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Ariz. R. Crim. P. 31.24



DIVISION ONE
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RUTH A. WILLINGHAM,
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

RONALD DAY and HEATHER DAY,) 1 CA-CV 12-0059
husband and wife,)
) DEPARTMENT C
Plaintiffs/Appellees-)
Cross-Appellants,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
AMOR MINISTRIES, a California) Civil Appellate Procedure)
corporation,)
)
Defendant/Cross-)
Appellee,)
)
and)
)
CENTRAL CHRISTIAN CHURCH OF THE)
EAST VALLEY, an Arizona)
corporation,)
)
Defendant/Appellant-)
Cross-Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-028673

The Honorable Dean M. Fink, Judge

AFFIRMED

Jennings, Haug & Cunningham, LLP
by Larry J. Crown
Elan S. Mizrahi
Joseph A. Brophy
Attorneys for Plaintiffs/Appellees-Cross-Appellants
Phoenix

Jones, Skelton & Hochuli, P.L.C
by Mark D. Zukowski
John T. Masterson
Jonathan P. Barnes, Jr.
Attorneys for Defendant/Cross-Appellee
Phoenix

and

Penilla Metzger, PLLC
by David R. Penilla
Nathan T. Metzger
Perry E. Casazza
Attorneys for Defendant/Appellant-Cross-Appellee
Phoenix

S W A N N, Judge

¶1 Defendant/Appellant/Cross-appellee Central Christian Church of the East Valley ("Central") appeals a jury verdict in favor of Plaintiffs/Appellees/Cross-appellants Ron and Heather Day and the superior court's denial of its motion for new trial. The Days cross-appeal the court's denial of their request that the judgment be entered nunc pro tunc as of the date of the verdict to allow them to avoid the effect of a statutory change to the pre- and post-judgment interest rate. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 In November 2006, Ron and Heather Day, members of Central, travelled to Mexico with other church members on a volunteer mission to build wood-framed structures. Central partially coordinated the trip to Mexico, organized and assigned the volunteers, and supervised the work at the construction sites. Amor Ministries ("Amor"), an organization that arranges mission construction projects in impoverished areas, also partially coordinated and facilitated the trip. Amor designed the buildings and delivered the materials to the construction sites.

¶13 During the trip, a sub-group of volunteers, including the Days, built a church. On November 12, 2006, while constructing the roof of the church, Ron stepped on an unsheathed rafter that broke under his weight. He fell through the unfinished roof and sustained multiple injuries to his head, neck, and back.

¶14 The Days sued Central and Amor for negligence and loss of consortium. They claimed that Central breached the duty of care it owed Ron because it did not properly train or warn him about the safety risks associated with stepping on an unsheathed rafter. Central argued that the rafter was an open and obvious hazardous condition and noted Amor's construction manual did not contain any safety warnings or instructions for rooftop workers.

Amor asserted that Central was in charge of the construction site and building process. Central and Amor both argued that the Days failed to mitigate their damages, and identified the supplier of the construction materials, Mat Materiales, as a non-party at fault.

¶15 On June 7, 2011, the jury returned a verdict awarding Ron \$4,695,000 in damages and allocating 5% fault to Ron, 15% to Amor, 80% to Central, and 0% to nonparty Mat Materiales. The jury awarded Heather Day \$1,250,000 for her loss of consortium claim. After considering Central's objections to the Days' proposed form of judgment and statement of costs, the court entered judgment on the verdict on September 2, 2011. The court also rejected the Days' request that it enter the judgment nunc pro tunc as of the date of the verdict in order to allow the Days to benefit from the higher statutory interest rate applicable at that time.

¶16 Central moved for a new trial on the ground that Amor had withheld photographs of the accident site that were material to Central's defense until after the close of evidence, causing it prejudice. Central contended that the court erred by failing to instruct the jury, or allow Central to argue, that the photographs were unfavorable to Amor. Central also maintained that the court improperly allowed the Days to present evidence regarding their general financial condition and their lack of

health insurance coverage for certain treatments. The court denied the motion.

¶17 Central timely appealed, and the Days timely cross-appealed. Central contends that the superior court erred by: 1) denying its motion for new trial; 2) refusing to instruct the jury that Amor's failure to disclose the photographs created an inference that the photographs were against Amor's interests; 3) allowing the Days to present evidence of their financial circumstances and the limitations of their health insurance coverage; and 4) applying Arizona law regarding negligence and damages, rather than Mexican law. The Days argue on cross-appeal that the court erred by refusing to enter the judgment nunc pro tunc to the date of the jury verdict.

¶18 We have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

I. CENTRAL'S APPEAL

A. The Court Properly Declined to Instruct the Jury That the Delayed Production of the Photographs Created an Adverse Inference.

¶19 Before trial, an Amor representative, Michael Williamson, testified at his deposition that he took several photographs at the accident site on the day of the accident. Amor had not produced these photographs and, despite Central's request, did not produce them after Williamson's deposition. At

trial, Williamson again testified that he had taken photographs at the site on the day of Ron's injury.

¶10 At the conclusion of Williamson's testimony, a juror submitted a question regarding why Williamson had not given the photographs to Amor's counsel or included them with his incident report. The court put the question to Williamson over Amor's objection.¹ Williamson explained that he thought he sent the photographs to his supervisor but may have forgotten, and he did not know why they were not included with his incident report. He also asserted that he forgot to provide the photographs after he was asked for them at his deposition.

¶11 After all witnesses had testified, Amor produced Williamson's photographs. The court sustained Central's objection and refused to admit them into evidence, but it denied Central's request that it instruct the jury that Amor's concealment of the photographs created an inference that they were harmful to Amor's case. The court explained that giving such an instruction or allowing Central to argue that inference to the jury would be unduly prejudicial to Amor because the photographs did not show a "smoking gun" that established Amor's fault. The court warned that if Central made the argument to

¹ The juror also asked Williamson to explain why another Amor witness testified that Amor did not take any photographs at the accident site. The court did not ask that question for foundational reasons.

the jury, the court would allow Amor to reopen the evidence to show the photographs to the jury.

¶12 After the court entered judgment on the verdict, Central asked it to order a new trial on the grounds that the photographs were material to Central's defense because they would have changed the result at trial, and that the absence of that evidence prejudiced Central and deprived it of a fair trial. It also argued that the court erred by failing to instruct the jury, or to allow Central to argue, that the photographs were unfavorable to Amor.

1. The Court Did Not Err by Denying Central's Motion for a New Trial.

¶13 Central contends that the court erred by denying its motion for new trial. We review the superior court's denial of a motion for new trial for an abuse of discretion. *Nelson v. Phoenix Resort Corp.*, 181 Ariz. 188, 191, 888 P.2d 1375, 1378 (App. 1994).

¶14 Central maintains that it was entitled to a new trial because the Williamson photographs were newly discovered evidence that would have changed the result at trial. A court may only grant a motion for new trial based upon newly discovered evidence if the evidence was in existence at the time of judgment, could not have been discovered before judgment with due diligence, and would probably change the result of the

litigation. *Boatman v. Samaritan Health Servs., Inc.*, 168 Ariz. 207, 212, 812 P.2d 1025, 1030 (App. 1990). Evidence that was in the possession of the moving party before the judgment was rendered is not "newly discovered" for purposes of Arizona Rule of Civil Procedure 59(a)(4) and does not entitle the party to relief. *Wendling v. Sw. Sav. & Loan Ass'n*, 143 Ariz. 599, 602, 694 P.2d 1213, 1216 (App. 1984).

¶15 Central obtained the Williamson photographs before judgment, and they were therefore not newly discovered evidence that would warrant a new trial. *Id.* In addition, Central knew of the photographs no later than June 29, 2010, when Williamson testified about them at his deposition, and did not move to compel their production. *Boatman*, 168 Ariz. at 212, 812 P.2d at 1030 (denying motion for new trial on the basis of newly discovered evidence because the moving parties failed to act with due diligence in discovering testimony of two witnesses whose identity was known to them before entry of judgment). We conclude that Central was not entitled to a new trial on the ground that the Williamson photographs were newly discovered evidence.

¶16 And it is not clear that the photographs would have changed the result of the litigation even if they had been introduced at trial. Rob Beck, a site leader, testified for Central that he executed the sheathing of the rafters for the

church in an atypical sequence because the volunteers needed to cut one of the sheathing boards to avoid a live electrical pole that was in place at the construction site. He claimed that Ron fell when he stepped on a rafter while attempting to help Beck place a sheathing board. Another Central witness and site leader, Brian Klingaman, testified that construction activity stopped while the sheathing board was cut to accommodate the electrical pole and that the sheathing sequence was not altered. He maintained that Ron fell long after the sheathing board was cut and in place. Brad Klingaman, another Central volunteer, testified that the workers cut the sheathing board while it was on the roof.

¶17 Central contends that it would have confronted Beck with the photographs at trial to impeach his account of the accident.² Yet when the photographs surfaced at trial, Central did not argue that they changed its case or insist that they diminished Beck's credibility and should therefore be shown to the jury. Instead, Central *objected* to their admission.³ It was

² Central asserts that the photographs corroborate Brian Klingaman's version of events and refute Beck's testimony. However, as the Days' counsel pointed out at trial, the photographs contradicted Brian Klingaman's testimony that the electrical pole was not fully installed at the time of the accident.

³ Although Central argues repeatedly in its opening brief that the superior court abused its discretion by not allowing Central to reopen the evidence at trial to present testimony regarding the photographs, it does not cite, nor do we find, any such

only after trial that Central submitted affidavits from Brian and Brad Klingaman in which they averred that if Amor had timely produced the photographs, they would have been better able to explain the events surrounding Ron's injury and would have referred to the photographs to illustrate their testimony at trial.⁴ In these circumstances, the superior court did not abuse its discretion by denying Central's motion for new trial based upon newly discovered evidence.

¶18 Central also asserts that the court should have granted a new trial under Arizona Rule of Civil Procedure 59(a)(1) because Amor's withholding of the photographs until the close of evidence constituted an irregularity in the proceedings that deprived Central of a fair trial. But Central could not articulate at trial how it was prejudiced in any meaningful way by Amor's failure to disclose the photographs. Instead, it contended that the photographs "prove[d] nothing" and fought to keep them from the jury. *See Valley Nat'l Bank of Ariz. v.*

request by Central in the record. To the contrary, Central vehemently opposed reopening the evidence to allow the jury to see the photographs.

⁴ Central also offered the affidavit of its expert witness, Frank Gomer, who stated the photographs provided empirical evidence that the lumber at the job site was substandard. However, Gomer's opinions were based on his training and experience in psychology, human factors engineering, safety engineering, and engineering management. Central offered the testimony of a different expert, structural engineer Ronald Starling, concerning weight-bearing issues.

Meneghin, 130 Ariz. 119, 122, 634 P.2d 570, 573 (1981) ("Any irregularity in procedure may be waived if a party expressly or implicitly consents to it, as by acquiescing or failing to object to the procedure."). Because there was no error in the conduct of the trial that affected the verdict, we find no abuse of discretion in the court's determination. *S. Ariz. Freight Lines v. Jackson*, 48 Ariz. 509, 512, 63 P.2d 193, 195 (1936) ("A new trial should be granted only when the trial court believes that there has been some error in the conduct of the original trial which, in all probability, has affected the verdict.").

2. The Trial Court Did Not Err by Refusing To Instruct the Jury That Amor's Concealment of the Photographs Created an Inference That the Photographs Were Harmful to Amor's Case.

¶19 Central next contends the court erred by refusing to instruct the jury that it could infer the Williamson photographs would have been unfavorable to Amor because it failed to disclose them before the close of evidence. We review the court's refusal to give a requested jury instruction for an abuse of discretion and consider the evidence in the light most favorable to the party requesting the instruction. *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 409, ¶ 21, 207 P.3d 654, 662 (App. 2008).

¶20 After Amor disclosed the Williamson photographs at trial, Central asked the court to give the jury a spoliation

instruction. When the court indicated that it would not give such an instruction, Central asked that it be allowed to argue to the jury that the photographs would have been unfavorable to Amor. The court denied the request on the grounds it would be misleading because the photographs were not a "smoking gun" that established Amor's fault. The court ruled Central's counsel could remind the jury that Williamson admitted he took photographs of the accident site, that Amor never produced the photographs, and that those photographs were not available for the jury to see. But he could not suggest to the jury that it infer the photographs were against Amor's interests. The court told Central's counsel that if he argued that an adverse inference arose from the missing photographs, the court would reopen the evidence and allow Amor to introduce the photographs into evidence.

¶21 Under Arizona law, a trial court has discretion to impose sanctions when a party destroys potentially relevant evidence, *Souza v. Fred Carries Contracts, Inc.*, 191 Ariz. 247, 249-50, 955 P.2d 3, 5-6 (App. 1997), including instructing the jury that it may infer that the destroyed evidence would have been unfavorable to the position of the offending party. See *Smyser v. City of Peoria*, 215 Ariz. 428, 440, ¶ 38, 160 P.3d 1186, 1198 (App. 2007) (holding trial court did not err by refusing to give the jury an adverse inference instruction). In

this case, however, instructing the jury that it could draw an adverse inference against Amor based upon its failure to produce Williamson's photographs would have been an abuse of discretion, because Central presented no evidence upon which a reasonable fact finder could conclude Amor withheld the photographs intentionally. *Smyser*, 215 Ariz. at 440, ¶ 38, 160 P.3d at 1198.⁵ And because the photographs were not actually harmful to Amor's position, it would have been anomalous to instruct the jury to infer that they were.

B. The Court Did Not Err by Admitting Testimony Regarding the Days' Insurance Coverage and Finances.

¶22 Central challenges the superior court's admission of evidence at trial regarding the Days' health insurance coverage and financial circumstances. Generally, we review challenges to the court's admission or exclusion of evidence for abuse of discretion. *Yauch v. S. Pac. Transp. Co.*, 198 Ariz. 394, 399, ¶ 10, 10 P.3d 1181, 1186 (App. 2000). If the evidentiary ruling is predicated on a question of law, we review that ruling de novo. *Id.*

¶23 The Days claimed that Ron could no longer work as a result of his injuries and sought damages for lost future earnings. Central maintained that Ron's injuries did not

⁵ Indeed, Central admitted in its reply to its motion for new trial that the photographs do not depict evidence that would support more comparative fault by Amor.

prevent him from working, and it moved in limine to preclude the Days from presenting evidence that Ron had been unemployed since the accident and was not employable as a result of his injuries. Indeed, Central asserted that Ron had been secretly working since the accident and had refused to participate in the employment rehabilitation program recommended by his neuropsychologist because it might reveal that he was not as severely injured as he claimed.

¶24 The Days argued that their health insurance would not pay for the rehabilitation program, and they could not otherwise afford it. They moved in limine to exclude evidence that their health insurance company had paid certain medical expenses and that they had received charitable gifts from Central members, disability insurance payments, and Social Security monies. Central opposed the motion, arguing that the Days "opened the door" to this evidence by testifying that they could not afford the rehabilitation treatment and introducing similar statements from medical records. The superior court denied both motions without prejudice but noted that Arizona law permits the use of evidence of collateral source income to prove malingering by a plaintiff, provided cooperative evidence is presented. It further ruled that Central could cross-examine Ron regarding his post-fall employment and other activities, as well as his

reasons for not participating in the employment rehabilitation program.

¶125 At trial, Ron's treating physician, Dr. Candyce Williams, testified during Amor's cross-examination that Ron had not followed her recommendations to consult with certain other physicians because his health insurance did not provide coverage for the treatment. When Central objected, the court ruled that if the witness had the necessary foundation to answer such questions, Central could attempt to impeach the Days' witnesses with information that the Days had other sources of income and could have afforded the recommended treatment even if it was not covered by health insurance.

¶126 The court then allowed Central to question Dr. Williams regarding whether she was aware of the Days' \$4,200 monthly income or whether she had asked Ron if he could afford the prescribed treatments. The court sustained the Days' objection when Central asked Dr. Williams whether she *understood* that Ron *could* afford the prescribed treatments. On redirect, the court allowed the Days to question Dr. Williams regarding whether Ron had reported to her that he could not pursue certain prescribed treatments, including the rehabilitation program, because his health insurance did not cover the treatment and the Days could not afford to pay for them.

¶127 Although the entire trial transcript is not in the record, Central apparently presented evidence and argument at trial that Ron was malingering, capable of employment, and that he failed to mitigate his damages because he refused to participate in the rehabilitation program. Central questioned Heather extensively regarding the Days' income from 2003 through trial, including their receipt of charitable and disability benefits after the accident and about whether Ron was motivated to attend the rehabilitation program and become gainfully employed. The Days presented rebuttal testimony from Heather that after Ron's accident, the Days had received disability insurance payments, Social Security disability benefits, and charitable gifts from Central members. She also stated that their previous health insurance had not covered the rehabilitation program Dr. Williams prescribed, and Ron had not attended it because they could not afford to pay for it. But Ron's new Medicare plan covered the rehabilitation program, and Heather testified that they had contacted the program to begin the evaluation process.

¶128 Central contends that the court erred by allowing the Days unilaterally to introduce evidence regarding their health insurance coverage and overall financial condition. "Ordinarily, courts exclude evidence of the existence or lack of insurance on policy grounds," but we "do not presume prejudice

even when a court improperly admits insurance-related evidence." *Ritchie v. Krasner*, 221 Ariz. 288, 302, ¶ 47, 211 P.3d 1272, 1286 (App. 2009); *Warner v. Sw. Desert Images*, 218 Ariz. 121, 133, ¶¶ 34-35, 180 P.3d 986, 998 (App. 2008) (stating collateral source rule requires that payments made to, or benefits conferred on, an injured party from other sources may not be credited against the tortfeasor's liability). In this case, however, Central put the Days' finances and health insurance at issue by arguing that Ron had been secretly working and hiding income since the accident, and that he had refused to participate in the employment rehabilitation program recommended by Dr. Williams. We therefore conclude that the superior court properly allowed the Days to introduce evidence to rebut that argument. *Ritchie*, 221 Ariz. at 302-03, ¶ 49, 211 P.3d at 1286-87 (holding trial court did not abuse its discretion by admitting evidence of plaintiff's financial condition for the limited purpose of addressing an issue concerning the continuity of his care).⁶

⁶ The court instructed the jury that it should not consider insurance coverage held by any party or credit any payments made to the Days from other sources to reduce their damages. We presume that a properly instructed jury followed the court's instructions. *Jimenez v. Starkey*, 85 Ariz. 194, 196, 335 P.2d 83, 84 (1959) (when trial court properly instructs jury, appellate court "must presume that the jury obeyed such instructions."); *Hyatt Regency Phoenix Hotel Co. v. Winston & Strawn*, 184 Ariz. 120, 140, 907 P.2d 506, 526 (App. 1995) ("We

¶129 We also reject Central's argument that the court erred by not allowing it to present evidence of the Days' financial situation to Dr. Williams and ask her to assess whether the Days could afford her prescribed treatments and whether Ron was telling her the truth when he said he could not afford them. Central did not establish that Dr. Williams had the requisite financial expertise to answer such questions. Ariz. R. Evid. 602 ("A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.").

¶130 We find no abuse of discretion in the superior court's rulings concerning admission of evidence regarding the Days' health insurance or financial circumstances.

C. The Court Did Not Err by Determining That Arizona Law Applied in This Case, As Opposed to Mexican Law.

¶131 Central next contends the superior court erred when it determined that Arizona law, and not the law of Mexico, applied in this case.⁷ We review de novo the court's choice of law

must assume on review that the jury followed the instructions of the trial court.").

⁷ The parties recognize that there is a conflict between the law of Arizona and the law of Mexico. Arizona has adopted a pure comparative negligence standard, A.R.S. § 12-2506; *Piner v. Superior Court In & For County of Maricopa*, 192 Ariz. 182, 188, ¶ 25, 962 P.2d 909, 915 (1998), whereas Central offered evidence that Mexico follows a negligence system, which limits damages to direct out-of-pocket expenses and bars relief to a plaintiff who is found to have contributed to his injuries.

determination. *Baroldy v. Ortho Pharm. Corp.*, 157 Ariz. 574, 578, 760 P.2d 574, 578 (App. 1988).

¶132 Arizona has adopted the "most significant relationship" test set forth in the Restatement (Second) Conflict of Laws (1971) ("Restatement") to determine the controlling law for multistate torts. *Bates v. Super. Ct.*, 156 Ariz. 46, 48-49, 749 P.2d 1367, 1369-70 (1988).⁸ Three sections of the Restatement apply. First, the Court must examine the "general principles of [Restatement] § 145 to determine the number of contacts and the weight of each state's contacts with the parties and the occurrence." *Baroldy*, 157 Ariz. at 578, 760 P.2d at 578. Second, those contacts must be considered under the principles of Restatement § 6 to determine which state has the most significant relationship to the parties and the occurrence. *Id.* Third, the Court must also apply the specific principles of Restatement § 146. *Id.*

1. Restatement § 145

¶133 In deciding which jurisdiction has the most significant relationship, a court should first consider: "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile,

⁸ "The [Restatement] uses 'state' broadly to denote any territorial unit with a distinct general body of law. See § 3. Thus, the term includes Mexico which has a federal Civil Code." *Wendelken v. Superior Court*, 137 Ariz. 455, 457 n.2, 671 P.2d 896, 898 n.2 (1983).

residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered." Restatement § 145(2).

¶134 There is no dispute Ron was injured in Mexico and Central's negligence took place in Mexico. And while we acknowledge the Days' arguments that Central's negligence began in Arizona when it failed to properly train and instruct Ron and that the effect of Ron's injury will be predominantly felt here, we nonetheless determine the first two factors favor Mexico as the jurisdiction with the most significant relationship.

¶135 However, the Days are Arizona residents and Central is an Arizona corporation. "In § 145 analyses, the domicile of the plaintiff often carries the greatest weight . . ." because "[c]ompensation of an injured plaintiff is primarily a concern of the state in which plaintiff is domiciled." *Baroldy*, 157 Ariz. at 579, 760 P.2d at 579 (citation omitted). Therefore, this factor weighs heavily in favor of Arizona as the jurisdiction with the most significant relationship.

¶136 Central contends the final factor -- the place where the parties' relationship is centered -- should favor Mexico because Central's volunteers were subject to Mexican building codes and safety labor restrictions during the construction project. Those matters, however, are not pertinent to the

question where the parties' relationship is centered. The Days attended Central's church services in Arizona for years, volunteered and registered in Arizona for the mission project, and travelled from Arizona in a Central vehicle to the construction site. The parties established their relationship in Arizona, and it is centered here. Therefore, this factor weighs in favor of Arizona.

¶137 Two factors from Restatement § 145 favor Mexico and two favor Arizona. Because "the determination of which state has the most significant contacts is primarily qualitative, not quantitative," we next evaluate the parties' contacts with Arizona and Mexico in light of the principles of Restatement § 6 to determine which law should apply. *Wendelken v. Super. Ct.*, 137 Ariz. 455, 458, 671 P.2d 896, 899 (1983) (citation omitted).

2. Restatement § 6

¶138 Restatement § 6 provides that in the absence of a statute that prescribes how broadly a state's law is to be applied, courts should consider: (a) the needs of the interstate system, (b) the relevant policies of the forum, (c) the relevant policies of other interested states, (d) the protection of justified expectations, (e) the policies underlying the field of law, (f) uniformity of result, and (g) ease in determination of application of the law to be applied.

¶139 As the Arizona Supreme Court recognized in *Wendelken*, our choice of law determination in this matter “should have little effect on the harmonious relationship or on the commercial interaction between Arizona and Mexico.” 137 Ariz. at 458, 671 P.2d at 899. This is a private dispute between an Arizona citizen and an Arizona corporation whose relationship is centered in Arizona. It does not implicate Mexican tourism or commerce.⁹

¶140 “Arizona, in addition to being the forum state and the place of the trial, has considerable interest in this matter.” *Wendelken*, 137 Ariz. at 458, 671 P.2d at 899. Arizona has an interest in both Central and the Days because they are domiciliaries of the state and has a particular interest in ensuring the Days are appropriately compensated for their injuries. *Id.* Mexico does not have a comparable interest in the liability that an Arizona corporation has to an Arizona citizen.

¶141 Further, the protection of justified expectations is not a consideration in this case because neither party

⁹ Central’s argument that the application of Arizona law in this case would serve as a significant disincentive for charitable organizations to conduct similar missions in foreign countries is based solely on speculation. Absent evidence, we have no reason to conclude that Arizona charitable organizations are incentivized to conduct missions in other countries in hopes of securing the advantages of their more defense-friendly negligence laws.

anticipated the negligent act and therefore could not have formed an expectation as to which law would apply in the event of negligence. *Id.* at 460, 671 P.2d at 901. Similarly, “[p]redictability and uniformity of result” are irrelevant in this case because these considerations “are of greatest importance in cases where the parties are likely to give advance thought to the legal consequences of their transactions, i.e., contracts or will validity, not where negligence is at issue.” *Id.* at 460, 671 P.2d at 901.

¶42 Having fully considered the Restatement § 6 factors and the interests of Arizona and Mexico in this action, we conclude that the trial court properly determined that Arizona has the most significant relationship to this occurrence and these parties.

3. Restatement § 146

¶43 In a personal injury action, the law of the state where the injury occurred should be applied unless another state has a more significant relationship. Restatement § 146. Here, although Ron’s injury occurred in Mexico, Arizona has a more significant relationship to the parties and occurrence.

¶44 We hold that the superior court properly ruled Arizona law applies in this case.¹⁰

¹⁰ Because we determine that the superior court correctly applied Arizona’s negligence law in this case, we find no error

II. THE DAYS' CROSS-APPEAL REGARDING THE ENTRY OF JUDGMENT

¶145 When the jury rendered its verdict on June 7, 2011, A.R.S. § 44-1201(A) required interest on any judgment to be at the rate of ten per cent per annum or such other rate as the parties had agreed in writing. But in 2011, the legislature amended the statute to provide, in relevant part: "interest on any judgment shall be at the lesser of ten per cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15 or any publication that may supersede it on the date that the judgment is entered." A.R.S. § 44-1201(B) (2011). This amendment became effective on July 20, 2011. 2011 Ariz. Sess. Laws, Ch. 99, § 15 (1st Reg. Sess.).

¶146 The Days separately lodged a proposed form of judgment and a statement of costs with the court on June 14, 2011. On June 20, 2011, Central objected to both the form of judgment and the statement of costs. On June 28, 2011, the Days filed a reply in support of both documents. On August 18, 2011, when the court held oral argument on both issues, the Days asked it to enter the judgment nunc pro tunc as of the date of the verdict and award pre- and post-judgment interest at the higher

in its refusal to instruct the jury regarding the standard of liability under Mexican law or to allow Central's witness, Anthony Maldonado, to testify regarding Mexican law.

statutory interest rate in effect at that time. The court acknowledged that the objections to the form of judgment were "not particularly significant" and stated it would have endeavored to enter the judgment before the statutory rate change if it had been aware of the amendment. Nevertheless, the court determined that the revised statute required it to utilize the new interest rate based on the date the judgment would be filed with the clerk of the court.

¶147 The Days contend the court erred by ruling it had no authority to direct entry of the judgment nunc pro tunc to a date earlier than the statutory interest rate change and by delaying entry of the judgment for the purpose of taxing costs. We review the superior court's interpretation of statutes and court rules de novo. *Egan v. Fridlund-Horne*, 221 Ariz. 229, 232, 211 P.3d 1213, 1216 (App. 2009) ("We review de novo the superior court's interpretation and application of statutory and constitutional provisions."); *Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, 544, ¶ 6, 189 P.3d 1114, 1117 (App. 2008) (appellate court reviews de novo "questions involving the interpretation of court rules and 'evaluate[s] procedural rules using principles of statutory construction.'") (citation omitted).¹¹

¹¹ Central urges us to apply an abuse of discretion standard to the superior court's refusal to enter the judgment nunc pro

¶148 Although the court had the power to make the judgment effective on an earlier date, it could not make the entry of the judgment any earlier than the date it was filed by the court clerk. Ariz. R. Civ. P. 58(a); *Haroutunian*, 218 Ariz. at 545-46, ¶ 10, 189 P.3d at 1118-19 (entry of a judgment occurs when it is file-stamped by the court clerk); *Jackson v. Sears, Roebuck & Co.*, 83 Ariz. 20, 23, 315 P.2d 871, 873 (1957) (judgment is not effective until it is entered by the clerk of the court in the civil docket). The amended statute mandates that interest on any judgment be determined based on the interest rate published "on the date that the judgment is entered." A.R.S. § 44-1201(B) (2011). Therefore, even if the superior court had entered the judgment nunc pro tunc to be effective on June 7, 2011, the date of the verdict, it nevertheless would have been required to calculate the pre- and post-judgment interest based on the rate published on the date the court clerk filed the judgment. We find no error in the superior court's determination that it could not direct entry of the judgment nunc pro tunc to a date before the statutory interest rate change and award the Days a higher rate of pre- and post-judgment interest.

tunc. However, the court indicated its ruling was based on its interpretation of A.R.S. § 44-1201(B), and therefore, it did not exercise its discretion in denying the Days' request.

¶149 Further, although the delay in the entry of the judgment was arguably caused by the court in this case, we must also consider that the purpose of a nunc pro tunc order is to reflect the truth of what previously occurred, not to avoid a change in the law to benefit one side. See *State v. Johnson*, 113 Ariz. 506, 509, 557 P.2d 1063, 1066 (1976). A nunc pro tunc judgment may be entered "where a judgment has actually been rendered and that rendition is reflected in the record of the court." *Allen v. Allen*, 129 Ariz. 112, 114, 628 P.2d 995, 997 (App. 1981) (citation omitted). The rendition of judgment is a pronouncement that demonstrates the present intent of the judge and adjudicates the matter. *Allen*, 129 Ariz. at 115, 628 P.2d at 998. In this case, the court had not previously adjudicated the dispute in any prior ruling or judgment, and it would have been an abuse of its discretion for it to deny the Days' request for judgment nunc pro tunc as of the date of the verdict.

¶150 Finally, the Days argue the court erred by delaying the entry of judgment for the taxing of costs in violation of Arizona Rule of Civil Procedure 58(a). Although the court acknowledged that the primary cause of its delay in entering the judgment was its consideration of the objections to the Days' statement of taxable costs, it also needed to rule on Central's and Amor's objections to the Days' proposed form of judgment. The Days did not ask the court to expedite its resolution of

those objections or enter the judgment prior to the statutory change.

CONCLUSION

¶51 For the foregoing reasons, we affirm.

¶52 The Days request an award of costs on appeal. We grant their request regarding the costs the Days incurred on Central's appeal, subject to their compliance with Arizona Rule of Civil Appellate Procedure 21. Central and Amor are entitled to costs on the Days' cross-appeal pursuant to A.R.S. § 12-342.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

PHILIP HALL, Presiding Judge

/s/

SAMUEL A. THUMMA, Judge