STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1331,
A17-1345

Justin D. Meyer,
Appellant (A17-1331),

Justin D. Meyer, et al.,
Appellants (A17-1345),

vs.

Fairview Health Services
d/b/a Fairview Lakes Regional Healthcare,
Respondent.

Filed May 21, 2018
Affirmed
Ross, Judge

Chisago County District Court
File No. 13-CV-15-51

Katherine S. Barrett Wiik, Teresa Fariss McClain, Lisa L. Beane, Robins Kaplan LLP, Minneapolis, Minnesota (for appellants)

William L. Davidson, Paul C. Peterson, João C.J.G. de Medeiros, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

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

ROSS, Judge

Hospital patient Justin Meyer sued Fairview Lakes Regional Healthcare for medical malpractice after he suffered a seizure and stroke while being treated for symptoms associated with pancreatitis, alcohol abuse, and high blood pressure. Meyer blamed the seizure on Fairview's alleged failure to properly monitor his blood pressure. The jury heard Fairview's defense that Meyer's chronic alcohol abuse, not its alleged negligence, caused the seizure and stroke, and it returned a verdict in Fairview's favor. On appeal, Meyer argues that Fairview's causation defense was improper, that the district court improperly allowed evidence that Meyer was told to stop drinking, and that Fairview's counsel committed misconduct. Because no authority supports Meyer's contention that a medical-malpractice defendant may not argue that the plaintiff's condition itself caused the claimed injury, and because Meyer incurred no prejudice from the allegedly improperly admitted evidence or the allegedly improper attorney conduct, we affirm.

FACTS

Justin Meyer, a 34-year-old man with a history of chronic alcohol abuse, went to Fairview Lakes Regional Medical Center's emergency room with abdominal pain in October 2012. A nine-day, hard-liquor binge had triggered a bout of recurrent pancreatitis. Fairview physician Jay Hemmila noticed that Meyer's blood pressure was high and started treating him with Propranolol. Dr. Hemmila kept Meyer on a liquid diet for four days and saw his pancreatitis gradually improve and his blood pressure reduce.

Meyer resumed eating solid food. His blood pressure continued to improve but his abdominal pain worsened. Meyer grew agitated. He developed a headache and his blood pressure rose. Dr. Hemmila treated him with Clonidine and discontinued solid foods. Meyer's blood pressure decreased but rose again after several hours. Dr. Steve Thompson treated Meyer with another dose of Clonidine.

Meyer became markedly agitated. A nurse summoned the emergency response unit. Meyer refused to allow hospital staff to check his vital signs. A nurse administered Haldol and Ativan to treat Meyer's agitation and anxiety. Another physician, Dr. Michael Dummer, evaluated Meyer, transferring him to the intensive care unit.

Dr. Dummer was concerned about Meyer's apparent delirium and ordered new lab tests. None indicated that Meyer was experiencing organ damage from high blood pressure. Meyer calmed down and told Dr. Dummer, "I'm fine now, doc." At trial, Dr. Dummer testified that Meyer would not have shown this cognitive improvement if a stroke had caused his outburst. He attributed Meyer's outburst to alcohol withdrawal and opined that a CT scan would have been uninformative.

Dr. Dummer checked on Meyer later in the ICU and saw that his blood pressure had risen again. He believed that Meyer was experiencing a hypertensive urgency, which is typically treated gradually over hours or days. Dr. Dummer treated Meyer with Enalaprilat, and his blood pressure began dropping. This reassured Dr. Dummer. But Meyer's blood pressure began climbing again, and again he became agitated. Dr. Dummer ordered another dose of Enalaprilat, and again Meyer's blood pressure dropped to a satisfactory level. Meyer had been in the hospital for four days.

Within minutes, Meyer suffered a seizure. Dr. Hemmila ordered a CT scan to check for hemorrhaging. The scan revealed intracranial hemorrhaging in two spots and a cerebral edema consistent with posterior reversible encephalopathy syndrome. Dr. Hemmila promptly consulted a neurosurgeon and summoned a helicopter to fly Meyer to the University of Minnesota Medical Center.

Meyer and his wife sued Fairview for medical malpractice, alleging that Fairview's negligence caused Meyer's seizure and stroke.

Before trial, the Meyers moved the district court to prohibit Fairview from arguing that Meyer's alcoholism constituted comparative negligence. They also asked the court to prohibit Fairview from introducing evidence that Meyer had failed to recover from alcoholism despite receiving medical advice to do so. The district court prohibited Fairview from referring to Meyer's alcoholism as "negligence," but it allowed it to offer evidence of Meyer's history of alcoholism and the medical advice he received to stop drinking.

On the afternoon before opening statements, the Meyers objected to Fairview's anticipated argument that Meyer's continued alcohol use caused his seizure and stroke. The district court overruled the objection and observed that Meyer's alcohol abuse was relevant to the standard of care and clarified that its prior order did not prohibit Fairview from arguing that alcohol caused Meyer's injury.

During opening statements, the Meyers framed the case as being about the treatment of blood pressure. They conceded that Meyer was a heavy daily drinker who struggled with alcoholism and that his lengthy binge caused the bout of pancreatitis that brought him to

the hospital. They told the jury that Fairview breached the standard of care by failing to check Meyer's organs for damage or administer a CT scan sooner.

Fairview's opening statement predicted that the evidence would show that it met the standard of care and that many years of alcohol abuse took a toll on Meyer's body and caused his blood pressure to vary unpredictably. It said that although it was not claiming that Meyer's alcohol constituted negligence on his part, Meyer had been told that he should stop drinking and "the alcohol over many, many, many years was the cause of the stroke." Fairview revealed that its experts would say that Meyer was in a hypertensive urgency, not a hypertensive emergency, and that Fairview properly followed the standard of care by attempting to reduce Meyer's blood pressure gradually rather than abruptly.

After several witnesses, the district court instructed Fairview to refrain from asking questions "in this v[e]in – 'Mr. Meyer was told to stop drinking. He chose not to stop drinking and the stroke was the result.'" Fairview obeyed the district court's instruction. One medical expert, Dr. Benny Gavi, testified on the Meyers' behalf and opined that the hospital had failed to meet the standard of care. Dr. Meghan Walsh testified on the hospital's behalf and maintained that Dr. Hemmila did meet the standard of care. Dr. Hemmila testified that Fairview properly cared for Meyer and that blood pressure is typically difficult to control in patients who chronically use alcohol. He opined that Meyer's stroke resulted from hypertension related to his alcohol use and from the related conditions of alcohol withdrawal, liver disease, and pancreatitis.

The jury deliberated for two hours and wrote a note explaining that it was split on the issue of malpractice. The note said:

Judge –

the jury is 50/50 split on the decision of malpractice. Nobody has swayed after discussion for 2+ hours–

Some key points we have discussed:

yes:
- did not address BP appropriately
- Should have been more proactive @ 2nd mental status change
- The gaps between vital checks are too long

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no:
- made honest effort to medicate BP
- was urgency + they had hours–days to bring down
- properly medicated according to patient history
- caused by alcohol

The district court instructed the jury to continue deliberating. The jury did so and returned a unanimous verdict finding that Fairview was not negligent. The Meyers moved for a new trial, and the district court denied the motion.

The Meyers appeal.

D E C I S I O N

The Meyers challenge the outcome of the trial by maintaining that the process was unfair. They contend first that the district court abused its discretion by denying their motion for a new trial because Fairview improperly argued that Meyer's alcohol abuse caused the injuries he sustained at the hospital. We review a district court's decision to deny a motion for a new trial for a clear abuse of discretion. *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 625 (Minn. 2012). A district court abuses its discretion when

its ruling rests on an erroneous view of the law. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

We are not persuaded by the Meyers' contention that the district court acted inconsistent with the law. A jury should not consider a comparative-negligence defense unless the plaintiff's alleged negligence occurred after the defendant's alleged negligence. *See Martineau v. Nelson*, 311 Minn. 92, 101–02, 247 N.W.2d 409, 415 (1976). Following this rule, the district court prohibited Fairview from using the term "negligence" to describe Meyer's alcohol use. The district court also did not instruct the jury to consider comparative negligence as a defense. The district court acted consistent with the law as it regards comparative negligence.

The Meyers imply that a medical-malpractice defendant is also precluded from arguing that a plaintiff's condition proximately caused the claimed injury. But a medical-malpractice plaintiff must prove that the defendant's malpractice proximately caused his injury, *Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321, 329 (Minn. 2013), and the defendant may therefore present evidence and argument to the contrary, establishing that something else proximately caused the plaintiff's injury. Fairview was not precluded from introducing evidence of the effects of Meyer's alcohol abuse on his body, as well as expert testimony that alcohol abuse caused the seizure and stroke. Nor was it precluded from arguing that Meyer's alcohol abuse and its physical consequences caused the seizure and stroke.

The Meyers argue for a different result, relying chiefly on *Larson v. Belzer Clinic*, 292 Minn. 301, 195 N.W.2d 416 (Minn. 1972), for the proposition that medical-

malpractice defendants may not argue that a plaintiff's apparently negligent actions occasioned the need for medical treatment. The Meyers read *Larson* too broadly. *Larson* does not prohibit a defendant from arguing that a plaintiff's self-induced physical condition caused the injury that the plaintiff alleges to have resulted from the defendant's negligent care. *Larson* instead prohibits a defendant from arguing that a plaintiff's earlier negligence, which caused him to seek medical treatment, excuses a doctor's later negligence in treating the plaintiff.

In *Larson*, a three-year-old boy left his back yard over a fence, walked down the block, entered a neighbor's yard, and pulled a window box down onto himself, fracturing his leg. *Id*. at 306, 195 N.W.2d at 418–19. During the boy's lengthy hospital stay, he incurred necrosis, allegedly because of the hospital's failure to frequently inspect his bandages. *Id*. at 302–03, 195 N.W.2d at 417. The hospital argued in closing that the boy's (or his parents') negligence preceding his hospitalization should excuse the clinic from malpractice liability:

> Now all of you would agree with me, I am sure, that had not young Bradley at three and a half years old escaped from the fence in the back yard, went several houses down the block and got into his neighbor's yard and fence, and in some fashion pulled this window box down upon him and fractured his leg, Doctor Stiegler wouldn't be here and nothing would ever have happened.

Id. at 306, 195 N.W.2d at 418–19. The supreme court held that the defendant's argument about the boy's negligence improperly shifted blame to the plaintiff. *Id*. The hospital's argument in *Larson* bears no resemblance to Fairview's argument here. In *Larson*, the hospital essentially argued improperly that the plaintiff would never have arrived at the

hospital where he received the allegedly improper, injury-causing malpractice, if he had not been negligent. *See id.* But the child's broken leg could not have caused the necrotic skin condition he incurred in his month-long hospital stay, and the hospital did not make that causation argument. Fairview would have run afoul of *Larson* if it had argued, for example, that the jury should absolve Fairview of liability for its alleged malpractice simply because Meyer abused alcohol and the abuse is what brought him to Fairview. By contrast, here Fairview argued that Meyer's preexisting physical condition arising from his alcohol use was the actual, physiological cause of the injuries for which he seeks to hold the hospital liable—the seizure and stroke. *Larson* does not move us to reverse.

The Meyers next argue that the district court abused its discretion by denying their motion for a new trial because the evidence that Meyer did not follow medical advice to stop drinking alcohol was unfairly prejudicial. We review a district court's evidentiary rulings for an abuse of discretion. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). An improper evidentiary ruling resulting in the erroneous admission of evidence will require a new trial only if it results in prejudicial error. *George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). "An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial." *Id.*

The Meyers argue that evidence that Meyer did not follow medical advice to stop drinking was not relevant to any disputed issue. Irrelevant evidence is inadmissible. Minn. R. Evid. 402 (2017). Fairview makes little argument for the relevancy of this evidence, and we see no legitimate use for it. Fairview instead argues that the Meyers fail to say how the evidence prejudiced them. The Meyers argue that the jury's note shows the prejudice. They

point to one entry on the jury's list of reasons to find against Fairview's liability—that Meyer's injury was caused by alcohol—as proof that the jury improperly considered evidence that Meyer had not quit drinking despite a doctor's directive. The argument interprets the note in a manner that is the least reasonable. The entry on the note instead strongly implies that the jury was properly considering the relevant issue of whether the seizure and stroke were "caused by alcohol." It does not suggest that the jury was even contemplating Meyer's failure to follow medical advice, let alone holding the failure against his malpractice claim. Because the Meyers offer no other argument to support their claim that the irrelevant evidence prejudiced their case, we end the analysis here.

The remainder of the Meyers' arguments—that Fairview's attorneys committed misconduct by highlighting Meyer's alcoholism during opening and closing statements, eliciting improper expert opinion, and exhibiting a water bottle that represented the amount of alcohol Meyer consumed daily—similarly fail for lack of any showing of prejudice. A trial court's decision to deny a motion for a new trial based on misconduct of counsel may be reversed if the "conduct was so prejudicial that it would be unjust to allow the result to stand." *Ellingson v. Burlington N. Ry. Co.*, 412 N.W.2d 401, 402–03 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). We have no reason to conclude that allowing the verdict to stand would work an injustice. We add that the jurors' note sheds light on their deliberation in a way that reveals their objective and rational weighing of the evidence in proper consideration of the issues, as they were instructed by the district court.

Affirmed.