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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1194**

Mary Jane Whalen,
Appellant,

vs.

Rodel Joseph Eberle,
Respondent.

**Filed May 16, 2011
Affirmed
Peterson, Judge**

Fillmore County District Court
File No. 23-CV-07-953

David A. Joerg, Joerg & Benson Law Office, Preston, Minnesota; and

Peter C. Sandberg, Sandberg & Sandberg, LLC, Rochester, Minnesota (for appellant)

Owen L. Sorenson, Stringer & Rohleder, Ltd., St. Paul, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from the denial of a new-trial motion, appellant Mary Jane Whalen argues that she is entitled to a new trial because the district court abused its discretion by excluding evidence of her medical expenses. We affirm.

FACTS

After appellant was injured in a motor-vehicle accident, she received medical treatment from St. Mary's Hospital, Olmsted Medical Group, Quantum Physical Therapy, and Advanced Chiropractic. Appellant brought suit against respondent Rodel Joseph Eberle, alleging that the accident and her resulting injuries were caused by respondent's negligence. Respondent conceded liability before trial, and the issue of damages was tried to a jury in October 2009.

At trial, appellant presented the deposition testimony of her treating physician, Dr. Craig Thauwald, and of her physical therapist. Appellant also testified about her injuries and submitted her medical records into evidence. To establish past medical expenses, appellant requested that her medical bills be entered into evidence. Respondent objected on the ground that the medical bills lacked foundation. The district court sustained the objection. The court offered appellant an opportunity to call a witness to lay the proper foundation for the bills, but appellant called no further witnesses and rested.

Respondent presented the deposition testimony of Dr. Bruce Van Dyne, who performed an independent medical examination of appellant. Although Van Dyne testified that the ambulance service, the treatment received at St. Mary's Hospital, and some of the chiropractor's treatment were reasonable and necessary, appellant did not try again to offer the exhibit listing her medical bills.

The jury returned a special verdict in favor of appellant, awarding \$2,300 for past pain and disability. The jury found that appellant had not sustained a permanent injury

and did not award any future damages. Because the jury's verdict failed to satisfy any of the tort thresholds for recovery set forth in Minn. Stat. § 65B.51, subd. 3 (2010), the district court entered judgment in favor of respondent. The district court also awarded respondent costs and disbursements pursuant to Minn. Stat. § 549.04, subd. 1 (2010), because appellant rejected an offer of judgment before trial that was more favorable than the verdict ultimately obtained.

Appellant moved for a new trial, alleging errors regarding evidentiary rulings. The district court denied the motion. This appeal followed.

DECISION

A new trial may be granted for “[e]rrors of law occurring at the trial.” Minn. R. Civ. P. 59.01(f). “Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” *Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990). “An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial.” *George v. Estate of Becker*, 724 N.W.2d 1, 9 (Minn. 2006). Absent an abuse of discretion, the district court’s decision whether to grant a new trial will ordinarily be upheld on appeal. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

Appellant contends that the district court erred in excluding the exhibit listing her medical bills for lack of foundation. “Evidentiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the [district] court’s sound discretion and will only be reversed when that discretion has

been clearly abused.” *Johnson v. Wash. Cnty.*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted).

Appellant argues that Thauwald’s testimony provided foundation for the medical bills because he was her treating doctor and “[a] doctor doesn’t prescribe treatment for an illness or injury unless he considers the treatment to be necessary.” But Thauwald never testified that all of appellant’s medical bills offered at trial were necessary and reasonable medical expenses or that these medical bills were causally related to the accident. Thus, the district court did not abuse its discretion by excluding appellant’s medical bills. Accordingly, the district court did not abuse its discretion in denying appellant’s motion for a new trial.

Affirmed.