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*Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A24-1509**

Jay Maurice, as Trustee for the next-of-kin of Jon Maurice,
Appellant,

vs.

Granite Falls Municipal Hospital aka Granite Falls Health,
Respondent,

Patrick Juenemann, et al.,
Defendants.

**Filed April 14, 2025**
**Affirmed**
**Florey, Judge**[*]

Yellow Medicine County District Court
File No. 87-CV-19-253

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Considered and decided by Larson, Presiding Judge; Slieter, Judge; and Florey, Judge.

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

## NONPRECEDENTIAL OPINION

**FLOREY**, Judge

In this medical-malpractice appeal, appellant-trustee challenges the district court's denial of his new-trial motion, asserting that the district court improperly (1) allowed the jury to hear evidence regarding a pretrial settlement with a settling defendant and allowed respondent-hospital to offer evidence regarding the settling defendant's fault, but then left that defendant off the special-verdict form; (2) allowed respondent to present cumulative evidence while limiting appellant's witnesses; and (3) prevented appellant from impeaching respondent's witnesses during closing argument. We affirm.

## FACTS

Following the death of Jon Maurice (Maurice), appellant Jay Maurice as trustee for the next-of-kin of Jon Maurice (Trustee), brought a wrongful-death action against respondent Granite Falls Municipal Hospital aka Granite Falls Health (Granite Falls). The following facts are drawn from the testimony produced at the jury trial and are viewed in the light most favorable to the verdict.

In March 2017, Maurice went to the Granite Falls emergency room after experiencing a severe headache, chest pain, low back pain, and dizziness. Physician assistant Heather Reeve treated Maurice when he arrived at the hospital. Reeve called for a cardiologist consultation with Dr. Richard Alpin at St. Cloud Hospital, who recommended that Reeve conduct tests to rule out a pulmonary embolism. After speaking with Dr. Alpin, Reeve ran multiple tests to determine the source of Maurice's pain, including a head CT scan, a chest x-ray, and an electrocardiogram (EKG). Reeve reviewed

the results with Dr. Thomas Chapa. Reeve testified that the results of the CT scan showed no evidence of a pulmonary embolism. The CT scan was also interpreted by radiologist Dr. Patrick Juenemann. Dr. Juenemann reported that Maurice had a "[n]ormal caliber thoracic aorta" with "[n]o evidence of dissection." Dr. Wade Schmidt agreed that the radiology report from Dr. Juenemann showed that Maurice's aorta was a normal caliber thoracic aorta with no evidence of dissection.

Maurice was admitted to the hospital for ongoing observation and testing. Later that evening, Maurice experienced sharp pain in his chest. Certified nurse practitioner Holly Gisi-York repeated the EKG and the cardiac panel and ordered additional lab tests to rule out cardiac issues. Gisi-York stated that the results of the tests were normal. She contacted cardiologist Dr. Schmidt at St. Cloud Hospital for a cardiac consultation. By that time, Maurice was no longer experiencing pain. Dr. Schmidt advised that Maurice go to St. Cloud Hospital the following morning for a CT angiogram.

The following morning, Granite Falls discharged Maurice with instructions to go to St. Cloud Hospital for an outpatient CT angiogram. The medical records noted that Maurice did not complain of pain at that time and remained comfortable. Maurice was reported to be in stable condition and his vital signs had improved through the night. Maurice's brother, Trustee, drove Maurice to St. Cloud Hospital following Maurice's discharge from Granite Falls. St. Cloud Hospital performed an angiogram, and a radiologist noticed that Maurice had an aneurysm. Because the operating rooms at St. Cloud Hospital were full, Maurice was transferred by helicopter to the University of

Minnesota Hospital. Maurice died during the helicopter transfer between St. Cloud and Minneapolis.

Trustee filed a wrongful-death action against Granite Falls, Dr. Juenemann, and Dr. Schmidt.[1] In March 2020, Trustee voluntarily dismissed the claims against Dr. Schmidt. And in June 2023, Trustee resolved the claims against Dr. Juenemann and stipulated to dismiss him from the action. Following the dismissal of claims against Doctors Juenemann and Schmidt, Trustee filed an amended complaint seeking relief against Granite Falls.

The matter proceeded to trial in March 2024. The jury heard testimony from Trustee; Maurice's family members; and the treating medical providers, Heather Reeve, Dr. Schmidt, Dr. Thomas Chapa, and Holly Gisi-York. In addition to these witnesses, Trustee called two experts, Dr. Thomas Faulhaber and Dr. Michael Koumjian. Granite Falls also called expert witnesses Dr. Bryan Delage, Dr. Rhonda Cornell, and Dr. Lyle Joyce. The jury found in favor of Granite Falls, determining that Granite Falls, by and through its employees, was not negligent with respect to the care and treatment provided to Maurice. Trustee moved for a new trial, which the district court denied.

Trustee appeals.

**DECISION**

Trustee challenges the district court's denial of his new-trial motion. A new trial may be granted for "[e]rrors of law occurring at the trial." Minn. R. Civ. P. 59.01(f). "We review a district court's decision to grant or deny a new trial for an abuse of discretion."

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[1] The lawsuit was originally filed by Maurice's mother, Barbara Maurice. Trustee was later substituted as the plaintiff after Barbara Maurice's death.

*Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). To grant a new trial as a result of an erroneous evidentiary ruling requires the complaining party to demonstrate that the error resulted in prejudice. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (noting that relief on appeal "rests upon the complaining party's ability to demonstrate prejudicial error" (quotation omitted)). "An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial." *George v. Est. of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). We will not reverse if it is unlikely that erroneously admitted evidence might have influenced the jury and caused the verdict. *W.G.O. ex rel. Guardian of A.W.O. v. Crandall*, 640 N.W.2d 344, 349 (Minn. 2002). The appealing party bears the burden of showing prejudice. *Olson ex rel A.C.O. v. Olson*, 892 N.W.2d 837, 842 (Minn. App. 2017). Ultimately, "[t]he question whether to admit evidence rests within the broad discretion of the district court, and the district court's decision will not be disturbed unless it constitutes an abuse of discretion or is based on an erroneous view of the law." *Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 536 (Minn. App. 1997), *rev. denied* (Minn. June 11, 1997).

## I. The district court's evidentiary rulings related to Dr. Juenemann do not constitute an abuse of discretion.

Trustee asserts that the district court erred in its evidentiary rulings related to Dr. Juenemann because it: (1) permitted the jury to hear evidence of the pretrial settlement agreement between Trustee and Dr. Juenemann; (2) allowed Granite Falls to suggest that Dr. Juenemann was negligent; and (3) did not include Dr. Juenemann on the special-verdict form. Each argument is addressed in turn.

***References to the Settlement Agreement***

Before trial, Trustee settled his claims against Dr. Juenemann on a *Pierringer* basis.[2] The district court admitted evidence of the existence, but not the amount, of Dr. Juenemann's *Pierringer* settlement with Trustee at trial.

Settlement agreements are generally not admissible at trial for the purpose of proving fault. Minn. Stat. § 604.01, subd. 4 (2024); Minn. R. Evid. 408. However, a release agreement may be admitted "for another purpose, such as proving bias or prejudice of a witness." Minn. R. Evid. 408. In such instances, "[t]he jury should be given those facts necessary to arrive at a fair verdict to all parties, but as a general rule the amount paid in settlement should never be submitted." *Frey v. Snelgrove*, 269 N.W.2d 918, 923 (Minn. 1978). Ultimately, the purpose of these guidelines is "to assure a fair trial to all parties," and they "may be modified when that end would not be served." *Id.* A district court's deviation from these guidelines "would not constitute error if those modifications substantially protect the rights of all parties and preserve the adversary process." *Id.*

During trial, Granite Falls' counsel engaged in the following exchange with Trustee:

> COUNSEL: Okay. And we talked about how you are the trustee in this case, the Plaintiff, bringing this case. You also sued Dr. Juenemann, the radiologist who read your brother's report, or he read the imaging and issued a report, correct?
>
> TRUSTEE: Yes.

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[2] "A *Pierringer* agreement allows a plaintiff to release a settling defendant and to discharge a part of the plaintiff's cause of action while reserving the balance of the cause of action against the nonsettling defendants." *Reedon of Faribault, Inc. v. Fid. & Guar. Ins. Underwriters, Inc.*, 418 N.W.2d 488, 490 (Minn. 1988); *see also Pierringer v. Hoger*, 124 N.W.2d 106 (Wis. 1963).

> COUNSEL: Okay. And then you later settled with Dr. Juenemann, correct?
>
> TRUSTEE: Yes.

Trustee's expert witness, Dr. Faulhaber, also confirmed that Dr. Juenemann "was a former Defendant in this case" and had "since settled with [Trustee]."

Trustee claims that the district court erred by allowing the jury to hear evidence that Trustee settled his claims with Dr. Juenemann. The district court rejected this argument in its order denying Trustee's new-trial motion. It noted that Trustee "was critical of Dr. Juenemann and the care that he provided to Mr. Maurice," but only until the parties entered into the *Pierringer* agreement. The district court recognized that the rules of evidence permit the court "to explain the reason for the absence of Dr. Juenemann as a party," or "to show bias or prejudice of Dr. Juenemann." We agree with the district court.

Dr. Juenemann was listed as a witness in the case. On the first day of trial, Trustee indicated that Dr. Juenemann would not be available to testify in person and asked to submit his deposition testimony. Granite Falls objected to the admission of Dr. Juenemann's deposition testimony, noting that the deposition was taken prior to the settlement and *Pierringer* release and Granite Falls did not have an opportunity to cross-examine him. The district court permitted Granite Falls to enter limited information that Dr. Juenemann reached a settlement with Trustee to explain his absence from trial. And it further reasoned that evidence of the settlement "went to the bias and prejudice of [Trustee's] witnesses pursuant to *Frey* and Rule 408 of the Minnesota Rules of Evidence."

We discern no error in this ruling. Rule 408 permits evidence of a settlement agreement to show "bias or prejudice of a witness." Minn. R. Evid. 408. "The extent to which a settlement should be disclosed to the jury will vary from case to case and must rest in the sound discretion of the trial court." *Frey*, 269 N.W.2d at 922. Here, the district court allowed limited testimony of the settlement agreement, finding that the bias exception under rule 408 applied and that the evidence would explain to the jury why Dr. Juenemann was absent from trial.

Further, Trustee has not shown that he was unfairly prejudiced by the admission of this evidence. A prejudicial error is one that influenced the jury and changed the result of the trial. *George*, 724 N.W.2d at 9. In assessing whether erroneously admitted evidence might reasonably have influenced the jury and changed the result of the trial, appellate courts consider the record as a whole. *Jack Frost, Inc. v. Engineered Bldg. Components Co.*, 304 N.W.2d 346, 352 (Minn. 1981). Viewing the record in its entirety, we note that Granite Falls made only two references to the settlement during trial. The testimony was not extensive, and the witnesses did not state the amount of the settlement. We are satisfied that these brief references to the settlement agreement were not unfairly prejudicial to Trustee. Therefore, we conclude that the district court did not abuse its discretion by admitting evidence of the settlement between Trustee and Dr. Juenemann.

***References to Dr. Juenemann's Medical Findings***

Trustee claims that the district court erred by permitting Granite Falls to defend the claims against it by attempting "to prove a malpractice case against" Dr. Juenemann. Trustee argues that Granite Falls "pointed the finger at Dr. Juenemann" throughout the trial

by suggesting that he failed to find evidence of an aortic dissection when reviewing Maurice's test results. And Trustee asserts that Granite Falls should not be permitted "to make a case of medical malpractice against Dr. Juenemann and include the fact that he settled with [Trustee] as evidence of his malpractice—without the testimony of an expert radiologist." We do not find this argument persuasive.

Granite Falls, as the defendant, was not obligated to prove the negligence of a nonparty as a means of avoiding its own liability. "[T]he mere occasion of injury does not in itself support an inference of negligence." *Lenz v. Johnson*, 122 N.W.2d 96, 99 (Minn. 1963). A "plaintiff [bears] the burden to prove, by expert testimony, that it was more probable that [plaintiff's injury] resulted from some negligence for which defendant was responsible than from some negligence for which he was not responsible." *Smith v. Knowles*, 281 N.W.2d 653, 656 (Minn. 1979) (quotation omitted); *see also Anderson v. Rengachary*, 608 N.W.2d 843, 846 n.3 (Minn. 2000) (recognizing that a plaintiff in a medical-malpractice case bears the burden of proof).

Trustee, as the party alleging negligence, bore the burden of supporting his claims against Granite Falls. But Granite Falls did not bear a commensurate burden. *Cf. Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 60 (Minn. 2000) (determining that the district court erred in granting a motion to dismiss by focusing on defendant-medical provider's rebuttal of plaintiff's medical-malpractice action, rather than focusing on whether plaintiff established a prima facie case). Granite Falls did not assert claims against Dr. Juenemann. As such, it was not required to call an expert radiologist at trial to offer an opinion as to whether Dr. Juenemann was negligent. Thus, Trustee is not entitled to a new

trial on the ground that Granite Falls suggested, but did not offer evidence to prove, negligence by Dr. Juenemann.

***Special-Verdict Form***

Trustee asserts that the district court should have included Dr. Juenemann on the special-verdict form to reflect that Granite Falls "plainly tried to allege malpractice against Dr. Juenemann." "District courts have broad discretion to decide whether to use special verdicts and what form special verdicts are to take." *Poppler v. Wright Hennepin Coop. Elec. Ass'n*, 845 N.W.2d 168, 171 (Minn. 2014). An appellant is entitled to a new trial only when the special-verdict form was both erroneous and prejudicial. *RAM Mut. Ins. Co. v. Meyer*, 768 N.W.2d 399, 406-07 (Minn. App. 2009), *rev. denied* (Minn. Oct. 20, 2009).

Generally, where some but not all of the defendants have settled with the plaintiff, the settling defendant's negligence must be submitted to the jury even though they have been dismissed from the lawsuit. *Frey*, 269 N.W.2d at 923. A party's negligence should be submitted to the jury "*[i]f* there is evidence of conduct which, if believed by the jury, would constitute negligence or fault on the part of the person inquired about." *Lines v. Ryan*, 272 N.W.2d 896, 902 (Minn. 1978) (emphasis added) (quotation omitted). In cases involving medical negligence, as here, "a plaintiff usually must offer expert testimony with respect to the standard of care and establish that the defendant doctor departed from that standard." *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 191 (Minn. 1990); *see also Plutshack v. Univ. of Minn. Hosps.*, 316 N.W.2d 1, 5 (Minn. 1982) (outlining the elements of negligent care and treatment against medical personnel).

As to Dr. Juenemann, there was no expert testimony bearing on the standard of care or whether Dr. Juenemann deviated from that standard. And interpreting a radiologist's report is not "within the general knowledge or experience of laypersons." *Mercer v. Andersen*, 715 N.W.2d 114, 122 (Minn. App. 2006) (noting an exception to the requirement of offering expert testimony). Thus, expert testimony was required to establish a prima facie case of medical negligence on the doctor's part. Without such testimony, the jury would have been unable to determine whether Dr. Juenemann breached his duty of care toward Maurice, without engaging in speculation. *See Leubner v. Sterner*, 493 N.W.2d 119, 121 (Minn. 1992) (cautioning that a jury should not be permitted to speculate as to possible causes of a plaintiff's injury in a medical-malpractice action). Because the record lacks such evidence, the jury could not have found Dr. Juenemann negligent. *See id*. (noting that failure to make a prima facie showing of medical negligence, "normally in the form of expert testimony," mandates summary judgment or a directed verdict).

Because there is insufficient evidence in the record that Dr. Juenemann committed negligence, the district court did not abuse its discretion by excluding Dr. Juenemann from the special-verdict form.

**II. The district court's evidentiary rulings related to the expert witnesses do not constitute an abuse of discretion.**

Trustee challenges the district court's evidentiary rulings. Errors in the admission or exclusion of evidence may support a motion for a new trial. *May v. Strecker*, 453 N.W.2d 549, 554 (Minn. App. 1990), *rev. denied* (Minn. June 15, 1990). This court will

reverse a district court's evidentiary ruling only if the district court abused its discretion and that abuse of discretion resulted in prejudice to the objecting party. *Id.* Here, Trustee argues that the district court erred in its treatment of the parties' expert witnesses by (1) allowing Granite Falls' witnesses greater leeway in their testimony than Trustee's witnesses on questions of liability, and (2) permitting Granite Falls to present unduly cumulative evidence. Each argument is addressed below.

***Inconsistent Rulings***

Trustee argues that the district court made more favorable rulings on the admissibility of evidence from Granite Falls' expert witnesses, while limiting similar testimony from Trustee's expert witnesses. Trustee contends "that the same questions when presented to the same expert were prohibited to [Trustee] and allowed to [Granite Falls]." However, Trustee does not identify any specific questions that reflect this error. Indeed, Trustee acknowledges that he is not claiming "that the individual rulings were necessarily an abuse of discretion."

We need not address the testimony of individual witnesses because Trustee has not demonstrated that the errors—if any—were prejudicial. "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 62 (Minn. 2019) (quotation omitted); *see also* Minn. R. Civ. P. 61 ("No error in either the admission or the exclusion of evidence . . . is ground for granting a new trial or for setting aside a verdict . . . unless refusal to take such action appears to the court inconsistent with substantial justice."). "An evidentiary error is prejudicial if it might reasonably have

influenced the jury and changed the result of the trial." *Kedrowski*, 933 N.W.2d at 62 (quotation omitted).

Here, Trustee has not demonstrated prejudice. Trustee disagrees with some of the district court's evidentiary rulings. However, even if we "would reach a different conclusion" on the admissibility of expert testimony, we will affirm the district court's ruling absent a clear abuse of the district court's broad discretion. *Williams v. Wadsworth*, 503 N.W.2d 120, 123 (Minn. 1993). "In the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the appellate court is bound by the result." *Kroning*, 567 N.W.2d at 46. Trustee selected individual exchanges out of the transcript in isolation and compared them against other exchanges. But Trustee has not shown that any of these questions prejudiced his case. Nor has Trustee shown that the result of the trial might reasonably have been different based on any of the district court's evidentiary rulings. On appeal, this court will not presume error. *Custom Farm Servs., Inc. v. Collins*, 238 N.W.2d 608, 609 (Minn. 1976).

While this court may have been more or less restrictive in its evidentiary rulings, the district court is vested with the discretion to make these determinations. Viewing the transcript as a whole, we are satisfied that the district court acted within its broad discretion. *See Jack Frost, Inc.*, 304 N.W.2d at 352 (analyzing the record "as a whole" in determining whether a new trial is warranted). Because Trustee has not shown that he was prejudiced by the district court's evidentiary rulings, we conclude that the district court did not abuse its discretion in its rulings on the parties' objections to expert testimony.

*Cumulative Testimony*

Trustee also argues that the district court admitted cumulative expert testimony from Granite Falls' witnesses. A district court may exclude evidence based on materiality, lack of foundation, remoteness, relevancy, or its cumulative nature. *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994); *see also* Minn. R. Evid. 403 (authorizing district court to exclude relevant evidence for "undue delay, waste of time, or needless presentation of cumulative evidence"). "Evidentiary rulings on . . . the cumulative nature of testimony are within the [district] court's discretion and will not be reversed absent a clear showing of abuse." *Molkenbur v. Hart*, 411 N.W.2d 249, 253 (Minn. App. 1987), *rev. denied* (Minn. Oct. 30, 1987).

At trial, Granite Falls presented expert testimony from three medical providers who treated Maurice: Dr. Chapa, Reeve, and Gisi-York. It also called three expert witnesses: Dr. Delage, Dr. Cornell, and Dr. Joyce. Dr. Delage is a family-medicine physician who provided testimony about critical-access hospitals, such as Granite Falls. Dr. Cornell is an advanced-practice provider who discussed the standard of care for practitioners. Dr. Joyce, a cardiothoracic surgeon, discussed causation and the standard of care related to Maurice's claim for pre-death pain and suffering.

Trustee argues that he is entitled to a new trial because the evidence presented from Granite Falls' witnesses was cumulative. The district court rejected this argument, determining that the testimony was not cumulative and that the hospital's experts were "allowed to testify fully as to the facts and their opinions." The district court further noted that if it adopted Trustee's argument, then Granite Falls "would have had to choose

between only calling outside experts or calling its own employees and not both. [The employees had] the right to testify as to their actions they took and defend themselves."

We discern no abuse of discretion in the district court's decision to admit testimony from the hospital's experts. While the experts offered similar testimony, it was not cumulative because the experts offered different perspectives related to Maurice's care.

Dr. Delage provided testimony about the supervision level required for a medical doctor who supervises an advanced-practice provider. He reviewed the tests performed on Maurice, such as the chest x-rays and EKG exams, and stated that the results of those tests were unremarkable. Dr. Delage discussed the types of diagnoses for a patient presenting with Maurice's symptoms and testified that Maurice's test results were not significant for aortic dissection.

Dr. Cornell explained the role of an advanced practice-provider working within a critical-access hospital. The doctor discussed Reeve's plan for Maurice when he arrived at the hospital and reviewed the actions that Reeve took to care for Maurice. Dr. Cornell noted that it is not within the scope of practice for an advanced-practice provider, such as Reeve, to review imaging or interpret the results of tests, and that such providers rely on a radiologist for their expertise. Dr. Cornell listened to an audio tape of the conversation between Reeve and Dr. Alpin and stated that the consultation was appropriate to meet the standard of care. Dr. Cornell provided similar testimony related to Gisi-York, noting that she had reviewed Gisi-York's records on Maurice's care and believed Gisi-York acted appropriately. The doctor agreed that the care Gisi-York provided to Maurice, as well as Gisi-York's consultations with the cardiologist, were appropriate.

Dr. Joyce offered testimony about Maurice's damages for pre-death pain and suffering after amendments to the medical-malpractice statute made such damages recoverable. *See* Minn. Stat. §§ 573.01-.02 (2024) (permitting a trustee to bring claims in a wrongful-death action for "all damages suffered by the decedent resulting from the injury prior to the decedent's death," in addition to pecuniary losses).

The evidence presented from the experts was not cumulative. Dr. Chapa, Reeve, and Gisi-York testified about their treatment of Maurice at Granite Falls. And Dr. Delage and Dr. Cornell reviewed the actions of Maurice's separate medical providers and gave testimony about the appropriateness of their care. Finally, Dr. Joyce testified about pre-death pain and suffering. While there may have been limited instances of overlap in the testimony, the individual expert witnesses did not offer testimony that was unduly cumulative.

Further, Trustee has not shown prejudice arising from the experts' testimony. This court has stated that "[a] new trial will not generally be granted on the basis of evidence that is merely contradictory, impeaching, or cumulative." *Dostal v. Curran*, 679 N.W.2d 192, 194 (Minn. App. 2004), *rev. denied* (Minn. July 20, 2004); *see also Disch v. Helary, Inc.*, 382 N.W.2d 916, 918 (Minn. App. 1986) (noting that a new trial will not be granted for cumulative evidence "except under the most extraordinary circumstances" (quotation omitted)), *rev. denied* (Minn. Apr. 24, 1986); *George*, 724 N.W.2d at 9 ("[T]he admission of evidence that is cumulative or is corroborated by other competent evidence will be deemed harmless and will not warrant a new trial."); Minn. R. Civ. P. 61 (requiring courts to ignore harmless error).

The record reveals that the witnesses did not provide cumulative testimony and Trustee has not demonstrated that he was prejudiced by the admission of this testimony. We therefore conclude that the district court did not abuse its discretion by admitting the testimony of Granite Falls' providers and experts.

## III. The district court did not improperly limit Trustee's efforts to impeach Granite Falls' witnesses.

Trustee argues that the district court erred by limiting his attempts to impeach the testimony of Reeve and Gisi-York. First, Trustee contends that the district court prevented him from impeaching these witnesses with prior inconsistent statements. Second, he maintains that the district court improperly made findings of fact related to the credibility of Granite Falls' witnesses, which Trustee was forced to accept in closing argument.

***Impeachment***

Trustee asserts that the district court prevented him from impeaching two of Granite Falls' witnesses, Reeve and Gisi-York. "The credibility of a witness may be attacked by any party, including the party calling the witness." Minn. R. Evid. 607. One way to attack credibility is through a prior inconsistent statement. Minn. R. Evid. 613. Generally, a wide range of inquiry should be allowed on cross-examination, but the manner and scope of that examination rests largely with the discretion of the district court, and no reversible error occurs unless there is a clear abuse of that discretion. *Nelson v. Austin Transit, Inc.*, 135 N.W.2d 886, 889 (Minn. 1965). Further, entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error. *Kroning*, 567 N.W.2d at 46.

Trustee attempted to impeach Reeve and Gisi-York with inconsistencies between their trial testimony and their prior, sworn deposition testimony. As to Reeve, Trustee asked her about the different types of chest scans that could be used to look for aortic dissection. Trustee asserted that Reeve's testimony at trial regarding Maurice's CT scan differed from her prior deposition testimony and asked her to read a portion of the deposition transcript to the jury. The district court ruled that Trustee first had to show Reeve the deposition to "see if she remembers." After reading the transcript, Reeve acknowledged that she originally stated that she "would have to consult with a radiologist" to figure out which CT scan to order, but that she did not do so.

Trustee also sought to impeach Gisi-York with her deposition testimony. Gisi-York stated in her deposition that she did not discuss a possible aortic dissection with Dr. Schmidt during a telephone consultation to assess Maurice's chest pain. Trustee asserted that Gisi-York's deposition testimony differed from the testimony offered at trial. The district court reiterated that counsel had to ask the witness a question and could not just "read the statement to her." Trustee then played a portion of the telephone call between Gisi-York and Dr. Schmidt discussing Maurice's condition, during which Dr. Schmidt asked Gisi-York if the CT scans showed evidence of aortic dissection or a pulmonary embolism. Trustee then asked Gisi-York if Dr. Schmidt "was asking the right question" by inquiring about Maurice's aorta, and Gisi-York agreed. Trustee asserts that "[t]his was a crucial change of testimony," because Gisi-York previously stated that she did not discuss this concern with Dr. Schmidt.

On appeal, Trustee argues that he should have been permitted to confront Reeve and Gisi-York without first giving them the chance to explain the inconsistencies between their deposition testimony and their statements at trial. However, we do not consider whether the district court erred in its evidentiary rulings because Trustee has not demonstrated that the complained-of evidentiary rulings affected the verdict. And without a showing of prejudice, Trustee is not entitled to a new trial. *See Kroning*, 567 N.W.2d at 46 (ruling that a party is not entitled to relief unless the evidentiary ruling resulted in prejudice).

Here, Reeve and Gisi-York both acknowledged that their testimony at trial differed from their deposition testimony. Reeve reviewed her prior testimony and agreed that there was a discrepancy about her understanding of CT scans. She explained that: "The testimony in my deposition is correct at the date I gave it, there's been—what is it, five—five years have gone by and I've continued to practice medicine, so obviously I have additional training." Reeve further explained that she interpreted the question differently when she was deposed in 2019, stating: "So back in 2019, I guess the way I read it is . . . you said for a pulmonary embolism and aortic dissection, I think. And then I said I would have to consult with the radiologist." Gisi-York also offered an explanation for the discrepancy between her prior testimony and her testimony at trial. She noted that in 2019, she did not know there was a recording of the phone call and went off her memory of the call "as best as [she] could," given the passage of time. Gisi-York stated that she answered the questions from her memory to the best of her ability.

As this testimony reveals, the jury heard acknowledgements from both Reeve and Gisi-York that their testimony changed from 2019 to trial, based on advances in their

training and an opportunity to hear the recordings first-hand. Because these inconsistencies were presented to the jury, Trustee has not suffered any prejudice as a result of the district court's ruling. Without a showing that the district court's rulings would have affected the verdict, we conclude that the district court did not abuse its discretion by denying a new trial based on these challenged evidentiary rulings.[3]

***Closing Argument***

Trustee asserts that the district court erred by making factual findings related to the credibility of the witness, which Trustee was "forc[ed] . . . to accept" in closing arguments. To support this argument, Trustee points to the district court's ruling that Trustee could not say that the witnesses were "lying" in closing arguments. The district court indicated that counsel could say the witnesses "changed their story" or that the statements were inconsistent. But the district court determined that it would be prejudicial to say that the witnesses were "lying" because counsel did not know whether the witnesses intentionally made inconsistent statements, or whether the witnesses simply did not recall. For that reason, the district court precluded Trustee from telling the jury that Granite Falls' witnesses were "lying" at trial.

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[3] Trustee also argues that the district court erred by limiting his attempt to impeach Dr. Chapa. Trustee inquired about the information in the medical records and asked Dr. Chapa if he "chose[] to credit" testimony from Reeve and Gisi-York. The district court sustained Granite Falls' objection that this constituted improper impeachment. Because Trustee did not argue that he was prejudiced by the district court's ruling, we need not address this issue. *See State Dep't of Lab. & Indus. v. Wintz Parcel Drivers*, *Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue).

The district court's ruling is not erroneous. "A lawyer shall not . . . state a personal opinion as to . . . the credibility of a witness . . . ." Minn. R. Prof. Conduct 3.4(e); *see also State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984) (stating in the criminal context that an attorney may not interject personal opinions at trial regarding the veracity of a witness). And while counsel may challenge the credibility of a witness, that argument must be based on the evidence and the law, and not counsel's personal opinion. *State v. Everett*, 472 N.W.2d 864, 870 (Minn. 1991). Thus, the district court did not err by instructing Trustee's counsel not to claim to the jurors that the witnesses were "lying" during closing arguments.

**Affirmed.**