

Circuit Court for Montgomery County
Case No. 419521V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 829

September Term, 2017

EUGENE MADATOV

v.

ANNA FEDOROVA

Kehoe,
Berger,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: October 9, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a motor vehicle accident. Anna Fedorova (“Fedorova”), appellee, was a passenger in the rear seat of a vehicle driven by Eugene Madatov (“Madatov”), appellant, when Madatov rear-ended a vehicle in front of him on southbound I-270. Fedorova filed suit against Madatov on April 13, 2016 for injuries she sustained in the accident. The parties stipulated to Madatov’s liability, and the case proceeded to a jury trial on the issue of damages. Madatov raises two evidentiary issues on appeal:

1. Whether the circuit court abused its discretion by limiting the testimony of Madatov’s expert witness, Dr. J. Richard Wells.
2. Whether the circuit court abused its discretion by permitting Fedorova to introduce evidence about the relationship between Dr. Wells and Madatov’s liability insurer.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

On January 30, 2014, Fedorova was a passenger in Madatov’s vehicle when Madatov rear-ended another vehicle going southbound on Route I-270. Fedorova sought medical attention the day after the accident and received treatment from various medical professionals in the subsequent months. Fedorova was treated for injuries to her knee, neck, and back.

On April 13, 2016, Fedorova filed a Complaint against Madatov. She alleged that Madatov negligently struck the vehicle in front of him, thereby causing Fedorova’s injuries. Liability was conceded and the case proceeded to trial on the issue of damages only.

Prior to trial, Madatov retained Dr. J. Richard Wells as an expert witness. Dr. Wells reviewed Fedorova's medical records and conducted an independent medical examination. Dr. Wells prepared a report setting forth his findings and medical opinions. Dr. Wells opined that Fedorova had sustained only soft tissue injuries in the accident and that any symptoms she continued to experience were unrelated to the accident. Dr. Wells stated in his report that any treatment beyond May 6, 2014 was unnecessary for Fedorova's accident-related injuries. During discovery, Madatov identified Dr. Wells as an expert and submitted a copy of his report to Fedorova.

Prior to trial, Fedorova moved to exclude Dr. Wells's testimony due to alleged deficiencies in the production of certain tax records which Fedorova had subpoenaed from Dr. Wells. The requested tax records were produced and Fedorova's motion to exclude was denied. Several days before trial, Fedorova moved *in limine* to preclude Dr. Wells from testifying on issues relating to Fedorova's credibility or malingering. The circuit court granted Fedorova's motion.

Two issues arose during trial that form the basis for Madatov's appeal. The first issue relates to Dr. Wells's testimony on the issue of Fedorova's need for future surgery. The second issue relates to evidence of Dr. Wells's financial relationship with State Farm Insurance Company ("State Farm").

Testimony of Dr. Wells on Future Surgery

During Fedorova's case in chief, she presented testimony from a neurologist and an orthopedic surgeon, both of whom had been Fedorova's treating physicians following the

accident. Both physicians testified as to the extent of Fedorova's injuries, Fedorova's chronic pain following the accident, and Fedorova's possible need for spinal surgery in the future. The orthopedic surgeon described the anterior cervical decompression surgical procedure and estimated that the recovery period for that surgery would be approximately three to six months. He estimated the cost for the surgery to be \$40,000.00.

Dr. Wells testified on behalf of Madatov. He explained his opinions as to Fedorova's injuries as follows:

My opinion is that she sustained a soft tissue stretch/strain of the neck which includes muscle, tendons, and ligaments. She did not sustain any structural damage, and by that I mean she did not have an acute tear of the muscle, tendon, or ligament where it's separated. All she had was a strain from those, but it stretched. She did not have a fracture of any of the bony elements in the neck. She did not have an acute traumatic disc herniation, and she did not have acute nerve compression in the neck. All right, so what we're dealing with at this point is that there is a soft tissue stretch/strain which stimulates an inflammatory reaction. An inflammatory reaction goes on for six to 12 weeks. It then burns out, and you're done, and once it's done, you're back to the normal condition what you were before that inflammation occurred because as I said earlier, there was no structural damage.

* * *

So at this point, as of [April 8, 2014], [Fedorova's] inflammatory process had ended. She's back to her normal pre-accident state. Right now we're talking about the neck, and so any other complaints beyond this are not related to the accident. It has to be either a new injury or some other problem, but it wouldn't be related to the accident.

Dr. Wells explained that his opinions were based upon his reviews of Fedorova’s medical records as well as his independent medical examination.

Madatov inquired as to whether Dr. Wells had an opinion as to whether Fedorova required future surgery on her cervical spine as a result of the January 30, 2014 accident. Fedorova objected to the question on the basis that Dr. Wells had “written a report” that “makes no reference” to surgery. Madatov argued that the question was proper because Dr. Wells had indicated in his report that Fedorova had fully recovered from her accident-related injuries. The circuit court found that the information in Dr. Wells’s report was “[w]ay too general” to permit testimony from Dr. Wells regarding whether Fedorova needed future surgery.

Relationship with State Farm

At the beginning of trial, before jury selection, an issue arose relating to the admissibility of certain documents produced by State Farm. The documents were related to State Farm’s payments to Dr. Wells. Madatov stipulated to the authenticity of the records in order to obviate the need for a State Farm representative to testify, but objected to the records being entered into evidence because the records expressly identified “State Farm Mutual Automobile Insurance,” which was a non-party. Fedorova responded that the evidence would be offered for the purpose of demonstrating bias on the part of Dr. Wells and was therefore admissible. Madatov argued that naming State Farm was overly prejudicial, but the circuit court ruled that the evidence was admissible to show bias.

At the end of the first day of trial, prior to Dr. Wells’s testimony, Madatov asked the court to reconsider its prior ruling. The circuit court again ruled that the evidence naming State Farm was “highly relevant” to bias because Dr. Wells was paid \$1.1 million over a three-year period by State Farm. The court ruled that the probative value of the evidence was not substantially outweighed by unfair prejudice.

During cross-examination of Dr. Wells, Fedorova presented Dr. Wells with State Farm’s documents listing payments made to Dr. Wells over the preceding three years. Madatov objected to the admission of the documents into evidence. Fedorova further inquired as to the payment he received from State Farm in connection with his testimony in the present case. Madatov lodged no objection to the questions asked of Dr. Wells about his financial relationship with State Farm. In closing arguments, Fedorova’s attorney referenced the payments from State Farm to Dr. Wells, arguing that if State Farm “can afford” to pay Dr. Wells \$1.1 million in the prior three years, “take this and take \$300,000 off it, and that’s what I’m asking for Ms. Fedorova.” No objection was lodged to the references to State Farm in closing argument.

The jury returned a verdict in favor of Fedorova, awarding total compensation in the amount of \$353,000.04. The breakdown of the award was \$46,637.27 for past medical expenses, \$40,000.00 for future medical expenses, and \$238,352.77 in noneconomic damages. Madatov filed a motion for reconsideration and for a new trial and/or for Remittitur, which was denied by the circuit court. This appeal followed.

STANDARD OF REVIEW

The admission or exclusion of evidence “is generally committed to the sound discretion of the trial court.” *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 406 (2012). “When the trial judge’s ruling involves a weighing [of both the probative value of a particular item of evidence, and of the danger of unfair prejudice that would result from the admission of that evidence], we apply the more deferential abuse of discretion standard [of review].” *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 620 (2011) (alterations in original) (quoting *J.L. Matthews, Inc. v. Md.-Nat’l Capital Park & Planning Comm’n*, 368 Md. 71, 92 (2002)).

DISCUSSION

I.

Madatov first asserts that the circuit court erred and/or abused its discretion by sustaining Fedorova’s objection to the question Madatov asked Dr. Wells about Fedorova’s potential need for future surgery. Madatov argues that the circuit court erred for various reasons. Madatov argues that Fedorova’s challenge to the sufficiency of Dr. Wells’s expert witness designation and opinions should have been made during discovery, not at trial. Madatov further asserts that Fedorova was on notice of Dr. Wells’s expected testimony about future treatment based upon the expert designation and the associated reports. Madatov characterizes the circuit court’s decision to preclude Dr. Wells from testifying about future surgery as a discovery sanction and argues that it constitutes an abuse of discretion because Madatov’s conduct was not willful or contemptuous.

We are not persuaded by Madatov’s attempt to frame this issue as a discovery dispute that should have been addressed prior to trial. Madatov analogizes to the Court of Appeals’s decision in *Food Lion v. McNeill*, 393 Md. 715 (2006), which involved a motion to exclude testimony from an expert on a particular point. In *Food Lion*, a party sought to preclude the opposing party’s expert witness from testifying on the issue of causation because the expert designation failed to provide the grounds or basis for the expert opinion. *Id.* at 726. The motion was made on the first day of trial. *Id.* The circuit court granted the motion but was reversed by an *en banc* panel. *Id.* at 728-29. The Court of Appeals affirmed, explaining that “[a] party who answers a discovery request timely and does not receive any indication from the other party that the answers are inadequate or otherwise deficient should be able to rely, for discovery purposes, on the absence of a challenge as an indication that those answers are in compliance, and, thus not later subject to challenge as inadequate and deficient when offered at trial.” *Id.* at 736.

Unlike in *Food Lion*, this is not a case where a party sought to preclude a witness from testifying on a particular subject matter identifiable from the expert designation due to some perceived deficiency in the expert’s report. Rather, the dispute about the precise scope of Dr. Wells’s testimony was not readily predictable prior to trial. Indeed, the report prepared by Dr. Wells does not specifically mention anything about Fedorova’s future need for surgery. It was only after Fedorova’s own expert witnesses testified to this issue that Madatov sought to introduce Dr. Wells’s opinions as to whether surgery would be necessary in the future. Fedorova could not have reasonably been expected to raise the

issue earlier because there was no way to anticipate, prior to trial, that Madatov intended to have Dr. Wells testify on the issue of future surgery. This is not, therefore, a discovery dispute as characterized by Madatov.

We next turn to whether the circuit court abused its discretion by granting Fedorova’s objection on the issue of future surgery. The circuit court observed that Dr. Wells’s report was “[w]ay too general” to reasonably be understood as including an opinion on the necessity of future surgery. The report provided that Fedorova had “fully recovered from the mild soft tissue strain to her neck” and that “[a]ny complaints or treatments after this are not related to this” motor vehicle accident. Dr. Wells further indicated that in his independent medical examination, he “did not find any physical abnormalities that would be related to this” motor vehicle accident.

In our view, the circuit court did not abuse its discretion by sustaining Fedorova’s objection to Madatov’s question about future surgery. An abuse of discretion is found

where no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding principles. An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic.

Questions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

An abuse of discretion, therefore, should only be found in the extraordinary, exceptional, or most egregious case. Given that the abuse of discretion standard makes generous allowances for the trial court's reasoning, we grant great deference to that court's conclusion and uphold it unless it is apparent a serious error has occurred.

Cent. Truck Ctr., Inc. v. Cent. GMC, Inc., 194 Md. App. 375, 398 (2010) (internal quotations and citations omitted).

We perceive no such serious error in the present case. Dr. Wells's report did not specifically include an opinion on Fedorova's need for future surgery. Indeed, Dr. Wells testified in a general manner, consistently with his report, that Fedorova had fully recovered from any injuries sustained in the motor vehicle accident. The circuit court reasonably concluded that it would be inappropriate for Dr. Wells to testify with specificity on the topic of Fedorova's need for future surgery. We hold that this decision was not so "far removed from any center mark imagined" so as to constitute an abuse of discretion.

II.

We next consider whether the circuit court erred or abused its discretion when it permitted Fedorova to introduce evidence regarding Dr. Wells's relationship with State Farm.¹

¹ Fedorova asserts that this issue is not preserved because Dr. Wells was questioned about his relationship with State Farm without objection from defense counsel. Madatov responds that there were numerous objections raised at different points in time, including prior to trial, during an oral motion to reconsider, and an objection to the introduction of a plaintiff's exhibit showing payments made by State Farm to Dr. Wells.

Maryland Rule 5-411 provides that “[e]vidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully.” The Rule, however, “does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.” Md. Rule 5-411. In the present case, the evidence of Dr. Wells’s financial involvement with State Farm was not introduced for the purpose of proving liability. Rather, the evidence was offered to show bias on the part of Dr. Wells. This is clearly permissible under Rule 5-411.

Madatov argues, however, that even if permissible pursuant to Rule 5-411, the evidence should have been excluded pursuant to Maryland Rule 5-403 because its probative value was substantially outweighed by the danger of unfair prejudice. We apply the abuse of discretion standard when considering the circuit court’s Rule 5-403 determination. *Ruffin, supra*, 418 Md. at 620.

In our view, given the substantial financial relationship between Dr. Wells and State Farm, the circuit court acted well within its discretion when permitting Fedorova, on cross-examination, to inquire as to Dr. Wells’s potential bias. Indeed, Dr. Wells acknowledged that his corporation was paid \$1,114,168.00 by State Farm in a three-year

A contemporaneous objection is generally required at the time that evidence is offered, and we observe that no such objection was lodged to portions of Dr. Wells’s testimony. Nonetheless, objections were lodged to the documentary evidence referencing State Farm, and we, therefore, address the merits of this issue on appeal.

period.² The circuit court reasonably concluded that “this witness being paid \$1.1 million over a three-year period by a single entity is highly relevant as to his bias or lack of bias, [and] his decision to look at facts through a certain lens.” We agree with the circuit court. We hold, therefore, that the circuit court did not abuse its discretion by admitting evidence about Dr. Wells’s relationship with State Farm.

Madatov asserts that any prejudice was exacerbated during closing argument when Fedorova argued to the jury that if State Farm “can afford” to pay Dr. Wells \$1.1 million in the prior three years, “take this and take \$300,000 off it, and that’s what I’m asking for Ms. Fedorova.” Critically, no objection was lodged to the references to State Farm in closing argument. This issue, therefore, is not before us on appeal. *See Little v. Schneider*, 434 Md. 150, 166-67 (2013) (“If [the defendant] had objected [during closing argument], and the trial court had sustained his objection, we might well agree that [the plaintiff’s] counsel had gone too far at this point. Yet, [the defendant] failed to object to this statement at trial. As a result, any complaint [the defendant] may have with regard to [the plaintiff’s] closing argument is waived and not preserved for appellate review.”). We similarly hold that this issue is not preserved for our review.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

² Dr. Wells, when presented with State Farm documents showing records of payments made, acknowledged that \$1,114,168.00 “sounds like that would be a reasonable number” for the amount he earned from State Farm in 2014, 2015, and 2016.