachment, the party must provide a foundation indicating the statements are inconsistent. *Vance*, 254 N.W.2d 358. Impeachment of this type does not turn on showing a specific degree of inconsistency. *O'Neill v. Minneapolis St. Ry.*, 213 Minn. 514, 521, 7 N.W.2d 665, 669 (1942). "If there is any variance between [the prior statement and current testimony] the statement should be received and its effect [on] the credibility of the witness should be left to the jury." *Id.*

The text of the chiropractor's letter was inconsistent with her testimony and consequently was admissible as impeachment. On its face, the letter attributes "[a]ll care rendered in [her] office" to the 2003 accident. This implies, contrary to the chiropractor's testimony, that care provided after July 2004 was not attributable to Koob's July 2004 accident with Salad. The district court acted within its discretion by allowing Salad to impeach the chiropractor with the contents of her November 2005 letter.

Koob argues the letter was not inconsistent and claims to have conclusively proved that the letter does not mean what it appears to say. But a statement's admissibility for impeachment is not barred simply because the other party might be able to offer explanation or rebuttal. *Cf. Auger v. Rofshus*, 267 Minn. 87, 91, 125 N.W.2d 159, 162 (1963) (stating that opportunity to reconcile statements means that witness "is not necessarily impeached" by the prior statement). The chiropractor testified on re-direct examination that the letter only referred to treatments up to the date of the 2004 accident. It was proper to allow the jury to evaluate the conflicting explanations for the letter and to evaluate its impact, if any, on credibility. *O'Neill*, 213 Minn. at 521, 7 N.W.2d at 669.

Koob also argues that the letter was inadmissible because his rebuttal required discussing inadmissible information about collateral-source reimbursement that Koob received for care after the 2004 accident. *See* Minn. Stat. § 548.251, subd. 5 (2008) (barring evidence of collateral sources for damages). But Koob could have rehabilitated his chiropractor's testimony without discussing insurance payments to Koob for post-2004-accident treatment. He chose not to do so and introduced the collateral-source information himself. He cannot object to his own actions. *See Isler by Isler v. Burman*, 305 Minn. 288, 296, 232 N.W.2d 818, 822 (Minn. 1975) (dismissing argument about prejudicial testimony because party's witness had offered the testimony).

Finally, Koob asserts error in the district court's denial of his request to recall the chiropractor for additional testimony. The record shows that Koob's attorney had already conducted re-direct examination on the chiropractor's testimony, and the offer of proof

was directed only at testimony already provided on re-direct, namely, that the letter was not referring to treatment after the 2004 accident. We see no abuse of discretion in the district court's disallowing testimony that is duplicative. *See* Minn. R. Evid. 403 (permitting exclusion of needlessly cumulative evidence).

Koob's second challenge to the district court's impeachment rulings involves a demand letter written by Koob's attorney in the 2003-accident proceedings. Salad sought to impeach Koob with a part of the letter that said a "significant portion" of medical expenses after the 2004 accident "are and will continue to be attributable to the [2003] accident caused by your insured." The district court allowed the letter as impeachment.

The demand letter is admissible under Minn. R. Evid. 801(d)(2)(D). Rule 801(d)(2) governs admission of statements by a party opponent and, under clause D, a statement by a party is admissible if it was made "by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." One's relationship to his attorney is a primary example of a "principal-agent relationship." *Comm'r v. Banks*, 543 U.S. 426, 436, 125 S. Ct. 826, 832 (2005). Koob and his attorney admitted at trial that Koob's attorney wrote the demand letter while representing Koob in the arbitration relating to the 2003 accident, as part of his role in that arbitration. Because the letter is a statement by Koob's agent during and in the scope of the agency, it is therefore a statement by a party opponent admissible for its truth. An even broader use of the letter is permitted by rule 801, but the district court admitted the letter for the more limited purpose of impeachment. The ruling was well within the district court's discretion.

Koob argues that the demand letter was nonetheless inadmissible under Minn. R. Evid. 408 as a statement made while negotiating settlement of a claim. The demand letter constituted an offer to compromise the 2003 claim, and Koob therefore argues that it is inadmissible as proof in his 2004 claim against Salad.

Under rule 408, "a valuable consideration in compromising or attempting to compromise a claim" is not admissible "to prove liability for or invalidity of the claim or its amount." Minn. R. Evid. 408. The text of the rule provides no support for Koob's argument that compromises in one claim are inadmissible at trial on an unrelated claim. The text refers in a single sentence to settling "a claim" and proving elements "of the claim." *Id.* The references unambiguously relate to the same claim. As the Eighth Circuit explained in applying the identical federal rule, "[r]ule 408 excludes evidence of settlement offers only if such evidence is offered to prove liability for or invalidity of the claim under negotiation." *Vulcan Hart Corp. v. NLRB*, 718 F.2d 269, 277 (8th Cir. 1983). The claim under negotiation in the demand letter was the claim against the defendant in the 2003 accident, and the evidence was not offered to prove liability or invalidity of that claim. The demand letter was not inadmissible on rule 408 grounds.

Affirmed.