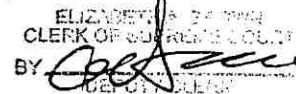
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WAFA ABDULMALEK HAZA AL OKAIBI, AN INDIVIDUAL,
Appellant,
vs.
ELIZABETH JANE STEHLIK,
Respondent.

No. 83488-COA



FILED

DEC 26 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Wafa Abdulmalek Haza Al Okaibi appeals from a judgment on a jury verdict in a tort action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

This matter arises from a motor vehicle accident involving Okaibi[1] and respondent Elizabeth Jane Stehlik. Stehlik alleged that she sustained injuries in this accident and subsequently filed a complaint alleging that Okaibi's negligence had caused Stehlik personal injuries.

In advance of the trial, Stehlik filed an "initial designation of expert witnesses," which listed her various medical providers as non-retained expert witnesses. Okaibi never sought to depose any of the providers. Trial commenced in July 2021, during which Stehlik, Stehlik's

[1]We refer to appellant as "Okaibi" because her attorney refers to her by that name.

23-41854

husband Ryan Morgan,[2] a responding police officer, and Okaibi testified. The parties stipulated to admit Stehlik's medical bills and her records from various medical providers. Okaibi did not present any evidence challenging the causation of Stehlik's injuries or dispute the reasonableness, necessity, or cost of her treatments.

At the close of Okaibi's case, Stehlik moved for a directed verdict as to liability, arguing, in relevant part, that she proved causation and damages as a matter of law through her medical records, and that Okaibi had stipulated to the admission of those records. Okaibi opposed this request, arguing that there was contradicting evidence as to Stehlik's preexisting conditions and how the accident occurred and, therefore, causation was a question of fact for the jury.

The district court denied Stehlik's motion and expressed concern over submitting the case to the jury because Stehlik did not have expert testimony or an expert affidavit to opine that her injuries were caused by the collision, her medical treatment was reasonable and necessary, and the charges were usual and customary in the region. Stehlik asserted that Okaibi stipulated to the medical records, which conclusively established causation and damages, and that the parties agreed to the stipulation of the records as a cost-saving measure. She also offered to obtain affidavits from her medical providers to satisfy the court; however, Okaibi argued that would be prejudicial. Okaibi also asserted that she did

---

[2]Morgan was also a plaintiff in the underlying case. However, the jury did not return a verdict in his favor, and he is not a party on appeal.

not stipulate to causation, but otherwise made no further argument, and indicated that she would defer to the district court's decision. The district court determined that Okaibi had stipulated to the admission of the records but not causation. The district court denied the motion.

During closing arguments, Stehlik's counsel, when discussing damages, stated "I'm not going to ask you to pay those future damages. We can put a zero there." For her part, Okaibi did not challenge causation, the reasonableness of Stehlik's medical treatment, or Stehlik's purported abandonment of future medical expenses during her closing argument. Rather, she argued that Stehlik was comparatively negligent and at fault for the collision. The jury ultimately returned a verdict in favor of Stehlik and awarded her damages for past and future medical expenses and pain and suffering. Okaibi did not file any post-trial motions challenging the jury's verdict or the judgment entered thereon. This appeal followed.

On appeal, Okaibi contends that, because Stehlik did not present any expert testimony, she failed to properly establish causation and the reasonableness and necessity of her medical damages. Okaibi also argues that it was erroneous for the district court to allow the jury to award future medical damages when Stehlik's counsel abandoned those damages during closing arguments.

Okaibi failed to raise either of these arguments below, which she acknowledges on appeal. While this court would ordinarily not consider her arguments under these circumstances, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered

on appeal"), Okaibi argues that this court should review her contentions for plain error. "Relief under the plain error standard is rarely granted in civil cases and is reserved for those situations where it has been demonstrated that the failure to grant relief will result in a manifest injustice or a miscarriage of justice." 5 Am.Jur.2d Appellate Review § 675 (2023) (footnotes omitted); *see also In re J.D.N.*, 128 Nev. 462, 469, 283 P.3d 842, 847 (2012) (citing Appellate Review § 720, an earlier version of § 675 stating the same principle, with approval in discussing the use of plain error in the civil context); *Williams v. Zell Hoefer*, 89 Nev. 579, 580, 517 P.2d 789, 789 (1973) (stating that, if argument or authority is not presented as to the alleged error, this court will not consider it unless "the error is so unmistakable that it reveals itself by a casual inspection of the record").

We decline to exercise our discretion to review this matter for plain error. *See, e.g., Flowers v. State*, 136 Nev. 1, 8, 456 P.3d 1037, 1045 (2020) ("Plain error review is discretionary, not obligatory."); *Hoard v. Hartman*, 904 F.3d 780, 787 (9th Cir. 2018) (recognizing that plain-error review is discretionary); *Chem. Leaman Tank Lines, Inc. v. Aetna Cas. & Sur. Co.*, 89 F.3d 976, 993 (3d Cir. 1996) ("In the absence of a party's preservation of an assigned error for appeal, we review for plain error, and our power to reverse is discretionary." (internal quotation marks omitted)). At trial, Okaibi did not object or otherwise present argument regarding any of the errors she now seeks to argue on appeal. Indeed, even when the district court sua sponte raised concerns about submitting this matter to a jury given the absence of expert testimony, Okaibi did not assert that such testimony was required, arguing instead that the issue of causation was a

question of the fact for the jury. Moreover, once the jury issued its verdict, Okaibi failed to raise any post-verdict challenges. Thus, we conclude that any challenge to the errors Okaibi asserts on appeal has been waived. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983; *see also Price v. Sinnott*, 85 Nev. 600, 607, 460 P.2d 837, 841 (1969) ("A party may not gamble on the jury's verdict and then later, when displeased with the verdict, challenge the sufficiency of the evidence to support it.").

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.

_________________________, C.J.
Gibbons

_________________________, J.
Bulla

_________________________, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Desert Ridge Legal Group
Keating Law Group
Van Law Firm
Ayon Law, PLLC
Eighth District Court Clerk