STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1315

Jacob Becker, et al.,
Appellants,

vs.

Mark A. Steinhauser, et al.,
Respondents.

Filed March 31, 2025
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CV-21-891

Teresa Fariss McClain, Elizabeth Fors, Robins Kaplan LLP, Minneapolis, Minnesota (for appellants)

Mark R. Bradford, Elizabeth Euller, Bradford Andresen Norrie & Camarotto, Bloomington, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this appeal from judgment following a jury trial on appellants' medical-malpractice claims, appellants assert that the district court abused its discretion by denying their motion to amend their pleadings to allege a negligent-nondisclosure claim and their motion for a new trial. We affirm.

FACTS

Appellants Jacob Becker, et al. (the Beckers) sued respondents Mark A. Steinhauser, et al, for medical malpractice. The Beckers' claims were based on care that Dr. Steinhauser provided on May 7, 2018, at Entira Family Clinic (Entira).

Evidence at trial showed that Jacob Becker was injured at work and underwent a medical evaluation on April 27, 2018. His blood pressure was very high, 206/109, and he was told to follow up with a primary-care doctor as soon as possible. Becker had a history of elevated blood-pressure readings dating back to at least 2015. He also had a family history of cardiovascular disease and diabetes.

On May 7, 2018, Becker met with Dr. Steinhauser—a family-medicine physician—for the first time. Becker was 39 years old. His chief complaint was swelling (edema) in his feet and ankles, which started on May 3, 2018. He also complained of frequent urination and weight gain. He denied other symptoms.

Dr. Steinhauser noted that Becker had significant weight gain over the preceding few years. Dr. Steinhauser noted that Becker snored and may have had "apneic periods," meaning his breathing temporarily stopped. Dr. Steinhauser recorded Becker's blood pressure twice during the visit.[1] The first reading was 184/97; the second was 178/90. The average of those readings reflected a severely high blood pressure. Severely high blood pressure can be life-threatening, and as Dr. Steinhauser acknowledged during his

[1] Dr. Steinhauser testified that Becker's blood pressure was checked throughout the visit, but those values were not recorded.

testimony, accepted standards of care require a doctor to "look for signs of target organ injury."

While examining Becker, Dr. Steinhauser observed "two to three plus pitting edema in both lower extremities," meaning that Becker's swollen feet and legs showed a pitted depression after the doctor pressed on them with his fingers. Dr. Steinhauser agreed that this is "moderate pitting edema" and can be a sign of heart or kidney dysfunction. Becker's liver "was three to four centimeters below the right costal margin," which could indicate enlargement. But Becker's liver was not tender or causing pain. Becker had anemia, meaning low hemoglobin in the blood; asymptomatic microscopic hematuria, meaning blood in the urine; and proteinuria, meaning protein in the urine. Blood and protein in the urine can be a sign of kidney damage.

Dr. Steinhauser did not send Becker to the hospital or prescribe medication. Dr. Steinhauser acknowledged at trial that there were signs of organ injury, but he testified that Becker "was relatively stable" and "there wasn't an acute symptom to cause [Dr. Steinhauser] to diagnose hypertensive emergency." Dr. Steinhauser testified, "I told [Becker] he had hypertension, but I wanted the laboratory study before starting treatment."

The morning after his appointment with Dr. Steinhauser, Becker fell to the floor of his home. He had suffered a hemorrhagic stroke. He underwent multiple surgeries but continues to suffer from cognitive issues.

The Beckers sued Dr. Steinhauser and Entira. They alleged that Dr. Steinhauser failed to appreciate the significance of Becker's elevated blood pressure and failed to properly evaluate and treat the hypertensive emergency that Becker presented. They also

alleged that Entira was vicariously liable for Dr. Steinhauser's medical malpractice as his employer.

The case was tried to a jury. The Beckers called Dr. Steinhauser to testify during the presentation of their case. Later, the Beckers moved the district court to amend their pleadings to include a claim of negligent nondisclosure based on Dr. Steinhauser's testimony. The district court denied that motion.

The central issue at trial was whether Dr. Steinhauser failed to meet the accepted standard of care. Evidence showed that a hypertensive emergency is severe blood pressure elevation in the presence of "acute target organ injury," also referred to as "acute end-organ damage." And evidence showed that the standard of care for a patient presenting a hypertensive emergency is to refer the patient for an emergency evaluation. The Beckers' theory was that Becker presented a hypertensive emergency during his visit with Dr. Steinhauser and that Dr. Steinhauser therefore had a duty to refer him for emergency care. Because there was no dispute over whether Becker had severe blood pressure elevation, the issue of breach turned on whether Becker was suffering acute target organ injury or acute end-organ damage when Dr. Steinhauser examined him.

The Beckers' expert, Dr. Brian Smith, a family-medicine physician, testified that Becker showed signs of acute end-organ damage primarily based on his edema. Dr. Smith also noted concern over the protein and blood in Becker's urine, which indicated that there could be something wrong with his kidneys, but he conceded that it was unclear at the time whether this issue was acute or chronic. Dr. Smith testified, "It's clear he had severely elevated blood pressure. He had at least two signs of end-organ damage potentially

affecting three organs," yet Dr. Steinhauser did not send Becker "to the emergency room for acute treatment."

Respondents' expert, Dr. Steven Zeiler, a stroke neurologist, testified that hemorrhagic strokes are primarily caused by chronic hypertension. He opined that Becker's stroke was caused by chronic hypertension, and he stated that there was no data to suggest that treatment to lower Becker's blood pressure would have prevented a hemorrhagic stroke. Dr. Zeiler also opined that the blood and protein in Becker's urine indicated a chronic issue, not an acute issue, and that Becker's edema was the result of liver disfunction, which is not caused by hypertension. Dr. Zeiler did not believe that Becker presented a hypertensive emergency during his appointment with Dr. Steinhauser. Dr. Zeiler testified that Becker "had no symptoms of target organ injury" and that Dr. Steinhauser could not have prevented Becker's hemorrhagic stroke.

Dr. Ruth Bolton, a family-medicine physician, also testified as an expert witness for respondents, opining that Dr. Steinhauser followed accepted standards of care in his evaluation and treatment of Becker. Dr. Bolton testified that Becker did not have any symptoms of acute target organ injury during his appointment with Dr. Steinhauser.

The day after testifying during the Beckers' case-in-chief, Dr. Steinhauser did not appear for trial. Defense counsel informed the court that Dr. Steinhauser was ill. After discussion with counsel, the district court informed the jury that Dr. Steinhauser was ill and that the Beckers' case would "proceed." Later, defense counsel informed the district court that the defense would forgo the opportunity to question Dr. Steinhauser as a witness.

During final instructions, the district court instructed the jury to treat Dr. Steinhauser's testimony no differently than any other evidence provided at trial.

During closing arguments, defense counsel argued that a demonstrative exhibit that the Beckers had introduced was fraudulent. The Beckers objected, and the district court overruled the objection.

The jury returned a unanimous special verdict, finding that Dr. Steinhauser was not negligent in his care of Becker. The district court entered judgment in favor of respondents. The Beckers moved for a new trial, and the district court denied that motion.

The Beckers appeal.

DECISION

I.

The Beckers contend that the district court abused its discretion by refusing to submit a negligent-nondisclosure claim to the jury, arguing that they established a prima facie case of negligent nondisclosure. *See* Minn. R. Civ. P. 15.02 (governing amendments to the pleadings to conform to the evidence).

After a responsive pleading has been served, "[a] plaintiff may not amend the complaint if the proposed amendment would be futile because it would serve no useful purpose." *U.S. Bank Nat'l Ass'n v. RBP Realty, LLC*, 888 N.W.2d 699, 705 (Minn. App. 2016), *rev. denied* (Minn. Apr. 18, 2017). We normally apply an abuse-of-discretion standard of review to a district court's denial of a motion to amend the complaint. *Id.* But "[i]f a district court denies a motion to amend on the ground of futility, our review of the

district court's ruling may turn on whether it was correct in an underlying legal ruling." *Id.* (quotation omitted).

In Minnesota, the doctrine of negligent nondisclosure was first outlined in *Cornfeldt v. Tongen*, 262 N.W.2d 684 (Minn. 1977), in which the supreme court "held that when there is a particular risk inherent in a treatment or procedure the doctor may have a duty to disclose it." *Pratt by Pratt v. Univ. of Minn. Affiliated Hosps. & Clinics*, 414 N.W.2d 399, 401 (Minn. 1987). The duty to disclose has been applied "when the patient must decide between the recommended treatment and no treatment at all" and "when a patient must choose between two or more medically accepted alternative treatments." *Id.* "The existence of the duty depends on an objective standard . . . ." *Kinikin v. Heupel*, 305 N.W.2d 589, 594 (Minn. 1981). "A duty to disclose arises if the doctor knows or should know of the risk." *Id.* A doctor must disclose "risks of death or serious bodily harm which are of significant probability," as well as "[r]isks which a skilled practitioner of good standing in the community would reveal." *Id.* at 595.

The Beckers argue that the proposed amendment was appropriate because Dr. Steinhauser never told Becker "that his severely high blood pressure and abnormal findings of pitting edema in his lower extremities and microscopic hematuria and proteinuria were signs of target organ damage that constituted a [h]ypertensive [e]mergency necessitating immediate treatment to avoid irreversible and life-threatening organ damage." Respondents counter that "Minnesota law is perfectly clear that there can be no claim for negligent nondisclosure where the doctor doesn't tell the patient of other, alternative courses of treatment *in the event the doctor's diagnosis is wrong*." That is, "a physician

does not have to inform the patient of all alternative courses of treatment in the event the physician's diagnosis is incorrect."

Respondents rely on *Pratt*, in which the supreme court stated that the doctrine of negligent nondisclosure does not "require disclosure of conditions not diagnosed after a diagnosis has been non-negligently made." 414 N.W.2d at 401. The supreme court reasoned in *Pratt*:

> [T]he [d]octors used all available tests and gathered all pertinent information in making their diagnosis. Thereafter they informed the Pratts of their conclusions and proceeded in a manner consistent with that diagnosis. Under the circumstances of this case, there was nothing more that could be done.
>
> To say that the [d]octors had a duty to disclose something more would, in effect, require them to inform the Pratts that their diagnosis might be incorrect. There is no logical stopping point to such a requirement. Such a rule could conceivably force physicians to inform patients of all risks associated with all conditions that were not diagnosed. To require physicians to list such a parade of horribles under these circumstances is not countenanced under either law or policy.

Id. at 402.

Here, it is undisputed that Dr. Steinhauser did not diagnose a hypertensive emergency. Indeed, Dr. Steinhauser's decision to not diagnose a hypertensive emergency was the basis of the negligence claim. And as explained in section II.C. of this opinion, the evidence supports the jury's finding that Dr. Steinhauser's diagnosis was not negligently made.

In denying the Beckers' motion to amend, the district court reasoned:

> I don't think . . . the law supports a claim for a duty to warn under the facts of this case. . . . [E]ither Dr. Steinhauser has a

> duty to tell [Becker] to go to the hospital, or he . . . had a duty to instruct him that this would be treated as an outpatient, and he would perform tests and call him in the morning. And so with that, I don't believe that it would be appropriate for the negligent failure to disclose claim to proceed.

The district court's reasoning is consistent with *Pratt*: because Dr. Steinhauser's diagnosis was not negligently made and did not include hypertensive emergency, Dr. Steinhauser had no duty to advise Becker of the risk of a hypertensive emergency. *See id.* at 401. Under *Pratt*, Dr. Steinhauser had no duty to recommend the alternative option of emergency care just in case he was wrong in his diagnosis. *See id.*

In sum, precedent indicates that the Beckers did not have a cognizable claim for negligent nondisclosure, and the district court did not abuse its discretion by rejecting their motion to amend.

II.

The Beckers contend that the district court abused its discretion by denying their motion for a new trial. A district court's ruling on a motion for a new trial is reviewed for an abuse of discretion. *TC/Am. Monorail, Inc. v. Custom Conveyor Corp.*, 840 N.W.2d 414, 417 (Minn. 2013). "The district court abuses its discretion if it bases its ruling on an improper application of the law to the facts." *Id.* However, we review questions of law de novo. *See id.* at 417-18. The Beckers argue that they were entitled to a new trial because the district court erroneously instructed the jury regarding Dr. Steinhauser's absence from trial, because defense counsel accused the Beckers of fraud during closing argument, and because the jury's special verdict was not supported by the evidence. We address each argument in turn.

Jury Instructions

The Beckers argue that "[t]he district court's comments and instructions to the jury regarding Dr. Steinhauser's health constituted a prejudicial irregularity in the proceedings" under Minn. R. Civ. P. 59.01(a) "and an error of law" under Minn. R. Civ. P. 59.01(f).

To obtain a new trial based on irregularity, the moving party must show that an irregularity occurred and that the party was deprived of a fair trial as a result. *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995), *rev. denied* (Minn. June 14, 1995). "An irregularity is a failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law." *Id.* (quotation omitted). We will not reverse a district court's decision on whether to grant a new trial based on irregularity absent a clear abuse of discretion. *Id.*

District courts have "considerable latitude" in choosing jury instructions. *Youngquist v. W. Nat'l Mut. Ins. Co.*, 716 N.W.2d 383, 385 (Minn. App. 2006) (quotation omitted). A new trial is warranted if "an erroneous instruction destroys the substantial correctness of the charge as a whole, causes a miscarriage of justice, or results in substantial prejudice." *Larson v. Gannett Co.*, 940 N.W.2d 120, 140 (Minn. 2020) (quotation omitted). An error is prejudicial if there is a reasonable likelihood the instruction had "a significant effect" on the jury's verdict. *Youngquist*, 716 N.W.2d at 386.

The Beckers called Dr. Steinhauser to testify in their case-in-chief and completed that testimony. The next day, Dr. Steinhauser did not appear for trial. Defense counsel informed the district court: "[M]y client will not be here today; he is not well, and he is going to be seen medically. I do not know what the outcome of that will be." Defense

counsel asked the court to tell the jury that Dr. Steinhauser would be absent for medical reasons. The Beckers' counsel expressed concern that a reference to Dr. Steinhauser being ill would produce sympathy for him.

The district court voiced concern that the jury would expect Dr. Steinhauser to return to be "questioned by the other side," as "will happen for all of the other witnesses in this case." The Beckers' counsel asked the court to tell the jury that Dr. Steinhauser was out due to "unforeseen circumstances." The district court expressed concern that such a statement might prejudice Dr. Steinhauser by causing the jury to "think that he had something else that he thought was more important going on today, that he just decided he was not going to show up."

After discussing the issue with counsel and considering their input, the district court advised the jury: "Dr. Steinhauser has fallen ill. And so we are going to proceed with the [Beckers'] case this morning." The next day, Dr. Steinhauser was still ill. The district court did not address the issue with the jury, reasoning: "I don't see the need to address that with the jury; we told them yesterday." However, the district court told the parties that it would not allow defense counsel to use Dr. Steinhauser's deposition as a substitute for live testimony without a showing that he was unavailable.

Defense counsel ultimately informed the district court that, because Dr. Steinhauser remained ill, the defense was willing to submit the case to the jury on the existing evidentiary record, without calling Dr. Steinhauser to testify. Defense counsel asked the district court to instruct the jury that Dr. Steinhauser remained out due to illness. The Beckers' counsel responded: "Your Honor, we don't have any objection to that."

The district court proposed a final instruction regarding Dr. Steinhauser's partial absence from trial, which was based on the district court's concern that a juror might question the weight to be afforded Dr. Steinhauser's testimony because it had been presented in a different process (i.e., without both direct and cross-examination). The district court indicated that in its view, instructing the jury was the "fairest thing to do." The court told the jury: "You heard the testimony of Dr. Steinhauser, who fell ill. You should consider his testimony just as you heard the other evidence."

The Beckers do not cite any rule or authority indicating that the district court's instructions regarding Dr. Steinhauser's absence were improper. A district court has broad discretion in instructing a jury. *State Farm Fire & Cas. Co. v. Short*, 459 N.W.2d 111, 113 (Minn. 1990). A district court also has broad discretion in controlling courtroom proceedings. *See Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995). The record shows that the district court carefully considered its options and received input from the parties before exercising its discretion, both when the issue first arose and when crafting its final instructions.

The Beckers argue that the district court abused its discretion because the instructions regarding Dr. Steinhauser's absence were "irrelevant to any material issue." Although the instructions were not relevant to the elements of the Beckers' medical-malpractice claims, the instructions were within the district court's broad authority to control courtroom proceedings. *See id.*

The Beckers also argue that the district court's instructions "relied on facts not supported by the record." But defense counsel's representations regarding Dr.

Steinhauser's illness were made as an officer of the court. The district court could rely on counsel's representation. *See Findling v. Grp. Health Plan, Inc.*, 998 N.W.2d 1, 12 n.10 (Minn. 2023) ("We assume lawyers in Minnesota are acting ethically.").

Finally, the Beckers argue that the district court's instructions unfairly prejudiced them. But the district court instructed the jury to treat Dr. Steinhauser's testimony just as it would "other evidence" and to "not allow sympathy, prejudice, . . . or emotion to influence [its] verdict." We assume that the jury followed the court's instructions and properly considered Dr. Steinhauser's testimony. *See State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998) ("We assume that the jury follows a court's instructions."). And even if the instruction was erroneous, an erroneous jury instruction may not be prejudicial if there is ample evidence to support the jury's findings. *Lewis v. Equitable Life Assurance Soc'y. of the U.S.*, 389 N.W.2d 876, 885 (Minn. 1986). As discussed in section II.C of this opinion, the evidence amply supported the jury's finding that Dr. Steinhauser was not negligent in his care of Becker.

In sum, the district court did not abuse its discretion by declining to grant a new trial based on its instructions regarding Dr. Steinhauser's absence from trial.

Fraud Accusation

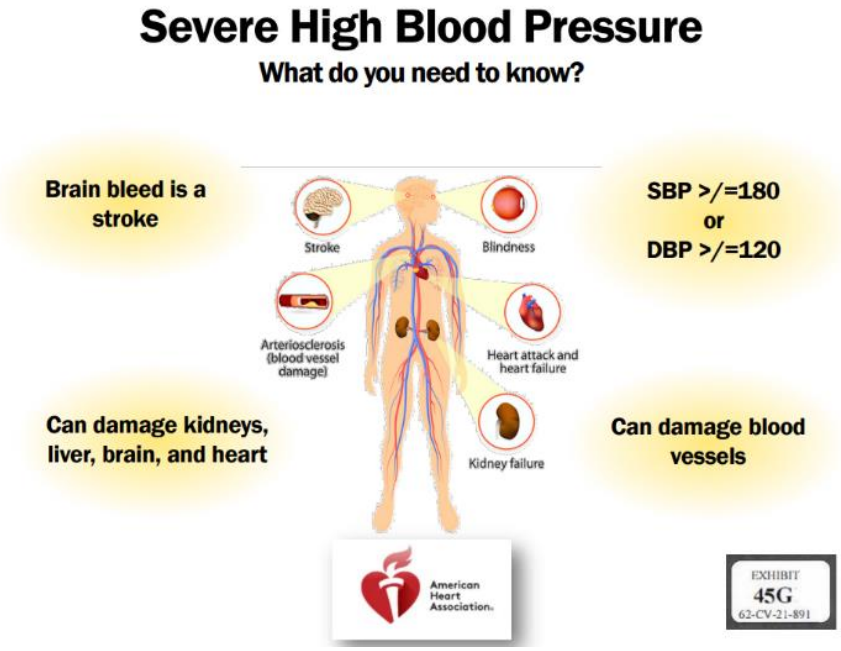
The Beckers argue that they are entitled to a new trial because defense counsel engaged in misconduct during closing argument by accusing them of fraud.

Minn. R. Civ. P. 59.01(b) permits the grant of a new trial based on "[m]isconduct of the . . . prevailing party." The decision to grant a new trial based on attorney misconduct "rests almost wholly in the discretion of the [district] court," and we will not reverse absent

a "clear abuse" of that discretion. *Wild v. Rarig*, 234 N.W.2d 775, 785 (Minn. 1975). "The primary consideration in determining whether to grant a new trial is prejudice." *Id.* at 786.

"[A] new trial for prejudicial argument is granted only to prevent a miscarriage of justice." *Connolly v. Nicollet Hotel*, 104 N.W.2d 721, 731 (Minn. 1960). Statements of counsel during closing argument "which are borne out by the record cannot be deemed prejudicial." *Id.* at 732. "Counsel have the right to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn therefrom." *Id.*

The Beckers introduced exhibit 45G, a diagram depicting, among other things, the organs that can be damaged from severely high blood pressure. Text on the lower left-hand side of exhibit 45G says: "Can damage kidneys, liver, brain, and heart." A box on the bottom of exhibit 45G contains the insignia of the American Heart Association (AHA) accompanied by a small copyright symbol.



The Beckers introduced exhibit 45G through their expert, Dr. Smith. On cross-examination, Dr. Smith testified that the Beckers' counsel prepared exhibit 45G and that he reviewed it. Dr. Smith agreed exhibit 45G was being represented as something from the AHA. Dr. Smith was then shown an image obtained from the website iStockPhoto.com. The figure in the image was identical to the one in exhibit 45G, but the iStockPhoto.com image did not contain an AHA insignia—suggesting the Beckers' image was not obtained from or approved by the AHA. Dr. Smith agreed that the AHA's website did not list any health threat to the liver from high blood pressure.

The defense discussed exhibit 45G in closing arguments as follows:

> I don't think this is from the [AHA]. The [AHA] doesn't say that the liver is . . . an end organ subject to damage from hypertension. Whether it's chronic or acute. And so I see this insignia, and I ask him -- you know, Dr. Smith, do you see that? That's the [AHA] insignia. There's a C with a circle around it. I think that means -- I am no copyright lawyer, but I think that means it's been copyrighted. You have to have their permission to . . . use their insignia. Did you check it? Did you check to see if this is on the . . . [AHA] website? No. Did you ask them if they checked if it's on the [AHA] website? No, he did not ask that. Well, I did. We did check. And it's from iStockPhoto.com. It's the exact same figure -- this has been marked as Exhibit 239. It's the exact same figure, and it talks about hypertension, and included in it is not the liver. Hypertension can cause stroke, blindness, heart attack and failure, kidney failure, arterial sclerosis, blood pressure damage. That Exhibit 45G is not the truth. And we are here to find the truth. . . . [W]e are here because an allegation, an accusation is being made against my client, and we are here to ask you, as finders of the truth, as the finders of fact, whether there was negligence. And if they have to doctor an exhibit in order to prove their case, that's not a search for the truth. That's the search for a case. Isn't it?

. . . .

> And, by the way, when we talk about the truth, there's actually a definition of what the truth is. Or means. The truth is a fact that can be verified. So if you can't verify something that has been said by a witness or a lawyer, well, you have to question whether it's actually based on something scientific or factual in the medical record. And here we know from Dr. Smith that an actual *fraudulent* exhibit was put forth in an attempt for the [Beckers] to meet their burden of proof.

(Emphasis added.) At this point, the Beckers' counsel objected to the characterization of the exhibit as fraudulent, and the district court overruled the objection. Defense counsel then reiterated that the exhibit was "[f]raudulent" and again implied that the exhibit had been "doctor[ed]" by the Beckers' counsel.

In denying the Beckers' motion for a new trial based on the alleged misconduct of defense counsel, the district court reasoned that the arguments "enjoyed support in the record." That is a fair characterization of the record. The record shows that exhibit 45G was deceptive in two ways. First, the AHA insignia suggested the diagram was an image prepared by the AHA, as opposed to a stock diagram from an internet site. Second, the AHA insignia suggested that the AHA endorsed the information in the diagram. The testimony of the Beckers' own witness largely established that the exhibit misrepresented that the AHA treats the liver as an organ that is at risk of acute damage from hypertension. Although defense counsel struck "hard blows" in closing argument, the record provided adequate support for counsel's argument. *See Connolly*, 104 N.W.2d at 732.

Thus, the precedential cases on which the Beckers rely are factually distinguishable because in those cases the record did not support the challenged arguments.[2] *See Wild*, 234 N.W.2d at 786 (noting a duty to grant a new trial where the misconduct "*appears to be inexcusable* and of such serious and prejudicial consequence as to deny the litigants a fair trial" and where the trial was so "permeated by such personality conflicts, such obvious appeals to passion and prejudice, and such rude, abusive, and unlawyer-like trial antics and tactics that no jury could arrive at an impartial verdict" (emphasis added)); *Krenik v. Westerman*, 275 N.W. 849, 850-51 (Minn. 1937) (concerning a closing argument by plaintiff's counsel that was "permeated with the contention that there was something reprehensible on defendant's part about the taking of [certain] statements from the plaintiff," despite the fact that there was nothing in the record showing that the taking of the statements was fraudulent or done in a reprehensible manner); *Ferraro v. Taylor*, 265 N.W. 829, 832-33 (Minn. 1936) (granting a new trial because counsel "made statements of fact not justified by the record").

And we reject the Beckers' argument that the AHA insignia was a "citation" for all the organs listed on the exhibit 45G *except* the "liver." Nothing on the face of the exhibit

[2] We are not bound by, and do not discuss, the nonprecedential cases of this court, federal cases, and cases from other states on which the Beckers rely. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority."); *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. App. 2017) (stating that "[a] federal court's interpretation of Minnesota law is not binding on this court"); *see also Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (indicating that cases from other states are not binding but may have persuasive value).

indicates that the AHA insignia was a "citation" or that the purported citation did not apply to the "liver." Moreover, the Beckers' witness did not describe the exhibit in that way. Instead, the witness acknowledged the disconnect between the plain appearance of the exhibit and the AHA's actual position during cross-examination. The insignia reasonably suggested AHA approval of all the information in exhibit 45G.

Finally, we reject the Beckers' assertion that the "fraud" references in defense counsel's closing argument were improper because respondents never pleaded a fraud claim or offered evidence to satisfy the five elements of a fraud claim. Although defense counsel used the term "fraudulent" as a descriptive term when analyzing and explaining the Beckers' exhibit, counsel was not attempting to present a legally cognizable claim of fraud.

In sum, the district court did not abuse its discretion in declining to grant a new trial based on defense counsel's statements during closing argument.

Weight of the Evidence

The Beckers argue that the district court erred by denying their motion for a new trial because the jury's verdict was not justified by the evidence.

Under Minn. R. Civ. P. 59.01(g), a new trial may be granted if the verdict is not justified by the evidence. In determining whether a verdict is justified by the evidence, a district court is vested with "the broadest possible discretionary power." *Clifford v. Geritom Med. Inc.*, 681 N.W.2d 680, 687 (Minn. 2004) (quotation omitted). "Whether the verdict is justified by the evidence presents a factual question[,] and the district court may properly weigh the evidence." *Id.* "The applicable test for granting a new trial on the basis

that the evidence does not justify the verdict is whether the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake." *Id.* (quotation omitted). "[W]e will not set aside a jury verdict on an appeal from a district court's denial of a motion for a new trial unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Navarre v. S. Wash. Cnty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted).

The jury was presented with conflicting expert testimony regarding whether Becker presented an acute target organ injury during his single visit with Dr. Steinhauser. Two experts testified that Becker had symptoms of acute end-organ damage. First, Dr. Smith testified that the edema in Becker's lower extremities was a sign of acute end-organ damage. But Dr. Smith could not identify lower-extremity edema listed as a symptom of acute end-organ damage in literature admitted into evidence on the topic of hypertensive emergencies. And he could not say which organ was causing the edema. Dr. Smith also testified that the presence of blood and protein in Becker's urine could be evidence of acute end-organ damage.

Second, Dr. Scott Lipson testified by deposition that Becker had an enlarged liver, which could indicate acute end-organ damage. But the Beckers' other expert, Dr. Smith, disagreed that hypertension could affect the liver. And Dr. Smith agreed that an AHA exhibit did not recognize the liver as an organ that is affected by hypertension. In sum, the Beckers' own experts provided conflicting testimony regarding whether Becker's liver indicated acute target organ injury caused by hypertension.

The Beckers assert that Dr. Steinhauser admitted at trial that Becker had acute target organ injury because Dr. Steinhauser acknowledged that pitting edema and abnormal kidney labs were "potential indicators of target organ damage." Although Dr. Steinhauser acknowledged that pitting edema and anormal kidney labs could be "potential indicators" of target-organ damage, he also testified that Becker "was relatively stable" and that "there wasn't an acute symptom to cause [him] to diagnose hypertensive emergency."

A defense expert witness, stroke neurologist Dr. Zeiler, testified that the swelling in Becker's lower legs was a product of liver disfunction—a chronic condition. Dr. Zeiler explained in detail why Becker's edema was "almost certainly" coming from his poorly functioning liver. Dr. Zeiler also testified that "the pathophysiology that led up to [the edema] had to have been going on for a prolonged period of time." Dr. Zeiler opined that a prolonged condition is "the only way that that type of edema would build up" and that Becker's hematuria and proteinuria were "more likely than not signs of a chronic problem in the kidney."

Another defense expert witness, Dr. Ruth Bolton, agreed that Becker's hematuria and proteinuria were related to chronic issues. As to Becker's liver, Dr. Bolton testified, "I've never seen [the liver] affected" by high blood pressure. Dr. Bolton testified that nothing indicated Becker had acute target organ injury and that if she had been in Dr. Steinhauser's shoes, she "wouldn't hospitalize [Becker] at that point. You wouldn't even know which part of the hospital to put him in."

In sum, on the one hand, one of the Beckers' experts opined that Becker's edema, hematuria, and proteinuria could indicate acute end-organ damage and therefore a

hypertensive emergency. That expert rejected the opinion of the Beckers' second expert that an enlarged liver indicated acute end-organ damage. On the other hand, Dr. Steinhauser and the defense experts testified that Becker's edema, hematuria, and proteinuria were not indicative of acute target organ injury. The jury resolved the conflicting testimony with a determination that Dr. Steinhauser was not negligent.

Again, "[t]he applicable test for granting a new trial on the basis that the evidence does not justify the verdict is whether the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake." *Clifford*, 681 N.W.2d at 687 (quotation omitted). When viewed in the light most favorable to the verdict, the jury's finding that Dr. Steinhauser was not negligent in his treatment of Becker is not "manifestly and palpably contrary to the evidence viewed as a whole." *Navarre*, 652 N.W.2d at 21 (quotations omitted). Thus, the district court did not abuse its discretion in declining to grant a new trial based on inadequate evidence.

In conclusion, the record demonstrates that the district court thoughtfully exercised its discretion throughout the trial and ensured that the case was fairly tried under the circumstances. We discern no basis to reverse.

Affirmed.