

132 Nev., Advance Opinion 52

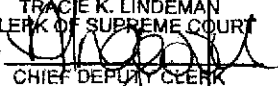
IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,
Appellant,
vs.
MARGARET SEASTRAND,
Respondent.

No. 64702

FILED

JUL 28 2016

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RAYMOND RIAD KHOURY,
Appellant,
vs.
MARGARET SEASTRAND,
Respondent.

No. 65007

RAYMOND RIAD KHOURY,
Appellant,
vs.
MARGARET SEASTRAND,
Respondent.

No. 65172

Consolidated appeals from a district court judgment, pursuant to a jury verdict, and post-judgment orders awarding costs and denying a new trial in a personal injury action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Affirmed in part, reversed in part, and remanded.

Hall Jaffe & Clayton, LLP, and Steven T. Jaffe, Las Vegas; Harper Law Group and James E. Harper, Las Vegas; Houser & Allison, APC, and Jacob S. Smith, Las Vegas; and Lewis Roca Rothgerber Christie LLP and Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith, Las Vegas, for Appellant.

Richard Harris Law Firm and Alison M. Brasier, Benjamin P. Cloward,
and Richard A. Harris, Las Vegas,
for Respondent.

BEFORE THE COURT EN BANC.¹

OPINION

By the Court, SAITTA, J.:

As any trial attorney is aware, the jury voir dire process can be as important to the resolution of their claim as the trial itself. In this case we are asked to consider whether an attorney may ask prospective jurors questions concerning a specific verdict amount to determine potential bias or prejudice against returning large verdicts and whether repeatedly asking questions about that specific verdict amount results in jury indoctrination warranting a mistrial. We also consider the question of when a district court abuses its discretion in dismissing jurors for cause under *Jitnan v. Oliver*, 127 Nev. 424, 254 P.3d 623 (2011).

We hold that while it is permissible for a party to use a specific award amount in questioning jurors regarding their biases towards large verdicts, it is the duty of the district court to keep the questioning within reasonable limits. When the district court fails to do so, this can result in reversible error due to jury indoctrination. We also distinguish our holding in *Jitnan* to emphasize that a juror's statements must be taken as a whole when deciding whether to dismiss for cause due

¹The Honorable Ron Parraguirre, Chief Justice, voluntarily recused himself from participation in the decision of this matter.

to bias. Just as detached language considered alone is insufficient to establish that a juror is *unbiased*, it is also insufficient to establish that a juror is *biased*.

In the current case, we hold that, while troubling, the plaintiff's questioning of the jurors during voir dire did not reach the level of indoctrination. Furthermore, we hold that the district court abused its discretion by dismissing for cause five jurors because their statements, when taken as a whole, did not indicate that they were biased against large verdict amounts. However, the district court's error was harmless. Next, the district court did not abuse its discretion by admitting opinion and causation testimony by respondent's treating physician, by admitting testimony by respondent's expert witness, or by excluding evidence of the amount that respondent's medical providers received for the sale of her medical liens. However, the district court did abuse its discretion by excluding evidence of the medical lien's existence to prove bias in Seastrand's medical providers, but the error was harmless. Lastly, we hold that the district court abused its discretion by awarding respondent expert witness fees in excess of \$1,500 per expert because it did not state a basis for its award. Therefore, we reverse the district court's decision as to the award of expert witness fees and remand to the district court with instructions to redetermine the amount of expert witness fees and, if greater than \$1,500 per witness, to state the basis for its decision.

FACTUAL AND PROCEDURAL HISTORY

Respondent Margaret Seastrand and appellant Raymond Riad Khoury were in an automobile accident where Khoury's car rear-ended Seastrand's car. Following the accident, Seastrand received extensive treatment to both her neck and back, including surgeries. Seastrand

brought the underlying personal injury action against Khoury to recover damages.

Khoury stipulated to liability for the accident, and the only issues contested at trial were medical causation, proximate cause, and damages. Khoury argued that Seastrand's injuries leading to the surgeries were preexisting and were not caused by the accident. During voir dire, Seastrand stated that she was seeking \$2 million in damages and was permitted to question the jurors regarding whether they had hesitations about potentially awarding that specific verdict amount. After this questioning, the district court granted Seastrand's motion to dismiss several jurors for cause but denied Seastrand's motion to dismiss five other jurors for cause. However, the next day, the district court reconsidered its previous ruling and dismissed those five jurors for cause.

During trial, multiple expert witnesses testified, including Dr. Jeffrey Gross, a neurological expert, and Dr. William S. Muir, one of Seastrand's treating physicians. After a ten-day trial, the jury returned a verdict in the amount of \$719,776. Seastrand then filed a memorandum of costs in the amount of \$125,238.01 and a motion for attorney fees. Khoury opposed the motion and moved to retax costs. The district court granted in part Seastrand's motion for costs, awarding her \$75,015.61, denied Seastrand's motion for attorney fees, and denied Khoury's countermotion to retax costs. Khoury then made a motion for a new trial, alleging various errors. The district court denied Khoury's motion. Khoury appeals from the judgment, the costs award, and the order denying his new trial motion.

Khoury raises the following issues on appeal: whether the district court abused its discretion by (1) denying Khoury's motion for a

mistrial due to jury indoctrination, (2) dismissing jurors for cause that displayed concerns about their ability to award large verdicts and/or damages for pain and suffering, (3) admitting causation and opinion testimony by one of Seastrand's treating physicians, (4) admitting testimony by one of Seastrand's expert witnesses that was outside the scope of his specialized knowledge and/or undisclosed in a timely expert report, (5) excluding evidence of the amount Seastrand's medical providers received for the sale of her medical liens, (6) excluding evidence of her medical liens, (7) refusing to grant a new trial following Seastrand's use of the word "claim" during opening arguments, and (8) awarding costs to Seastrand.

DISCUSSION

The voir dire process

Khoury argues that the district court abused its discretion by allowing Seastrand to voir dire the jury panel about their biases regarding large verdicts. Khoury contends that Seastrand's questioning indoctrinated the jury to have a disposition towards a large verdict. Khoury argues that by asking jurors if they were uncomfortable with a verdict in excess of \$2 million, Seastrand's attorney "improperly implanted a numerical value in the minds of the jury as representative of plaintiff's damages *before* the jurors heard or considered any admitted evidence." Therefore, Khoury urges this court to "rule that such questions are *per se* improper."

The decision whether to grant or deny a motion for mistrial is within the trial court's discretion. *Owens v. State*, 96 Nev. 880, 883, 620 P.2d 1236, 1238 (1980).

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