STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1788

Cathy J. Foy, et al.,
Appellants,

vs.

Tria Orthopaedic Center LLC,
Respondent,

Joel L. Boyd, M.D.,
Respondent.

Filed August 18, 2025
Affirmed
Halbrooks, Judge[*]

Hennepin County District Court
File No. 27-CV-22-2653

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William L. Davidson, Matthew D. Sloneker, Stuart D. Campbell, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondent Boyd)

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Considered and decided by Wheelock, Presiding Judge; Ross, Judge; and Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this appeal following a jury verdict in favor of respondents on appellants' medical-malpractice claims, appellants challenge the district court's denial of their motion for a new trial. Appellants assert that the district court abused its discretion in (1) limiting the scope of their expert's testimony to the issue of whether respondents obtained informed consent for the first of two surgeries performed on appellant-patient by respondent-physician; (2) excluding evidence of the second surgery and a third surgery performed by another physician; and (3) instructing the jury. Because we discern no abuse of discretion in the district court's rulings, we affirm.

FACTS

Appellants, Cathy J. Foy (Foy) and her husband, Brian Foy, brought this medical-malpractice action, alleging that respondent Joel L. Boyd, M.D., an orthopedic surgeon, failed to obtain Foy's informed consent before performing two surgeries on her knee. Foy's claim[1] centered on her allegation that Dr. Boyd did not inform her that the first surgery could involve placing a metal button in her knee. She asserts that, had she been so informed, she would not have consented to the surgeries. The evidence at trial, viewed in the light most favorable to the jury's verdict, reveals the following facts underlying Foy's claim.

[1] Brian Foy asserted a claim for lack of consortium against respondents. And appellants sought to hold respondent Tria Orthopaedic Center, LLC vicariously liable. These claims are derivative of Foy's claim against Dr. Boyd, which we focus on for purposes of this appeal.

Foy began seeing Dr. Boyd in late 2017. An MRI of Foy's right knee revealed that she had torn her meniscus—a fibrocartilage disc in the knee that acts as a shock absorber between the tibia and femur. More specifically, Foy had a torn meniscal root. After more conservative treatment failed to provide sufficient relief, Dr. Boyd recommended surgical intervention through a knee arthroscopy, which is an umbrella term for surgeries that involve putting a scope into the joint.

In Foy's case, Dr. Boyd anticipated that the arthroscopy could involve a partial meniscectomy or a meniscal root repair. A partial meniscectomy would involve removing the posterior horn of the meniscus. And a meniscal root repair entails securing the root using a small metal button. A partial meniscectomy has an easier recovery period than a meniscal root repair but removing the meniscus puts a patient on a more accelerated path to needing a total knee replacement. Preserving the shock absorbing function of the meniscus through repair can slow the progression of symptomatology in the knee. Although Foy's MRI suggested that a meniscectomy may be necessary, Dr. Boyd could not determine which procedure was appropriate before doing the surgery.

Dr. Boyd had several discussions with Foy during his treatment of her regarding potential surgical intervention. Although he did not recall the specific conversations with Foy, he testified that his usual practice when a patient may need a partial meniscectomy or a meniscal root repair is to discuss both procedures with the patient and that he has had that discussion "[h]undreds of times." Dr. Boyd acknowledged that a written consent form for Foy's surgery identified the surgery as a partial meniscectomy and did not mention a meniscal root repair. But he testified that the meniscectomy was "the worse of the two, so

I think that's important for patients to know that [they] could end up with a meniscectomy." And he testified that "mentioning that, 'If we can repair it, we will,' was also done." Foy conceded at trial that, during one her visits, Dr. Boyd told her, "I'll repair it if I can."

Dr. Boyd performed the knee arthroscopy on Foy in January 2018. During the surgery, Dr. Boyd decided to perform a meniscal root repair.[2] As part of the repair, Dr. Boyd installed a titanium button to anchor the meniscus. It is undisputed that Dr. Boyd did not inform Foy before the surgery that a meniscal repair could involve implanting a metal button. Dr. Boyd testified that it was not his practice to inform patients about the metal button used in a meniscal root repair, stating that he did not get into "granular detail about fixation points." Dr. Boyd also testified that the standard of care did not require him to inform Foy that a metal button would be used.

Foy testified that she would not have consented to a meniscal root repair because she has a history of adverse reactions to metal. Dr. Boyd testified that there was nothing in Foy's medical records to indicate that she had an adverse reaction to metals. And Foy conceded that she did not inform Dr. Boyd of her adverse reaction. Foy did not learn about the metal button until April 2019 while viewing an x-ray with a medical provider she visited because of continued issues with her right knee.

Although the jury did not hear evidence about them at trial, Foy had two more surgeries on her right knee. Dr. Boyd performed a second surgery in July 2018 to repair a

[2] Dr. Boyd also performed a partial meniscectomy to trim some fraying in the meniscus. That partial meniscectomy is not at issue in this litigation.

new meniscal tear after Foy fell. And a different surgeon performed a third surgery in August 2019 to remove the button at Foy's request.

Appellants commenced this lawsuit in January 2022. They served an affidavit, as required by Minn. Stat. § 145.682, subds. 2, 4 (2024), identifying Jeffrey S. Meisles, M.D., an orthopedic surgeon from Illinois, as the expert expected to testify as to the issues of "malpractice and causation." That affidavit attached a one-page report, in which Dr. Meisles stated:

> A meniscal repair is associated with a much longer and difficult recovery period than a meniscectomy. Furthermore, that procedure was relatively contraindicated based upon the patient's history of rheumatoid arthritis, and advanced degree of degenerative arthritis present in the knee. Ms. Foy subsequently underwent additional surgery to remove the endobutton implant used in the unsuccessful meniscal repair.
>
> My opinion is that the lack of informed consent for performing a meniscal repair represents a violation of the standard of care. If Dr. Boyd felt that a meniscal repair was necessary, he should have made an attempt to discuss it with Ms. Foy's representative while she was under anesthesia and should have thoroughly explained the procedure to her afterwards. This procedure was ill advised for the reasons described above and resulted in the need for further surgery. The repair was unsuccessful, and Ms. Foy subsequently had to have the meniscus removed, which should have been done in the first place.

Dr. Boyd did not challenge the sufficiency of Dr. Meisles' expert report through a motion to dismiss under Minn. Stat. § 145.682, subd. 6 (2024), or bring a motion for summary judgment, and the matter was set for trial in June 2024.

Through pretrial motions in limine, Dr. Boyd sought to exclude or limit Dr. Meisles' testimony; to preclude other health care providers from providing expert testimony that

Foy had not disclosed during discovery; and to exclude evidence related to Foy's second and third surgeries. Dr. Boyd argued that Dr. Meisles' testimony should be limited to opinions disclosed in his one-page report; that the only opinion that Dr. Meisles disclosed that referenced a standard of care related to the issue of informed consent for the first surgery; and that Dr. Meisles' opinions that the meniscal repair was "ill-advised," "unsuccessful," and "relatively contraindicated" lacked foundational reliability. Dr. Boyd further argued that Foy's second and third surgeries were not relevant to the issue of whether Dr. Boyd obtained informed consent for the first surgery.

Appellants opposed the motions in limine, arguing that Dr. Meisles' report was sufficiently specific and that they were entitled to 45 days to cure any deficiencies in the report under Minn. Stat. § 145.682, subd. 6(c).

The district court granted Dr. Boyd's requests to limit Dr. Meisles' testimony to the issue of whether there was informed consent for the first surgery. The district court determined that Minn. Stat. § 145.682 was not applicable because Dr. Boyd had not brought a motion to dismiss under the statute. On the evidentiary issue, the district court ruled that Dr. Meisles' "testimony must be limited to topics that fall within the scope of his expert [report]." And the district court ruled that "Dr. Meisles' expert [report] does not provide reliable foundation under [Minn. R. Evid.] 702 to support testimony regarding whether the procedure was properly performed" but did put respondents' "on notice of the

opinions and facts he will testify about as they relate to the issue of informed consent." The district court further explained:

> Dr. Meisles cannot testify about the causal relationship of the first surgery to any subsequent surgeries because such opinions were not disclosed in his expert report. He may not comment or opine on any aspects of Dr. Boyd's care or treatment that were not originally criticized in his expert disclosure because it would be unfairly prejudicial to raise new attacks on [Dr. Boyd's] conduct without an opportunity to prepare for cross-examination. [Foy's] claims must accordingly be limited to those that are specifically addressed and supported by Dr. Meisles's opinions. This effectively leaves the issue of informed consent as the sole basis for medical malpractice, as it is the only theory on which Dr. Meisles provided sufficient elaboration. (*See* Minn. R. Evid. 26.01(b)(1)). Any other theory or claim that Dr. Boyd's care was somehow insufficient or improper would confuse and mislead the jury because it is unsupported by credible expert opinion. Minn. R. Evid. 403.

The district court further ruled that Foy's subsequent healthcare providers would not be allowed to provide expert opinions that had not been disclosed. And, based on the lack of disclosed expert opinions, the district court excluded "all evidence and argument relating to damages in connection with [Foy's] subsequent surgery to remove the titanium button."

The matter proceeded to a trial limited to the issue of whether Dr. Boyd was negligent in obtaining informed consent for the first surgery. Dr. Meisles testified that the standard of care for orthopedic surgeons is "essentially a national standard" and that "all of the [orthopedic] surgeons in the U.S. take the same exam and are subject to the same standards." Dr. Meisles then offered his opinion that Dr. Boyd "did not adequately meet the standards necessary for informed consent because consent was obtained for a meniscectomy, and a meniscal root repair was performed, which is a different operation

than a meniscectomy with a much longer and more challenging recovery." But Dr. Meisles conceded that his opinion was based on the specification of a partial meniscectomy on the written consent form and that he had not heard Dr. Boyd's explanation at the time he formed his opinion.

In addition to his own testimony about his presurgery discussions with Foy, Dr. Boyd offered expert testimony from James Gannon, M.D., an orthopedic surgeon from Minnesota. Dr. Gannon testified that it is often a "game-day decision" whether to perform a meniscectomy or to repair the meniscus and that it is reasonable to discuss that fact with the patient. He also testified that the standard of care did not require a surgeon to discuss with a patient that a metal button would be used if a meniscal root repair were performed. Dr. Gannon was not concerned about the fact that the written consent form listed meniscectomy rather than meniscal root repair because "there are many things that we encounter, and to put every single procedure down, it's basically impossible." Dr. Gannon opined that Dr. Boyd met the standard of care in obtaining Foy's informed consent for the first surgery.

After the parties presented their cases, the district court instructed the jury on the elements that Foy was required to prove to prevail on her claim that Dr. Boyd failed to obtain her informed consent for the first surgery. The district court declined to give certain instructions requested by appellants and included language in other instructions to which appellants objected. Following closing arguments, the jury deliberated and returned a special verdict finding that Dr. Boyd was not negligent in obtaining Foy's consent for the

first surgery. Having found that Dr. Boyd was not negligent, the jury, as instructed, did not answer the special-verdict questions about causation and damages.

Appellants moved for a new trial, arguing that the district court abused its discretion by excluding evidence of Foy's second and third knee surgeries and by incorrectly instructing the jury on her informed-consent claim. The district court denied the motion, reasoning that it had properly limited Dr. Meisles' testimony based on his expert report, excluded evidence of the second and third surgeries, and instructed the jury.

This appeal follows.

DECISION

Appellants challenge the district court's decision to deny their motion for a new trial. We review this decision for an abuse of discretion. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). A new trial may be granted based on grounds enumerated in Minn. R. Civ. P. 59.01. Here, appellants argue that a new trial was warranted based on asserted errors by the district court in its evidentiary rulings and jury instructions. *See* Minn. R. Civ. P. 59.01(a), (f). We address appellants' arguments in turn below.

I. The district court did not abuse its discretion by limiting testimony by appellants' expert to the issue of whether Dr. Boyd obtained informed consent for the January 2018 surgery.

Appellants first challenge the district court's decision to limit Dr. Meisles' testimony at trial. A district court is afforded "broad discretion when ruling on evidentiary matters" and will not be reversed "absent an abuse of that discretion." *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). "By their very nature, evidentiary rules demand a

case-by-case analysis, an analysis best left to the trial judge familiar with the 'setting' of the case." *Id.* (quotation omitted).

Both Minn. Stat. § 145.682, subds. 2, 4, and Minn. R. Civ. P. 26.01(b)(2) require medical-malpractice plaintiffs to disclose, in advance of trial, the expert opinions they expect to offer at trial and the bases for those opinions. And to be admissible, an expert's opinion must have foundational reliability. Minn. R. Evid. 702. "It is well settled that expert opinions must have an adequate factual foundation to be admissible." *Hudson v. Trillium Staffing*, 896 N.W.2d 536, 540 (Minn. 2017). An expert opinion lacks adequate factual foundation if "(1) the opinion does not include the facts and/or data upon which the expert relied in forming the opinion, (2) it does not explain the basis for the opinion, or (3) the facts assumed by the expert in rendering an opinion are not supported by the evidence." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 56 (Minn. 2019) (quotations omitted).

In this case, it is clear that the combination of the requirements for pretrial expert disclosure and factual foundation persuaded the district court to issue the order limiting Dr. Meisles' testimony. The district court ruled that (1) appellants could not introduce expert opinions that they had not disclosed and (2) Dr. Meisles' disclosed opinions lacked factual foundation, with the exception of his opinion that Dr. Boyd failed to obtain informed consent for the first surgery. As to the disclosure requirement, the district court reasoned that, "although Dr. Meisles' testimony need not be strictly limited to the words or exact details in [his report, Dr. Meisles'] testimony must still reasonably fall within the scope of the disclosure so that [respondents] had fair notice and opportunity to prepare rebuttal

testimony." With respect to the foundation requirement, the district court explained that "Dr. Meisles's expert affidavit does not provide reliable foundation under Rule 702 to support testimony regarding whether the procedure was properly performed. But Dr. Meisles's expert affidavit puts [respondents] on notice of the opinions and facts he will testify about as they relate to the issue of informed consent." We discern no abuse of discretion in either aspect of the district court's ruling.

Appellants argue that the district court's decision contravenes the supreme court's reaffirmation in *Rygwall v. ACR Homes, Inc.*, that a party is not required to provide a "detailed disclosure" of an expert's opinion. 6 N.W.3d 416, 432 (Minn. 2024). But *Rygwall* also reaffirms that an expert report must

> (1) disclose specific details concerning the expert's expected testimony, including the applicable standard of care, (2) identify the acts or omissions that the plaintiff alleges violated the standard of care, and (3) include an outline of the chain of causation between the violation of the standard of care and the plaintiff's damages.

Id. at 431. The supreme court further explained in *Rygwall* that, to survive summary judgment, an expert "must provide an opinion with proper foundation and enough information about the specific case to reassure the court that the jury will have sufficient information to draw a reasonable inference—without speculating—that the provider's conduct caused the plaintiff's injury." *Id.* at 435. Thus, nothing in *Rygwall* displaces the expert disclosure and foundational reliability principles on which the district court relied in limiting Dr. Meisles' testimony.

Appellants also argue that the district court erred by ruling on foundation based solely on Dr. Meisles' report, which was disclosed early in the litigation pursuant to the requirements of Minn. Stat. § 145.682. It is true that a district court is not "limited to examining the four corners" of the statutorily required expert report at a later stage of the litigation and instead may consider "the record as a whole." *Rygwall*, 6 N.W.3d at 428. But again, the basis for the district court's order limiting Dr. Boyd's testimony was two-fold: it determined that appellants could only introduce expert opinions that had been disclosed and that most of the opinions in Dr. Boyd's report lacked foundational reliability. Appellants do not point to any expert disclosures other than Dr. Meisles' report submitted pursuant to Minn. Stat. § 145.682. Accordingly, the district court did not err by evaluating only that report to rule on foundation.[3]

For the foregoing reasons, we reject appellants' argument that the district court abused its discretion by limiting Dr. Meisles' testimony.

[3] Appellants argue that respondents "adopted the tactic of bringing motions in limine rather than a motion under Minn. Stat. § 145.682, thereby depriving appellants of the opportunity to cure any alleged deficiencies in their expert affidavit as permitted under Minn. Stat. § 145.682, subd. 6(c)" and that "[a] lawsuit should be decided on the merits rather than by legal tactics." But appellants bore the burden to make sufficient expert disclosures as required by statute and court rules, and respondents were under no obligation to bring dispositive motions before trial.

II. The district court did not abuse its discretion by excluding evidence of Foy's second and third surgeries in relation to informed consent, and Foy cannot demonstrate prejudice from exclusion of evidence in relation to causation.

Appellants next challenge the district court's decision to exclude evidence of Foy's second and third surgeries on the ground that such evidence was not relevant.[4] Again, the district court is afforded broad discretion in evidentiary rulings and will not be reversed absent an abuse of that discretion. *Doe 136*, 872 N.W.2d at 879.

"Evidence which is not relevant is not admissible." Minn. R. Evid. 402. And relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." Minn. R. Evid. 401. The erroneous exclusion of evidence may provide a basis for a new trial, but only if "such evidence might reasonably have changed the result of the trial if it had been admitted." *Poppenhagen v. Sornsin Constr. Co.*, 220 N.W.2d 281, 285 (Minn. 1974); *see also* Minn. R. Civ. P. 61 (requiring courts to disregard harmless error).

In this case, the district court limited appellants' expert testimony, and thus the trial, to the issue of whether Dr. Boyd obtained informed consent for the first surgery. The

[4] Appellants also argue that the district court erred in excluding certain unspecified medical records "on the basis that the authors were not disclosed as experts and did not testify." Because appellants do not identify what specific documents were excluded or how their exclusion prejudiced appellants, the issue is inadequately briefed and not properly before us. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). But we also discern no ruling in the record excluding medical records on the basis that appellants assert. Rather, the record reflects that the district court accepted the parties' stipulation that Foy's medical records were admissible but ruled that only medical records that were referred to during trial would be admitted. Appellants did not object to that procedure and do not identify any medical record that they offered into evidence during trial that was excluded by the district court.

district court then excluded evidence of Foy's medical care following the first surgery because "the need for any subsequent care does not make Ms. Foy's informed consent to the [first] surgery more or less likely." The district court also reasoned that appellants had not disclosed any of Foy's subsequent providers as expert witnesses and thus were precluded from offering testimony from those providers on issues including "whether [Foy] has been harmed or sustained any damages caused by the use of the titanium button in her meniscus root repair surgery; or whether [Foy] has been caused any damages by the placement of the titanium button during the meniscus root repair surgery performed by Dr. Boyd."

Appellants challenge the district court's exclusion of evidence of the second and third surgeries in relation to informed consent on several grounds. First, appellants argue that they pleaded that "Dr. Boyd failed to obtain Ms. Foy's consent to the first and second surgeries." But we have already determined that the district court did not abuse its discretion by limiting the scope of Dr. Meisles' testimony, and thus the trial, to the issue of informed consent for the first surgery.

Second, appellants argue that "evidence of lack of informed consent to the second surgery is additional evidence of lack of informed consent to the first surgery." They assert that Dr. Boyd's failure to disclose the use of the metal button before the second surgery "shows a continuing routine on [Dr. Boyd's] part that he does not inform patients of the metal anchor." But that fact was not contested at trial; Dr. Boyd conceded that he does not typically inform patients of the metal button.

Third, they assert that "[a] jury could logically ask, when informed that Ms. Foy claimed a metal anchor was placed in her knee without her knowledge or consent, what she did about it." This may be true, but it does not explain how evidence of events occurring *after* the first surgery makes it more probable or less probable that Dr. Boyd obtained informed consent *before* performing the first surgery in January 2018. In sum, we are not persuaded that the district court abused its discretion in determining that evidence of the second and third surgeries was not relevant to the issue of whether Dr. Boyd was negligent in obtaining informed consent for the first surgery.

Appellants separately argue that evidence of the third surgery was relevant to the issues of causation and damages and that expert testimony was not necessary on those issues, citing *Rygwall*, 6 N.W.3d at 430. We need not resolve whether appellants needed expert testimony to prove causation and damages because the jury, having found that Dr. Boyd was not negligent in obtaining informed consent for the first surgery, did not reach the issues of causation and damages. Accordingly, any error in excluding evidence relating to those issues could not have prejudiced appellants and cannot be a basis for reversal. *See Poppenhagen*, 220 N.W.2d at 285; Minn. R. Civ. P. 61.

For the foregoing reasons, we reject the appellants' arguments for reversal based on the district court's exclusion of evidence related to the second and third surgeries.

III. The district court did not abuse its discretion in instructing the jury.

Appellants last challenge the district court's decisions in relation to the jury instructions, arguing that the instructions given did not accurately reflect the law and that they were entitled to have certain additional instructions given. "The district court has

broad discretion in determining jury instructions" and should not be reversed if the "jury instructions overall fairly and correctly state the applicable law." *Larson v. Gannett Co., Inc.*, 940 N.W.2d 120, 140 (Minn. 2020); *see also Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 629 (Minn. 2022). Determining whether a jury instruction was erroneous requires us to "evaluate the applicable standard of proof, which is a question of law requiring de novo review." *Christie*, 911 N.W.2d at 838. A "district court errs if it gives a jury instruction that materially misstates the law." *George v. Estate of Baker*, 724 N.W.2d 1, 10 (Minn. 2006). But a new trial is not required unless the error was prejudicial, meaning that a more accurate instruction would have changed the outcome in the case or its effect cannot be determined. *Id.*

In this case, the district court instructed the jury that negligence is the failure to exercise reasonable care and that

> [r]easonable care by an orthopedic surgeon is care that meets an accepted standard of care that an orthopedic surgeon who is in a similar practice in a similar community would use or follow in similar circumstances. A failure to provide care that meets an accepted standard of care would be negligence.[5]

The district court also provided a specific instruction on informed consent, telling the jury that "[a] failure to tell a patient about the risks of treatment or the availability of alternative treatment is negligent if" several factors are met, including that "the risk is significant enough that the doctor should tell his patient about it." The district court further instructed that

[5] This instruction was based on the civil jury instruction guide on the duty of a doctor, dentist, or healthcare provider. 4A *Minnesota Practice* CIVJIG 80.10 (Supp. 2024).

> [t]he risk or existence of an alternative treatment is significant if, A, the physician knows or should know that a reasonable person in the patient's position would regard it as significant or, B, it is the type of risk or alternative treatment that a doctor customarily tells a patient about under similar circumstances.[6]

Appellants assert that the district court's jury instructions did not accurately state the law for several reasons. Appellants first assert that the negligence instruction given by the district court "is not a correct statement of the law in every case when it says that reasonable care by a doctor is care that meets the standard of care." More specifically, they assert that, in cases asserting a lack of informed consent, the failure to disclose a risk may be negligent even if it the failure to disclose is a customary practice among doctors. In support of this argument, they cite *Cornfeldt v. Tongen* (*Cornfeldt I*), in which the supreme court explained that, "even if his disclosure conforms to accepted medical practice, a physician nevertheless should be liable if he fails to inform the patient of a significant risk of treatment or of an alternative treatment." 262 N.W.2d 684, 702 (Minn. 1977). But the supreme court also explained in *Cornfeldt I* that "[f]ailure to disclose a risk that would have been disclosed under accepted medical practice thus should be a sufficient, but not a necessary condition of liability." *Id.* Here, taken as a whole, the jury instructions advised the jury, consistent with *Cornfeldt I*, that Dr. Boyd would be negligent if he failed to disclose risks that a reasonable doctor in his position would disclose or failed to disclose a significant risk of treatment or an alternative treatment.

[6] These instructions were based on the civil jury instruction guide on informed consent (negligent nondisclosure). 4A *Minnesota Practice* CIVJIG 80.25 (Supp. 2024).

Appellants also assert the district court erred by including the word "significant" in the informed consent instruction, citing the supreme court's statement in *Cornfeldt v. Tongen* (*Cornfeldt II*), that "[t]o the extent that our prior decision suggests that a physician's duty to disclose extends only to significant risks, *i.e.*, death or serious harm, it is hereby modified." 295 N.W.2d 638, 640 n.2 (Minn. 1980). But the supreme court clarified this statement in *Kinikin v. Heupel*:

> A physician must disclose risks of death or serious bodily harm which are of significant probability; to this there is no contention. Risks which a skilled practitioner of good standing in the community would reveal must also be disclosed and all medical experts testifying agreed the surgical complications affecting the plaintiff here were such risks. Lastly, to the extent a doctor is or can be aware that his patient attaches particular significance to risks not generally considered by the medical profession serious enough to require discussion with the patient, these too must be brought out. In determining whether risks of particular importance to the patient existed and whether his physician should have been aware of their importance, a jury must look to what a reasonable person in what the physician knows or should have known to be the plaintiff's position would consider significant when contemplating surgery.

305 N.W.2d 589, 595 (Minn. 1981). The district court's instruction was consistent with *Kinikin* and thus accurately stated the law.

Appellants next assert that the phrase "in a similar community" should have been removed from the instruction on reasonable care by an orthopedic surgeon," citing *Christy v. Saliterman*, 179 N.W.2d 288, 302 (Minn. 1970). In *Christy*, the supreme court rejected an argument that a psychiatrist who had experience only in state institutions was not qualified to testify "as to usual and customary methods of care and treatment of

voluntary patients in private hospitals." 179 N.W.2d at 302. The supreme court explained that "a specialist . . . is presumed to be acquainted with the national standards of his profession." *Id.* *Christy* does not directly address the proper jury instructions to be given when a specialist is sued for medical malpractice.[7] But, even assuming that the district court erred by including the phrase "in a similar community" in the instructions, we are not persuaded that this was prejudicial error. Dr. Meisles testified that the standard of care for orthopedic surgeons is a national standard, and neither Dr. Boyd nor Dr. Gannon challenged that characterization. Nor was there any argument that Dr. Meisles' testimony was entitled to less weight because he does not practice in Minnesota. On this record, we conclude that an instruction omitting the phrase "in a similar community" would not have changed the outcome of the case. *See George*, 724 N.W.2d at 10.

Appellants finally assert that the district court erred by declining to give additional instructions that they requested based on jury instruction guides on general negligence.[8] The district court determined that it was more appropriate to give instructions specific to the medical-malpractice context, and we discern no abuse of discretion in that decision. And we are persuaded that the instructions given "overall fairly and correctly state the

[7] A use note to the civil jury instruction guide on duty of a physician cites *Christy* and states that "[t]he reference to a 'similar community' should not be given if the [physician] is a specialist who is sued for the negligent performance of his specialty." 4 *Minnesota Practice*, CIVJIG 80.10 (Supp. 2024). Because the jury instruction guide "is only a guide," *Rowe v. Munye*, 702 N.W.2d 729, 734 n.1 (Minn. 2005), we focus on *Christy* itself.

[8] Appellants also assert that the district court erred by declining to give additional informed consent instructions that they requested. But appellants did not make this argument in their motion for a new trial, and it is therefore forfeited. *See Sauter v. Wasemiller*, 389 N.W.2d 200, 202 (Minn. 1986).

applicable law." *Larson*, 940 N.W.2d at 140 (quotations omitted); *see also Kalsbeck v. Westview Clinic, P.A.*, 375 N.W.2d 861, 868-69 (Minn. App. 1985) (reasoning that district court did not abuse its discretion in refusing to give requested general-negligence instruction in medical malpractice case when "[a]s a whole, the instructions adequately prepared the jury to deliberate"), *rev. denied* (Minn. Dec. 30, 1985).

Affirmed.