

STATE OF MINNESOTA
IN COURT OF APPEALS

A24-0534



Shamso Hussein,

Appellant,

vs.

Public Storage Institutional Fund III, a
California Limited Partnership,
d/b/a Public Storage,

Respondent,

Leeraya Rogers,

Defendant.

ORDER OPINION

Hennepin County District Court
File No. 27-CV-23-7738

Considered and decided by Worke, Presiding Judge; Ede, Judge; and Reilly, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Shamso Hussein challenges the district court's judgment in this negligence action to recover damages from respondent Public Storage Institutional Fund. Hussein argues that the district court abused its discretion by excluding certain evidence.

2. While at Public Storage's facilities, Hussein was injured when she fell out of a golf cart that a Public Storage employee was driving. Hussein sought medical attention from several providers, including an emergency department, her primary care physician,

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

and a pain clinic (collectively, the other medical providers). She was also treated by a chiropractor.

3. Hussein filed an amended complaint against Public Storage alleging one count of negligence. The case proceeded to a court trial.

4. At trial, the district court admitted deposition testimony, in relevant part, from Hussein's treating chiropractor. Hussein sought to introduce evidence of her medical records and medical bills, including those from the other medical providers, through only the chiropractor's testimony. Public Storage objected, asserting that the proposed evidence lacked foundation. Over Public Storage's objection, the district court admitted evidence related to the chiropractor's treatment of Hussein but excluded evidence of Hussein's treatment from the other medical providers.

5. The district court entered judgment in favor of Hussein in the amount of \$15,000. Hussein did not file any posttrial motions.

6. Hussein argues that the district court abused its discretion when it excluded the medical records and medical bills from the other medical providers. An evidentiary ruling is "within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). This includes evidentiary rulings concerning foundation. *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994).

7. Hussein specifically contends that the district court abused its discretion when it excluded evidence related to her treatment by the other medical providers because

it was offered through deposition testimony rather than through in-person testimony at trial. However, “matters such as trial procedure, evidentiary rulings and jury instructions are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error.” *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986); *see also* Minn. R. App. P. 103.04 (stating that “[t]he scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions”). Here, Hussein did not move for a new trial. Thus, she has forfeited this issue on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

8. Even if we were to consider this argument, we would conclude that it is unavailing. The record shows that the district court excluded the evidence for a lack of foundation, not because it was presented through deposition testimony. *See* Minn. R. Evid. 803(6); *see also Nat’l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 62 (Minn. 1983) (stating that actual custodian of business records is not required to testify when person laying foundation is familiar with how business compiles its documents). At trial, the district court specifically explained that the chiropractor could not provide an adequate foundation for the excluded medical records and bills because these records were compiled by the other medical providers and he lacked knowledge of their document-compilation practices. Therefore, Hussein’s evidentiary challenges also fail on the merits.

IT IS HEREBY ORDERED:

1. The district court’s judgment is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: August 26, 2024

BY THE COURT



Judge Renee L. Worke