

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0442**

Jill Marie Kalisch,
Respondent,

vs.

Jason Brewer Ericson, et al.,
Appellants.

**Filed January 27, 2025
Affirmed
Larson, Judge**

Hennepin County District Court
File No. 27-CV-22-11616

Michael R. Docherty, David J. Milavetz, Milavetz Injury Law, P.A., Brooklyn Center,
Minnesota (for respondent)

Teri E. Bentson, Law Offices of John C. Syverson, London, Kentucky (for appellants)

Considered and decided by Larson, Presiding Judge; Wheelock, Judge; and Smith,
John, Judge.*

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellants Jason Brewer Ericson and J.A.O. Services Inc. challenge the district
court's decision to deny their motion for judgment as a matter of law on respondent Jill

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

Marie Kalisch's damages claim for future medical expenses. Appellants argue Kalisch failed to meet her burden to prove future medical expenses were reasonably certain to occur, and failed to establish the type, cost, or duration of future medical care. Because the district court did not err when it determined that Kalisch met her burden, we affirm.

FACTS

On May 5, 2021, Kalisch and Ericson were involved in a motor-vehicle collision. Kalisch was driving a Toyota pickup truck, and Ericson was driving a dump truck owned by his employer, J.A.O. Services. Each driver brought a negligence claim.¹ The district court consolidated the cases, and the cases proceeded to a jury trial. At the close of evidence, all parties moved for partial judgment as a matter of law (JMOL) regarding future medical expenses. The district court denied both motions. Thereafter, the jury returned a special verdict on September 1, 2023, finding Kalisch and Ericson each 50% negligent. The jury awarded each driver money damages for the time period between the accident and the verdict, as well as future damages. Appellants renewed their JMOL motion, arguing Kalisch failed to meet her evidentiary burden to support the jury's \$50,000 award for future medical expenses. After a motion hearing, the district court denied appellants' motion and entered judgment for Kalisch in the amount of \$115,869.80 and for Ericson in the amount of \$24,020.05. This appeal follows.

¹ J.A.O. Services was a defendant in Kalisch's case and has been held jointly and severally liable for Kalisch's damages.

DECISION

Appellants challenge the district court's decision to deny their JMOL motion regarding Kalisch's future medical expenses. "We review de novo a district court's decision to deny a motion for judgment as a matter of law . . . viewing the evidence in the light most favorable to [the nonmoving party]." *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018) (quotation omitted); *see also Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022). In doing so, we apply the same standard as the district court and must reverse if the verdict is "manifestly against the entire evidence" or "contrary to the law applicable to the case." *J.N. Sullivan & Assocs., Inc. v. F.D. Chapman Constr. Co.*, 231 N.W.2d 87, 89 (Minn. 1975).

To establish damages for future medical care, a plaintiff must (1) demonstrate that "future damages in the form of future medical treatments will be required" and (2) establish the amount of the future medical expenses (the *Lind* factors). *Lind v. Slowinski*, 450 N.W.2d 353, 358 (Minn. App. 1990), *rev. denied* (Minn. Feb. 21, 1990). Appellants challenge the district court's determination that Kalisch met her burden on both *Lind* factors, and we address each in turn.

A.

Appellants first argue Kalisch failed to meet her burden on the first *Lind* factor to demonstrate that Kalisch will incur future medical expenses. To recover future medical expenses, "the plaintiff has the burden of proving future damages to a reasonable certainty." *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980). The plaintiff need not establish future medical expenses "to an absolute certainty," but must prove the future

expenses are “more likely to occur than not to occur.” *Id.* This ensures “that there is no recovery for damages which are remote, speculative, or conjectural.” *Id.*

The parties rely on three cases to support their arguments regarding Kalisch’s burden to prove future medical expenses. In the first case, *Lind*, we concluded that expert testimony establishing that treatment that would be needed “once in a while . . . on the average of once every four or five years” and that “ongoing medical care [would be needed] on a sporadic basis” was sufficient to demonstrate to a reasonable certainty that the plaintiff would incur future medical expenses. 450 N.W.2d at 358. Next, in *Dornberg v. St. Paul City Railway Co.*, the supreme court determined an expert’s opinion testimony that surgery would be needed, although “no one could tell positively that [the surgery] would definitely be necessary,” met the reasonable certainty requirement for future medical expenses. 91 N.W.2d 178, 183, 185 (Minn. 1958). The supreme court held the testimony “would go to the weight of [the expert’s] opinion but would not deprive the jury of the right to consider it.” *Id.* at 185. Finally, in *Penteluk v. Stark*, the supreme court concluded that expert testimony on the permanency of an injury was sufficient to submit the issue of future medical expenses to the jury. 69 N.W.2d 899, 901-02 (Minn. 1955). The supreme court reiterated that the meaning of the testimony must be drawn from its entirety and not isolated portions, as “[i]t is for the jury, not the court, to determine the weight to be given to the testimony of a witness and to decide what such testimony proves.” *Id.* at 901.

Here, Kalisch presented the following evidence at trial regarding future medical expenses. Kalisch sustained multiple injuries from the accident, including a double bone fracture of the ulna and radius, facial bruising, headaches, and overall pain throughout her

body. As a result, orthopedic surgeon Adam Bakker, M.D., performed two surgeries on the forearm to repair the fractures, surgeries on both her wrists, and surgery on her shoulder and bicep. Dr. Bakker's testimony was provided at trial via video deposition as Kalisch's medical expert. Dr. Bakker testified "to a reasonable degree of medical certainty" that: (1) there was "a good chance there will be" some permanent pain because of the injuries; (2) he was hopeful that Kalisch was "not going to require much" future medical care, "except for maybe an occasional therapy" to deal with her pain or discomfort; (3) a "potential" future surgery may be needed on her wrist, but it was not common; and (4) occupational therapy "helps with the range of motion, decreases her swelling and inflammation that she had before and after . . . her surgeries, and it really allows the recovery and the procedures that [Dr. Bakker] ha[s] done to be more long-term successful." The jury also learned Kalisch was an active person before the accident, continued to suffer pain long after the accident, and was gradually beginning to return to some of her pre-accident activities.

Viewing the evidence in the light most favorable to Kalisch, we conclude that Kalisch satisfied the first *Lind* requirement. Dr. Bakker was Kalisch's physician before the accident and was familiar with her post-accident treatment. His testimony described Kalisch's injuries and surgeries, as well as his opinion on future medical care. To a "reasonable degree of medical certainty," Dr. Bakker thought "that there[was] a good chance" Kalisch will experience permanent pain, believed Kalisch may need "an occasional therapy," and described the recovery benefits that occupational therapy provides after surgery.

Appellants disagree, arguing that Dr. Bakker’s use of words like “maybe” or “possibly” cannot establish any certainty regarding future medical expenses. But we must look at Dr. Bakker’s testimony as a whole. *See id.* And although Dr. Bakker testified that he was hopeful Kalisch would not need much future medical care and that Kalisch “potentially” would need a future surgery, on the whole, Dr. Bakker’s testimony was sufficient to allow the jury to determine its weight and whether Kalisch would more than likely incur future medical expenses. *See id.* at 901-02; *Dornberg*, 91 N.W.2d at 185.

We, therefore, conclude that the district court did not err when it determined Kalisch met her burden to demonstrate to a reasonable certainty that she will need future medical care. *See Lind*, 450 N.W.2d at 358.

B.

Second, appellants argue that Kalisch failed to present sufficient evidence on the second *Lind* factor to establish the amount of future medical expenses. Appellants specifically point to the absence of any cost estimate for future medical care. Future medical expenses will not be awarded “based on a showing that expenses are likely to occur” without “some evidence of what the expenses will be.” *Kwapien v. Starr*, 400 N.W.2d 179, 184 (Minn. App. 1987). This is because future medical expenses are “a matter which the jury cannot compute blindly without expert testimony. It cannot be left to their speculation.” *Lamont v. Indep. Sch. Dist. No. 395*, 154 N.W.2d 188, 192 (Minn. 1967).

The parties contend that *Kwapien* resolves this issue. In *Kwapien*, we upheld a future-damages award based on a physician’s testimony that the plaintiff’s condition “was permanent and essentially ‘incurable’” and would require “physical therapy or similar

treatment to relieve her pain for the rest of her life.” 400 N.W.2d at 184. To determine future medical expenses, the jury had information relating to the cost of the plaintiff’s previous physical-therapy treatments and the plaintiff’s life expectancy. *Id.* We determined that “it was possible for the jury to take [plaintiff’s] life expectancy and factor it against the cost of her past physical therapy treatments to arrive at an approximate figure for future medical expenses.” *Id.* We upheld the jury’s damages award on the basis that the amount of the award was “not . . . pure speculation.” *Id.*

At trial in this case, in addition to the evidence from Dr. Bakker regarding the need for future medical care, the jury was also provided with evidence of Kalisch’s past medical bills (around \$33,000 for the two-year period),² which included past therapy expenses. While the medical bills included costs for other procedures, each charge was labeled with a description and billing code that would have allowed the jury to determine which costs were associated with therapy. The record reflects Kalisch’s therapy totaled roughly \$400 a session or \$1,200 a course. The jury was also given an estimate of Kalisch’s life expectancy (41 years) to assist in deciding the amount of future medical expenses to award, if any.

Viewing this evidence in the light most favorable to Kalisch, we conclude Kalisch satisfied the second *Lind* factor. Based on the evidence presented at trial, it was possible for the jury to take Kalisch’s life expectancy and factor it against the cost of her past therapy treatments to arrive at a cost for future medical expenses. In fact, this seems to be precisely

² The district court order provides that the cost incurred was \$33,534.17 for the two-year period, but the record appears to reflect \$33,412.17 in costs incurred.

what the jury did, given that the \$50,000 future medical expenses award would provide approximately one course of therapy every year for the rest of Kalisch's estimated life.³

Appellants disagree, arguing that this case is distinguishable from *Kwapien* because Dr. Bakker did not testify with the same level of certainty as Kwapien's physician regarding the need for future medical care. While Dr. Bakker's testimony was not as certain, as explained in part A, Dr. Bakker's testimony provided enough context regarding the permanency of the injury and future medical care to allow the jury to weigh the testimony. See *Penteluk*, 69 N.W.2d at 901 ("It is for the jury, not the court, to determine the weight to be given to the testimony of a witness and to decide what such testimony proves.").

Appellants also argue that this case is more similar to *Lind*, in which we concluded the future-medical-expenses award was not supported by the physician's testimony and reduced the award. 450 N.W.2d at 358. In *Lind*, the jury awarded \$63,000 for future medical expenses. *Id.* But when calculating the future medical expenses supported by the evidence, we determined the total cost per year, times the plaintiff's life expectancy, only totaled \$30,400—prompting our reduction. *Id.* We do not observe a similar discrepancy here. As explained above, based on the evidence in the record, a \$50,000 award for future medical expenses accounts for approximately one course of therapy every year for the rest of Kalisch's life.

³ This calculation does not account for the cost of a potential wrist surgery or any pain medications Kalisch may also require.

For these reasons, we conclude the district court did not err when it determined Kalisch met her burden to establish the amount of the future medical expenses. *See id.*

Affirmed.