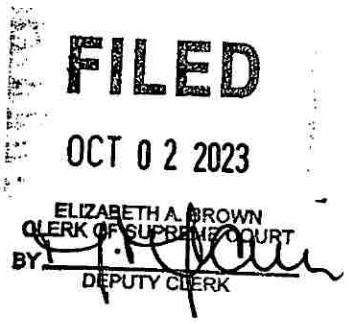
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MAZZA, AN INDIVIDUAL,
Appellant,
vs.
BANUELOS CHRISTIAN RAUDEL, AN INDIVIDUAL; AND WESTCOR COMPANIES LLC, D/B/A CORONADO CONCRETE & MASONERY, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 85142



ORDER OF AFFIRMANCE

This is an appeal from a district court judgment entered on a jury verdict and from a postjudgment order denying a motion for a new trial in a personal injury action. Eighth Judicial District Court, Clark County; Linda Marie Bell and Jerry A. Wiese, Judges.[1]

Appellant Robert Mazza brought a negligence action against respondent Banuelos Christian Raudel and Raudel's employer, respondent Westcor Companies, LLC dba Coronado Concrete & Masonery (collectively, Raudel), after Raudel rear-ended Mazza's vehicle while Raudel was driving a company vehicle. After a jury trial, the district court entered judgment for Mazza on the jury's verdict, awarding him a portion of his requested

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

damages. The district court denied Mazza's motion for a new trial and Mazza now appeals.[2]

Mazza challenges the district court's order denying his motion for a new trial on two grounds. First, Mazza argues that a new trial was warranted based on two of the district court's evidentiary rulings. In particular, Mazza claims that the district court improperly (1) admitted a medical record (the Soder record), which indicated that Mazza "reinjured" a preexisting back injury in the subject accident, and (2) permitted Raudel's expert witnesses to offer new opinions at trial about certain MRI films they had reviewed before trial but not before they penned their expert reports. Second, Mazza argues that a new trial was warranted based on several instances of attorney misconduct committed by Raudel's counsel, Phillip Emerson. We review the district court's order denying Mazza's motion for a new trial pursuant to NRCP 59 for an abuse of discretion, *Gunderson v. D. R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014), and affirm.

We first address Mazza's argument that a new trial was warranted because the Soder record should not have been admitted. Specifically, Mazza argues that Raudel's experts did not disclose any opinions regarding the Soder record before trial, that the record should not have been admitted in the absence of accompanying expert testimony demonstrating "a causal connection between the prior injury and the injury at issue," *FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 278 P.3d 490, 498 (2012),

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[2]Mazza's amended notice of appeal indicates that he is also appealing the district court's order denying his motion for additur. However, because Mazza did not provide any argument regarding that portion of the district court's order, we deem Mazza to have abandoned his appeal in that regard. *See Campbell v. Baskin*, 69 Nev. 108, 120, 242 P.2d 290, 296 (1952) (deeming an argument unsupported by authorities as abandoned).

and that the record constituted inadmissible hearsay. "We review a district court's decision to admit or exclude evidence for abuse of discretion, and we will not interfere with the district court's exercise of its discretion absent a showing of palpable abuse." *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). As the district court correctly observed, at least one of Raudel's expert's reports noted that Mazza had previously been involved in another accident and that, while Mazza denied having back pain from that accident, the medical records indicated otherwise. Because Mazza conceded that he had discussed the Soder record with the expert during his deposition, we perceive no abuse of discretion in the district court's finding that the expert's opinions regarding that record were timely disclosed.[3] We further note that Mazza did not object when the Soder record was entered into evidence at trial. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that "[a] point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal"). And while "evidence of a prior injury or preexisting condition" must ordinarily be supported by "expert testimony demonstrating the relationship between the prior injury and the injury complained of," such expert opinions are not required when that connection "is readily apparent to a layperson." *Giglio*, 128 Nev. at 283-84, 278 P.3d at 498. Here, the Soder record included a notation that Mazza had "reinjured" his lower back in the subject accident—the sole injury for which Mazza sought damages in this case. We also reject Mazza's argument that the Soder record was inadmissible double hearsay, as the

[3]In allowing Raudel to use the Soder record, the district court properly struck the testimony of one of Raudel's experts who attempted to provide a previously undisclosed opinion based on his review of that record.

subject record fell under multiple exceptions to the hearsay rule. *See* NRS 51.035(3)(a) (excepting "[a] party's own statement" from the definition of hearsay); NRS 51.115 ("Statements made for purposes of medical diagnosis or treatment and describing medical history . . . . are not inadmissible under the hearsay rule . . . .").

We next address Mazza's argument that a new trial was warranted because the district court improperly allowed Raudel's experts to offer new opinions at trial. Because the court sustained Mazza's objection and did not allow Raudel's experts to provide new opinions based on their review of the MRI films after the close of discovery, we conclude that the district court did not improperly allow the experts to bolster their opinions with inadmissible evidence as Mazza suggests. *See M.C. Multi-Family Dev.*, 124 Nev. at 913, 193 P.3d at 544.

We next address Mazza's argument that a new trial is warranted due to Emerson's alleged instances of attorney misconduct. *See* NRCP 59(a)(1)(B) (authorizing a new trial due to the prevailing party's misconduct). When "reviewing a district court's denial of a motion for a new trial based on attorney misconduct . . . this court [first] decides whether there was attorney misconduct." *Gunderson*, 130 Nev. at 74-75, 319 P.3d at 611. Based on our de novo review of the record, we conclude that none of the statements Mazza complains of constitute attorney misconduct or an improper attempt at jury nullification. *See BMW v. Roth*, 127 Nev. 122, 132, 252 P.3d 649, 656 (2011) ("Whether an attorney's comments are misconduct is a question of law that we review de novo.").

Although Mazza contends that Emerson's closing argument fell within the definition of "jury nullification" in that Emerson asked "the jury to ignore the evidence," *Capanna v. Orth*, 134 Nev. 888, 890-91, 432 P.3d

726, 731 (2018) (internal quotation marks omitted), the record shows that in closing, Emerson pointed to the evidence and "asked the jury to arrive at its decision 'based on the evidence.'" *Id.* at 891, 432 P.3d at 731 (quoting *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 269, 396 P.3d 783, 790 (2017)). Nor did Emerson invite the jury to speculate regarding missing physical therapy records; rather, he argued that the jury did not need to speculate about those records because the evidence showed that Mazza had received numerous physical therapy sessions before the subject accident. *See Jain v. McFarland*, 109 Nev. 465, 476, 851 P.2d 450, 457 (1993) ("Counsel is allowed to argue any reasonable inferences from the evidence the parties have presented at trial.").

Mazza also contends that Emerson attempted jury nullification during closing by offering his own opinion about Mazza's injuries. *See Gunderson*, 130 Nev. at 77-78, 319 P.3d at 613 (explaining that an attorney attempting jury nullification violates RPC 3.4(e) by expressing his personal opinions about the case). Mazza failed to identify where in the record such opinions could be found. *See* NRAP 28(a)(10)(A) (requiring appellant's brief to contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"). And after reviewing Emerson's closing argument, we conclude Emerson did not offer his "personal opinion about the justness of [Mazza's] cause."[4] *Lioce*

[4]We decline to consider Mazza's arguments that Emerson solicited improper expert testimony regarding the MRI films and missing physical therapy records, given that he failed to support these arguments with citations to the appendix. *See* NRAP 28(e); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 996 (1993) ("This court need not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal."). And while Mazza provided citations to the record

v. Cohen, 124 Nev. 1, 22, 174 P.3d 970, 984 (2008). Although Emerson suggested that Mazza's injuries could not have been as severe as he claimed, he supported those comments with references to admitted evidence. *See Jain*, 109 Nev. at 475-76, 851 P.2d at 457. And while Emerson revealed the fact that Mazza was referred to his chiropractor by his attorney, this did not violate the district court's orders on Mazza's motions in limine on the subject. *Cf. BMW*, 127 Nev. at 132, 252 P.3d at 656 ("A violation of an order granting a motion in limine may only serve as a basis for a new trial when the [violation of the] order . . . is clear.") (internal quotation marks omitted). Nor did we find anything in the record to support Mazza's contention that Emerson made improper arguments that Mazza's medical treatment was "attorney-driven."[5] Based upon the foregoing, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.

Cadish, J.

Lee, J.

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concerning his allegation that Emerson improperly solicited evidence of a "bus incident" that occurred after the subject accident, the cited pages do not discuss the bus incident and there is no evidence in the record that the jury learned of the incident.

[5]We decline to address Mazza's complaints that Emerson improperly commented on Mazza's absence from trial because Mazza fails to cite any authority to support his contention that such a comment warrants a new trial. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that a party is responsible for supporting its arguments with salient authority).

cc: Hon. Jerry A. Wiese, Chief Judge
William C. Turner, Settlement Judge
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