

IN THE COURT OF APPEALS OF IOWA

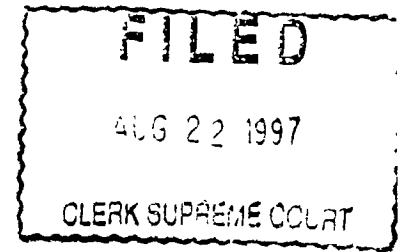
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No. 7-313 / 96-1894

SANDRA LEA STAHLHUT n/k/a SANDRA LEA WAY,
Appellant,

vs.

LORI SUE HARRIS and LUETTA SPREE,
Appellees.



Appeal from the Iowa District Court for Black Hawk County, Jon J. Fister,
Judge.

Plaintiff appeals a jury verdict awarding her damages in a personal injury
action. **AFFIRMED.**

Gary J. Boveia of Boveia Law Firm, Waverly, for appellant.

Timothy W. Hamann of Clark, Butler, Walsh & Hamann, for appellees.

Considered by Cady, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Plaintiff, Sandra Lea Way ("Way"), appeals a jury verdict awarding her damages in a personal injury action. She contends the trial court erred in allowing testimony from Lori Sue Harris and Luetta Sprees' ("defendants") witness because defendants did not comply with discovery deadlines. We affirm.

Scope of review. Our review is for the correction of errors of law. Iowa R. App. P. 4. Admissibility of expert testimony is discretionary. *Wheeler v. Dental East, P.C.*, 494 N.W.2d 248, 250 (Iowa App. 1992). We will not interfere unless a "manifest abuse of discretion has resulted in prejudice to the complaining party." *Id.* In order to prove the district court abused its discretion, Way must show the court exercised its discretion "on grounds or for reasons clearly unreasonable." *Id.* (quoting *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976)). We note the general rule of liberality in this jurisdiction regarding the admission of opinion evidence. *Wheeler*, 494 N.W.2d at 250.

Admission of Atherley testimony. Way was injured in a motor vehicle accident on December 3, 1993, when a vehicle driven by defendant Lori Sue Harris rear-ended her vehicle. The vehicle driven by Harris was owned by defendant Luetta Spree.

Way filed a petition on February 6, 1995. The trial setting conference memorandum provided that Way must identify her experts by January 31, 1996, and the defendants must identify their experts by March 29, 1996. On May 24, 1996, the

date discovery was to be completed, Way served a Supplemental Response to Interrogatories on defendants expanding the testimony of her previously named medical experts to include loss of future earning capacity.

On July 8, 1996, the day before trial, the defendants orally apprised plaintiff's counsel that Michael Atherley, a physician's assistant, would testify. The defendants had previously identified Atherley as "Heatley" on June 17, 1996. The confusion in his name was apparently due to the illegibility of Atherley's name on the medical records. Way had not attempted to depose "Heatley" before the name correction was made and did not seek a continuance or ask to depose Atherley after the correction was made. While limiting his testimony, the court allowed Atherley to testify over the objections of Way. Atherley testified to a physical examination he conducted of Way in September 1994, and in some detail, that Way was fit to be hired by her prospective employer. The jury returned a verdict in plaintiff's favor of \$2747. The court denied plaintiff's new trial motion.

Application of Rule 125. Way contends Atherley was an expert and thus should not have been allowed to testify as there was no timely disclosure of his identity or testimony pursuant to Iowa Rule of Civil Procedure 125.

Under Rule 125, an expert must be disclosed as soon as practicable, but not less than thirty days prior to the commencement of trial, except on leave of court. *Id.* Failure to comply with this rule vests in the court a discretionary power to exclude or limit the testimony of the expert, or make orders relating to nondisclosure. *Id.*

The Iowa Supreme Court in *Carson v. Webb*, 486 N.W.2d 278, 281 (Iowa 1992) defined the applicability of Rule 125. In determining this Rule's application to a treating physician, a court must look to whether the testimony, regardless if it is expert opinion, "relates to facts and opinions arrived at by a physician in treating a patient or whether it represents expert opinion testimony formulated for purposes of issues in pending or anticipated litigation." *Id.* (citing *Day v. McIlrath*, 469 N.W.2d 676 (Iowa 1991)). Furthermore, Rule 125(a) (1) provides in relevant part:

Nothing in this rule shall be construed to preclude a witness from testifying as to (1) knowledge of the facts obtained by the witness prior to being retained as an expert or (2) mental impressions or opinions formed by the witness which are based on such knowledge.

Iowa R. Civ. P. 125(a)(1) (1995).

In this case, Atherley performed a post job offer, screening physical examination of Way totally unrelated to this personal injury case. It was not conducted in anticipation of litigation. Thus, Atherley's testimony was within his scope of a treating physician and not as an expert. We therefore decline to apply Rule 125 in this instance; the district court did not abuse its discretion and we affirm its decision to allow the testimony. Moreover, Atherley's testimony constituted cumulative evidence as Way stipulated to the admission of exhibit 22, Way's medical records from Dr. Atherley, without objection. This exhibit contained medical information about Dr. Atherley's examination of Way, which formed the basis of his testimony. See *State v. Brotherton*, 384 N.W.2d 375, 379 (Iowa 1986).

Application of Rule 136. Way further argues that Atherley's testimony should not have been allowed as it violated Iowa R. Civ. P. 136 for being disclosed after the discovery deadline. However, it was Way who, on the date discovery was to be completed, expanded the anticipated testimony of her medical experts. "The concept of 'substantial justice' favors a trial which allows both parties an opportunity to fully and fairly develop their claims and defenses without prejudice to the other party." *Ragan v. Petersen*, No. 6-464 (Iowa App. June 26, 1997). To preclude defendants from presenting additional medical testimony, faced with a last-minute addition to Way's evidence, would be to deny defendants substantial justice. We find no abuse of discretion by the trial court in allowing the testimony of Atherley.

Having carefully considered all arguments on appeal and the record adduced at trial, we affirm the district court's decision.

AFFIRMED.