

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

---

ELIZABETH KELLER, WIFE OF THE DECEASED, KRISTOPHER KELLER,  
ON HER OWN BEHALF, AND AS BENEFICIARY AND  
PERSONAL REPRESENTATIVE OF THE ESTATE OF KRISTOPHER KELLER,  
*Plaintiff/Appellant,*

*v.*

ARIZONA PAIN SPECIALISTS, PLLC; ROBERT J. BROWNSBERGER, M.D.;  
ROBERT J. BROWNSBERGER, M.D., P.C.; AND  
KARLA AUSTIN, N.P.,  
*Defendants/Appellees.*

No. 2 CA-CV 2022-0140  
Filed August 23, 2023

---

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).*

---

Appeal from the Superior Court in Navajo County  
No. S0900CV201800390  
The Honorable Ralph Hatch, Judge  
The Honorable Joseph S. Clark, Judge

**AFFIRMED**

---

COUNSEL

Ahwatukee Legal Office P.C., Phoenix  
By David L. Abney  
*Counsel for Plaintiff/Appellant*

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

Broening Oberg Woods & Wilson P.C., Phoenix  
By Cody M. Hall and Kelley M. Jancaitis  
*Counsel for Defendants/Appellees Arizona Pain Specialists PLLC and  
Karla Austin, N.P.*

Jones, Skelton & Hochuli P.L.C., Phoenix  
By Eileen Dennis GilBride and Anne E. Holmgren  
*Counsel for Defendant/Appellee Robert J. Brownsberger, M.D.*

---

**MEMORANDUM DECISION**

Vice Chief Judge Staring authored the decision of the Court, in which Judge Sklar and Judge O’Neil concurred.

---

STARING, Vice Chief Judge:

¶1 In this action for wrongful death and medical malpractice arising from the death of her husband, Elizabeth Keller appeals from the judgment in favor of Arizona Pain Specialists PLLC, Robert Brownsberger, M.D., P.C., Robert Brownsberger, M.D., and Karla Austin, N.P. (collectively, “Defendants”). She also appeals from the trial court’s denial of her motion for new trial. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 In 2012, Kristopher Keller was injured when he fell down an elevator shaft. As a result, he experienced pain in his neck, back, and knees. In late 2014, Kristopher’s primary-care physician, who had been prescribing oxycodone for Kristopher’s pain, referred him to Dr. Brownsberger, a pain-management specialist at Arizona Pain Specialists (APS).<sup>1</sup> Brownsberger

---

<sup>1</sup> In 2014, APS “approached [Brownsberger] to see if [he] was interested in joining their group.” Without selling his practice to APS, Brownsberger “elected to join them and allow them to run [his] practice while [he] focused on patient care.” As such, Brownsberger was an employee of APS at the time he treated Kristopher.

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

previously treated Kristopher in 2012 following a work-related injury to his neck and one of his knees.<sup>2</sup>

¶3 In 2015, Kristopher started treatment with Brownsberger. During his initial office visit, Kristopher confirmed, both in his new-patient intake forms and verbally to Brownsberger, that he had “no past history or present abuse of alcohol, illegal drugs or controlled substances.” Brownsberger reviewed Kristopher’s prescription history in the Controlled Substances Prescription Monitoring Program (PMP) and found no signs of medication abuse. He decided medication was appropriate given Kristopher’s persistent pain, and he therefore refilled the oxycodone prescription Kristopher’s primary-care physician had initiated to maintain Kristopher’s quality of life while exploring other treatment options.<sup>3</sup> The prescription called for Kristopher to take one pill up to four times per day as needed. Additionally, Brownsberger administered two epidural injections over the next two months in an attempt to alleviate Kristopher’s pain.<sup>4</sup> Kristopher reported these injections provided him with significant but temporary relief. Brownsberger also referred Kristopher to a spine surgeon, but Kristopher ultimately decided not to undergo surgery.

¶4 In August 2015, Kristopher was required to submit to his first urine drug screen as a patient at APS, which returned a negative result for the presence of the prescribed opioids. A urine drug screen is a method of monitoring patient compliance with a pain-management treatment plan. Results of a urine drug screen can be deemed inconsistent based on the presence of illicit or non-prescribed medication or the absence of prescribed medication. In a patient who has been prescribed opioids, an inconsistent, negative urine drug screen means there were no opioids in the urine. There are various reasons for such a result: (1) the patient is not taking the opioid medication; (2) the patient is “diverting it and selling it on the street”; or (3)

---

<sup>2</sup>At that time, Kristopher had been prescribed opioids by another provider, and Brownsberger did not prescribe any opiate-based medication.

<sup>3</sup>The PMP, a “patient monitoring program sponsored by the state,” allows physicians to “check if a patient is taking other substances from other doctors.”

<sup>4</sup>“Epidural injections are steroid injections designed to reduce inflammation.”

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

the patient is taking more than the prescribed dosage and is running out of medication early.

¶5 In September, a physician assistant refilled Kristopher's prescription, and, in October, she ordered another urine drug screen, which was also negative for the presence of opioids. Upon Kristopher's request for a different pain medication at his October office visit, the physician assistant changed his prescription from oxycodone to hydrocodone, another opioid medication. In November, Brownsberger refilled Kristopher's hydrocodone prescription and ordered another urine drug screen, which was also negative for the presence of the prescribed opioids.

¶6 In January 2016, Brownsberger administered a third epidural injection, which lessened Kristopher's leg pain. In February, Kristopher again visited Brownsberger, and, based on the lack of opioids in Kristopher's November 2015 urine drug screen, Brownsberger ordered another screen but nevertheless refilled Kristopher's hydrocodone prescription.

¶7 Kristopher's back pain persisted, and, in April and May 2016, Brownsberger performed two diagnostic medial branch blocks to determine whether he was a candidate for radiofrequency therapy.<sup>5</sup> He also refilled Kristopher's opioid prescription, changing it from hydrocodone back to oxycodone. Based on Kristopher's positive responses to the procedures, Brownsberger performed lumbar radiofrequency therapy in late July.<sup>6</sup> And he again refilled Kristopher's oxycodone prescription.

¶8 In August 2016, nurse practitioner Karla Austin saw Kristopher at a post-procedure follow-up appointment and refilled his

---

<sup>5</sup>A medial branch block is the "numbing of small nerves in the back that provide innervation or sensory control input from small joints in the back called the fa[acet] joints."

<sup>6</sup>Radiofrequency therapy is "a semi-permanent block of the nerves to the facet joints" during which the doctor, "through a needle or a nonsurgical approach, . . . place[s] an electric current along the track of those nerves."

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

existing prescription for oxycodone.<sup>7</sup> Later that month, Kristopher died after ingesting a lethal amount of oxycodone.

¶9 In August 2018, Keller filed this action against Defendants, asserting claims of medical malpractice, wrongful death, and loss of consortium. In June 2020, she moved for partial summary judgment, arguing evidence established Brownsberger had fallen below the standard of care by failing to review records from Kristopher’s primary-care physician and document Kristopher’s inconsistent urine drug screen results, as well as any conversations with him regarding those results. Additionally, she argued both Brownsberger and Austin had fallen “below the standard of care by violating [APS]’s policy by continuing to prescribe [Kristopher] oxycodone and hydrocod[on]e.” The trial court denied Keller’s motion after oral argument, concluding genuine issues of material fact existed as to whether Brownsberger and Austin had “breached the[] . . . standard of care when treating and/or prescribing opioid medication to Kristopher.”

¶10 Following a nine-day trial, the jury returned a unanimous general verdict in favor of Defendants. Keller subsequently filed a motion for new trial, asserting the verdict was “not supported by the evidence.” The trial court denied the motion. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1), (5)(a).

**I. Motion for Partial Summary Judgment**

¶11 Keller argues the trial court erred in denying her motion for partial summary judgment because she had identified in her statement of facts “undisputed” evidence establishing Brownsberger and Austin fell below the applicable standards of care in treating Kristopher. Specifically, Keller asserts pretrial evidence, including deposition testimony and Kristopher’s patient records, established (1) Brownsberger had failed to review Kristopher’s medical records from his primary-care physician, (2) Brownsberger had failed to document Kristopher’s inconsistent urine drug screen results, (3) Brownsberger had failed to document any conversations he had with Kristopher regarding the inconsistent results, and (4) Brownsberger and Austin had continued to refill Kristopher’s opioid prescriptions in violation of APS’s own policies. Keller contends

---

<sup>7</sup>Austin’s last name was Ornelas at the time of trial.

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

that because “no genuine issues of material fact” remained with respect to these issues, there “was no reason why [they] had to go to the jury.”

¶12 As Keller acknowledges, a “denial of summary judgment is not an appealable order,” and “a denial based on disputed issues of material fact also is not reviewable on appeal from a final judgment after trial.” *Ryan v. Napier*, 245 Ariz. 54, ¶ 14 (2018); see *Desert Palm Surgical Grp., P.L.C. v. Petta*, 236 Ariz. 568, ¶ 21 (App. 2015) (reviewing order denying summary judgment motion after trial “could lead to the absurd result that one who has sustained his position after a full trial and a more complete presentation of the evidence might nevertheless be reversed on appeal because he had failed to prove his case more fully at the time . . . of the motion” (quoting *Navajo Freight Lines, Inc. v. Liberty Mut. Ins. Co.*, 12 Ariz. App. 424, 428 (1970))). But, she argues, because the “facts at issue in [her] motion . . . were not legitimately in dispute,” no genuine issues of material fact existed and she was therefore entitled to judgment as a matter of law. Thus, Keller appears to assert, we are permitted to review the trial court’s denial of her motion as we would “any other interim order” because it was “grounded on a purely legal issue that affected the final judgment.” *Ryan*, 245 Ariz. 54, ¶ 14; see A.R.S. § 12-2102(A). “We review *de novo* whether a pure question of law precluded the denial of summary judgment.” *Desert Palm*, 236 Ariz. 568, ¶ 22.

¶13 We disagree with Keller that the issues raised in her motion for summary judgment were purely legal. Purely legal issues “do[] not require the determination of any predicate facts, namely, the facts are not merely undisputed but immaterial.” *Id.* (quoting *John C. Lincoln Hosp. & Health Corp. v. Maricopa County*, 208 Ariz. 532, n.5 (App. 2004)). Here, even assuming without deciding the facts were undisputed, they were not immaterial; they were the underlying bases of Keller’s motion. See *Gipson v. Kasey*, 214 Ariz. 141, ¶ 10 (2007) (“Whether [a] defendant has met the standard of care—that is, whether there has been a breach of duty—is an issue of fact that turns on the specifics of the individual case.”). And granting Keller the relief she now requests, after a jury trial ending in a general verdict for Defendants, would lead to the same “absurd result” contemplated in *Desert Palm*. 236 Ariz. 568, ¶ 21. Accordingly, we do not further address Keller’s argument.

## II. Motion for New Trial

¶14 Keller argues the jury’s verdict was not supported by the evidence, and the trial court therefore erred in denying her motion for new trial. We review the denial of a motion for new trial for an abuse of

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

discretion. See *Dawson v. Withycombe*, 216 Ariz. 84, ¶ 25 (App. 2007). In doing so, we view the evidence in the light most favorable to sustaining the jury's verdict and will affirm if the verdict is supported by substantial evidence. See *Warrington v. Tempe Elementary Sch. Dist. No. 3*, 197 Ariz. 68, ¶ 4 (App. 1999); *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 11 (App. 2009). Substantial evidence is proof that permits "a reasonable person to reach the [jury's] result." *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, ¶ 11 (App. 2009). We will not reverse or vacate the ruling merely because "there is a dispute in the evidence from which reasonable [people] could arrive at different conclusions as to the ultimate facts." *Spain v. Griffith*, 42 Ariz. 304, 305 (1933).

¶15 "In medical malpractice actions, like all tort actions, a plaintiff must allege and prove the existence of a duty owed, a breach of that duty, and damages causally related to such breach." *Smethers v. Champion*, 210 Ariz. 167, ¶ 12 (App. 2005). Whether a duty is owed is generally a question of law for the court, and the elements of breach, causation, and damages are generally factual issues within the province of the jury. *Id.*; *Ritchie*, 221 Ariz. 288, ¶ 11. To prove her medical malpractice claim, Keller was required to establish Defendants (1) had "failed to exercise that degree of care, skill and learning expected of a reasonable, prudent health care provider in the profession or class to which he belongs within the state acting in the same or similar circumstances" and (2) "[s]uch failure was a proximate cause of the injury." A.R.S. § 12-563; see *Seisinger v. Siebel*, 220 Ariz. 85, ¶ 39 (2009) ("common law elements of a medical malpractice action . . . partially codified by the legislature in . . . § 12-563").

¶16 At trial, Keller called Dr. Amir Pouradib to testify as an expert witness regarding the standard of care applicable to a pain-management physician such as Brownsberger. Additionally, Keller called nurse practitioner Leah Miller to provide expert testimony as to the standard of care applicable to Austin. Brownsberger testified in his own defense and called standard-of-care expert Dr. Paul Pannozzo. Austin also testified in her own defense and called nurse practitioner Theresa Mallick-Searle as a standard-of-care expert.

¶17 After the jury returned a defense verdict, Keller moved for a new trial pursuant to Rule 59(a)(1)(H), Ariz. R. Civ. P., asserting the evidence did not support the "verdict, decision, and judgment for all of the defendants," and pursuant to § 12-2102(C), arguing "the evidence was insufficient to sustain the verdict and judgment for each defendant in an action tried before a jury." She also asserted the verdict was "against the

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

weight of the evidence.” Specifically, Keller argued the evidence presented at trial had established Brownsberger fell below the standard of care in treating Kristopher because he (1) failed to review records from Kristopher’s primary-care physician “during the time [he] treated Kristopher,” (2) failed “to document Kristopher’s inconsistent and inherently suspect urine toxicology results in the medical record,” (3) failed “to document in the medical record any conversation he had with Kristopher” regarding those results, (4) “violat[ed] his own practice’s protective policies concerning testing patients and prescribing oxycodone and hydrocodone,” and (5) continued to prescribe those medications to Kristopher. And, she argued, “the elements of standard of care, breach, proximate cause, and damages were established concerning all defendants.”

¶18 Defendants responded that Keller had failed to support her arguments with evidence and had not “allege[d] any error or irregularity in the jury verdict in favor of NP Austin and Arizona Pain Specialists other than a superficial statement that there was no question about the evidence ‘as to all defendants.’” In reply, Keller clarified she was “moving for a new trial concerning all defendants,” including Austin and APS. The trial court denied Keller’s motion, concluding “[t]here was sufficient evidence to sustain the jury’s verdict not holding any Defendant liable” for Kristopher’s death.<sup>8</sup>

¶19 On appeal, Keller reasserts her claim that the weight of the evidence established that Defendants had violated the standard of care in multiple respects.<sup>9</sup> She first argues the weight of the evidence presented at

---

<sup>8</sup>Although Keller did not initially develop any specific arguments that she was entitled to a new trial with respect to Austin and APS, the court appears to have considered the merits of the arguments raised in her reply in concluding sufficient evidence supported the verdict as to all Defendants.

<sup>9</sup>In her statement of facts, Keller appears to suggest Defendants’ treatment of Kristopher fell below the standard of care in several additional ways. However, because she does not argue or support these assertions in her opening brief’s argument section, we do not consider them as part of her argument. See *Sholes v. Fernando*, 228 Ariz. 455, n.5 (App. 2011) (“We confine ourselves to addressing the arguments as they are presented in the argument section of the opening brief and are supported properly, as all other issues are waived.”).



KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

trial established Brownsberger had “violated the standard of care and the policies of Arizona Pain Specialists when he did not review Kris’s medical records before prescribing [him] opioids.” She contends review of these records “would have revealed preexisting problems with drug abuse, depression, pain-medication addiction, and bipolar disorder that would have excluded Kris as a candidate for opioid therapy.” In support of her argument, Keller points to testimony in which Brownsberger explained that the standard of care for a new patient required him to “review the referring doctor’s medical records before initiating treatment” and that he had considered Kristopher to be a new patient in 2015 “in terms of [his] history and exam.” Further, she points to the lack of evidence that Brownsberger performed such a review in this case, as well as Brownsberger’s “conce[ssion]” at trial that he previously stated in a 2019 deposition that he “had no idea” Kristopher had a history of pain medication addiction before initiating opioid therapy.

¶20 Notably, although APS’s policies may inform the standard of care, it must ultimately be established by “expert medical testimony.” *Seisinger*, 220 Ariz. 85, ¶ 33; see *Shepherd v. Costco Wholesale Corp.*, 250 Ariz. 511, ¶ 29 (2021) (“While . . . a company’s policies may not establish the standard of care, they may inform it.”). Thus, to the extent Keller asserts APS’s policies definitively establish the standard of care, we disagree.

¶21 Moreover, substantial evidence supported a finding that Brownsberger’s conduct had satisfied the applicable standard of care. Brownsberger testified he had reviewed all records available to him before treating Kristopher in 2015, and, while he did not “necessarily recall specifically reviewing” records from Kristopher’s primary-care physician, it was his custom and practice to do so. And, although Pouradib testified Kristopher’s history of “mental disorder including depression and bipolar disorder” and “history of substance abuse,” as documented in the records from his primary-care physician, had excluded him as a candidate for opiate therapy, Brownsberger disagreed that the standard of care prevented him from prescribing opioids to patients diagnosed with such conditions. See Ariz. R. Civ. P. 26(b)(4)(F)(ii) (“[A] defendant in a medical malpractice action may—in addition to that defendant’s standard-of-care expert witness—testify on the issue of that defendant’s standard of care.”). Further, he disagreed with Kristopher’s primary-care physician’s records indicating Kristopher had suffered from a pain medication addiction, explaining he would still have “prescribed ongoing the medication at that time” if he had seen the records indicating such a diagnosis because the PMP showed no signs of prescription abuse. Also, both Brownsberger and

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

Pannozzo testified Brownsberger’s treatment of Kristopher had satisfied the standard of care. Keller, therefore, essentially asks us to reweigh the evidence on appeal, which we will not do. See *Adroit Supply Co. v. Elec. Mut. Liab. Ins. Co.*, 112 Ariz. 385, 390 (1975) (“[W]hen this court reviews the grant or denial of a motion for a new trial, it does not weigh the evidence.”); *Spain*, 42 Ariz. at 305; cf. *Est. of Reinen v. N. Ariz. Orthopedics, Ltd.*, 198 Ariz. 283, ¶ 12 (2000) (“The credibility of [any] witness’ testimony and the weight it should be given are issues particularly within the province of the jury.”).

¶22 Keller next contends the weight of the evidence established the standard of care had required Brownsberger “to review the inconsistent urine test results with Kris, to document the inconsistent urine test results in Kris’s medical records, to document the review of the inconsistent urine test results with Kris in the medical records, and to refrain from prescribing any opioids to Kris in light of those inconsistent urine test results.”<sup>10</sup> Further, she asserts, the weight of the evidence showed Brownsberger had violated this standard. Keller relies on defense expert Pannozzo’s testimony that the standard of care required Brownsberger to document in Kristopher’s medical records any inconsistent urine drug screen results, as well as any discussions with Kristopher about those results, and that Brownsberger violated the standard of care by not doing so.

¶23 Brownsberger testified it had been his custom and practice in 2015 and 2016 to “document the urine test results as well as any subsequent conversation with [his] patient” regarding inconsistent results in the patient’s medical record. He explained that whether a patient with an inconsistent urine drug screen is nevertheless compliant with the treatment plan “depends on the discussion with the patient as to rational[e] as well as the review of the records as [he] had them at the time.” Further, he stated, “When I use that term ‘compliant with the treatment,’ that is my shorthand of saying, I’ve reviewed the urine drug screens and I’ve reviewed the pharmacy board report, reviewed that with the patient, and felt that his explanation of his results were reasonable.”

---

<sup>10</sup>To the extent Keller asserts Austin and APS also fell below the standard of care in their review and documentation of Kristopher’s urine drug screen results, she does not develop this argument or support it with citations to the record in the appropriate section of her opening brief. See Ariz. R. Civ. App. P. 13(a)(7)(A). Thus, we do not address it. See *Sholes*, 228 Ariz. 455, nn.1, 5; *Ritchie*, 221 Ariz. 288, ¶ 62.

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

¶24 As discussed, the results of Kristopher’s first two urine drug screens at APS were “inconsistent” based on the absence of the prescribed opioids. Brownsberger testified he had documented those results by noting Kristopher was “compliant” with the treatment plan after conversations indicating Kristopher sometimes took more than four tablets per day, which was permissible “on occasion” if he “felt like he needed to for the pain.” And, although PannoZZo testified he had been unable to locate in Kristopher’s medical records “where Dr. Brownsberger documented a conversation with [Kristopher] about the inconsistent urine tox[icology] results,” he also testified Brownsberger had met the standard of care if, as Brownsberger testified, he documented his conversations with Kristopher by indicating in the record that Kristopher was “compliant.”

¶25 As to Kristopher’s third negative urine drug screen, Brownsberger testified he had ordered another screen without noting that Kristopher was in compliance with the treatment plan. He explained this was his way of documenting that the third screen was “not consistent.” Further, although Brownsberger testified he did not remember reviewing the negative result of Kristopher’s fourth urine drug screen until after Kristopher had died, PannoZZo testified the standard of care did not require Brownsberger to stop prescribing opioids based on Kristopher’s negative urine drug screens. And, as discussed, Brownsberger and PannoZZo both testified Brownsberger had satisfied the standard of care in treating Kristopher. Again, we do not reweigh the evidence on appeal. *See Adroit Supply Co.*, 112 Ariz. at 390; *Spain*, 42 Ariz. at 305.

¶26 Keller also argues the weight of the evidence established the applicable standards of care had required Brownsberger, Austin, and APS “to refer Kris to an addiction specialist and to use non-opioid therapies in light of his past medical history” and “repeated inconsistent urine test results,” but they had continued to prescribe opioids to Kristopher in violation of that standard. Keller, however, fails to identify evidence supporting this assertion in the argument section of her opening brief, and we therefore do not consider it. *See Ariz. R. Civ. App. P. 13(a)(7)(A)* (argument must contain “contentions concerning each issue presented for review . . . and appropriate references to the portions of the record on which the appellant relies”); *Ritchie*, 221 Ariz. 288, ¶ 62 (failure to comply with rule governing opening brief “can constitute abandonment and waiver” of claim). In any event, Brownsberger and Austin each disagreed their respective standards of care had required them to refer Kristopher to an addictionologist or to discontinue his opioid prescription. *See Ariz. R. Civ. P. 26(b)(4)(F)(ii)*. Brownsberger and Austin testified they had satisfied the

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

standard of care in treating Kristopher, including in refilling his opioid prescriptions, testimony with which Pannozzo and Searle agreed. We do not reweigh evidence on appeal. See *Adroit Supply Co.*, 112 Ariz. at 390; *Spain*, 42 Ariz. at 305.

¶27 Keller further asserts the “weight of the trial evidence was that Kris died because . . . Brownsberger and . . . Austin provided him with repeated opioid prescriptions when he was not a suitable candidate for opioid therapy.” Thus, she argues, “[b]ut for their prescription of opioid medications . . . in violation of the standard of care,” Kristopher “would not have overdosed on those opioid medications” because he “would not have had the opioid medications to overdose on.” However, a general verdict, like the one reached in this case, “will be upheld when several counts, issues or theories are submitted to the jury if evidence on one count, issue or theory is sufficient to sustain the verdict.” *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338, 341 (App. 1983); see *Elliott v. Landon*, 89 Ariz. 355, 357 (1961) (“[W]hen we do not know on what basis the jury reached its verdict, if there is any evidence to support a theory which will sustain same it must be affirmed on appeal.” (quoting *Citizens Utils. Co. v. Firemen’s Ins. Co.*, 73 Ariz. 299, 303 (1952))). Because the jury could have concluded, based on the evidence presented at trial, that none of Defendants’ conduct had fallen below the standard of care, we need not reach Keller’s argument regarding causation. See § 12-563 (to establish medical malpractice, plaintiff must show defendant failed to exercise reasonable care and “[s]uch failure was a proximate cause” of plaintiff’s injury).

¶28 Finally, Keller contends the trial court “improperly speculated about the jury’s credibility determinations” in denying her motion for new trial, pointing to its finding that the jury “found Defendants and their experts more credible than [her] experts.” Thus, she argues, we must vacate the court’s order denying her motion based on its “decision to guess about how the jury had weighed the credibility of the defendants and . . . their expert witnesses.” However, as discussed, substantial evidence supported the verdict, and the court’s additional speculation as to how the jury had weighed the evidence is not a basis for granting or denying a motion for new trial. See Ariz. R. Civ. P. 59(a)(1). The court merely recognized that when, as here, conflicting evidence has been presented, a defense verdict indicates the jury believed one side’s evidence over that of the other. Cf. *Correa v. Pecos Valley Dev. Corp.*, 126 Ariz. 601, 607 (App. 1980) (“It is the function of the jury to weigh conflicting evidence and inferences and to determine the credibility of witnesses.”); *Est. of Reinen*, 198 Ariz. 283, ¶ 12. Keller’s argument fails.

KELLER v. ARIZ. PAIN SPECIALISTS, PLLC  
Decision of the Court

¶29 Accordingly, because substantial evidence supports the jury's verdict in favor of Defendants on the basis that no breach occurred, the trial court did not abuse its discretion in denying Keller's motion for new trial. See Ariz. R. Civ. P. 59(a)(1)(H); § 12-563; *Ritchie*, 221 Ariz. 288, ¶¶ 11, 33; *Smethers*, 210 Ariz. 167, ¶ 12.

**Disposition**

¶30 For the foregoing reasons, we affirm. As the prevailing parties on appeal, Defendants are entitled to their reasonable costs upon compliance with Rule 21, Ariz. R. Civ. App. P. See A.R.S. § 12-341.