

**IN THE COURT OF APPEALS OF IOWA**

No. 8-582 / 08-0136  
Filed November 26, 2008

**SHIRLEY L. RICHARDSON,**  
Plaintiff-Appellee,

**vs.**

**AMERICAN FAMILY  
INSURANCE COMPANY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mark J. Smith,  
Judge.

Insurer appeals from judgment entered in favor of plaintiff in a suit for  
contractual underinsured motorist benefits. **AFFIRMED.**

Ted J. Wallace, Davenport, for appellant.

M. Tod Melton and Thomas J. Potter of Ludens Potter Burch Melton &  
Calvo, Morrison, Illinois, for appellee.

Heard by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

**HUITINK, P.J.**

American Family Insurance Company (American Family) appeals from judgment entered in favor of Shirley Richardson on her suit for contractual underinsured motorist benefits. American Family contends the district court erred in excluding evidence; in restricting its closing arguments; and in submitting an eggshell plaintiff jury instruction. In addition, it contends it was denied a fair trial by cumulative errors. We affirm.

**I. Background Facts and Proceedings.** Richardson was involved in a motor vehicle accident in which she was hit from behind. Following the accident, Richardson underwent four neck and cervical surgical procedures at the University of Iowa Hospitals. She sought coverage for these procedures under her underinsured motorist benefits coverage through American Family. American Family denied that the surgeries were caused by the motor vehicle accident. The matter went to trial on the sole issue of whether Richardson's four surgeries were proximately caused by the motor vehicle accident.

At trial American Family sought to introduce a disability insurance application, which had been completed prior to the accident at issue. It also sought to introduce a medical record from Mayo Clinic from before the accident. Richardson moved in limine to exclude the items. American Family argued that other lawsuits and applications for disability were relevant to Richardson's motivation for making the instant claim. The district court sustained Richardson's objections to the exhibits on grounds they were more prejudicial than probative. The court did not exclude questioning concerning preexisting conditions or prior medical complaints. American Family was allowed to question Richardson about

the medical matters asserted on the disability application and the Mayo medical record.

Richardson introduced the testimony of Dr. Vincent Traynelis, the operating neurosurgeon, who opined that the accident was related to Richardson's later neck surgeries. He testified that he based his opinion upon the patient's history, i.e., Richardson stated that she had no significant history of neck problems before the accident. During cross-examination, American Family asked if Dr. Traynelis was aware of Richardson's prior treatment for back and neck issues and how that knowledge would change his opinion. Dr. Traynelis testified that Richardson had degenerative disk disease that may or may not have required surgery. However, the accident "acutely created a symptomatic situation out of one that was relatively asymptomatic."

American Family introduced the testimony of Dr. Thomas Carlstrom, also a neurosurgeon, who had examined Richardson's medical history and documentations. Dr. Carlstrom noted that Richardson had an extensive history of both neck and low back pain prior to the accident. He stated that Richardson had sustained a muscular injury in the accident. He opined that the surgery performed on Richardson was not necessary for her complaints from the automobile accident and that it was "not a good operation for getting rid of neck pain, [it] doesn't usually work."

After Richardson had finished testifying, American Family sought to introduce into evidence one of Richardson's interrogatory answers and to read into the record portions of Richardson's prior deposition. The district court ruled that it would allow American Family to recall Richardson and question her about

the contents of the interrogatory and the deposition, but it would not allow the items to be introduced in the manner proposed by American Family. American Family did then recall Richardson and further question her concerning prior history of neck and back pain and treatment.

The district court informed the parties it intended to offer the eggshell plaintiff instruction “because Dr. Traynelis did testify that this accident made her degenerative disk disease become symptomatic.” American Family objected, arguing that the instruction was improper since it had not been allowed to introduce evidence of her prior disability. The court overruled the objection.

Just before closing arguments, Richardson asked the district court to limit American Family’s closing arguments. Richardson asked that American Family not be allowed to argue that the surgeries were not needed.

I think that he’s limited to arguing that it did not – that it wasn’t – the surgeries weren’t caused by the accident. They weren’t related to the accident. I don’t think he can get into the need for the surgery. That’s not a defense to causation. It’s a defense to damages. And if he’s intending to go there, which I would have never dreamed that he would until we had the directed verdict motion yesterday, I want to stop it before it’s said rather than interrupt him during his closing argument.

American Family argued that the issue was introduced by Dr. Carlstrom’s testimony that came in without objections and that “I believe the position that they should never have occurred is, in fact, a statement that they are not related to the accident.” The court commented: “But the question is whether or not, given the limited scope that the jury is deciding here, whether that’s relevant evidence to whether or not the injury—not the surgery—the injury was proximately caused by the accident.” After further discussion, the court granted Richardson’s motion

limiting American Family's closing argument. Closing arguments were not reported.

The jury returned a verdict with a special interrogatory finding that "the medical treatment provided to the Plaintiff at the University of Iowa was proximately caused by the automobile accident of January 30, 2003."

American Family's motion for new trial was denied. American Family appeals.

**II. Evidentiary Rulings.** American Family contends the district court erred in excluding evidence, including the disability insurance application, which it claims was relevant and probative of Richardson's motives. It argues that the actual disability application, and not just the information contained therein, was direct evidence that the plaintiff was aware of her neck injury prior to the accident, contrary to her testimony at trial.

We review the district court's determination of relevancy and admission of relevant evidence for an abuse of discretion. *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). An abuse of discretion exists when "the court exercised [its] discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997).

In *Nepple v. Weifenbach*, 274 N.W.2d 728, 733-34 (Iowa 1979), our supreme court held it is the duty of trial courts, upon timely objection, to prevent the introduction of evidence regarding unrelated prior claims because such evidence can be very distracting and improperly impugn the merits of the case being tried. The court noted that "litigiousness, in the eyes of most people, reflects upon character and that hostility is ordinarily felt against one who

constantly requires services of a court of law for the adjustment of life's problems." *Nepple*, 274 N.W.2d at 733 (internal quotation and citation omitted); see also *Mohammed v. Otoadese*, 738 N.W.2d 628, 632 (Iowa 2007) (noting that even if somehow relevant, evidence of a prior lawsuit "should have been excluded under rule 5.403").

Here, the district court properly performed its duty enunciated in *Nepple*: that is, upon timely objection, the court prevented the introduction of evidence regarding unrelated prior claims for disability because such evidence can be very distracting and improperly impugn the merits of the case being tried. We find no error.

**III. Limiting Closing Argument.** American Family next argues the district court denied its fair comment on the evidence in the record in disallowing argument that if the surgeries themselves were unnecessary for her neck complaints; they cannot be proximately caused by the accident. We first note that we have no way to review the arguments actually made. Therefore, we confine ourselves to the narrow question of whether the trial court erred in ruling that American Family's closing arguments would be limited to the scope of the question presented to the jury.

The scope of closing arguments rests largely with the sound discretion of the trial court. *Lane v. Coe College*, 581 N.W.2d 214, 218 (Iowa Ct. App. 1998). We find the trial court did not abuse its discretion by determining American Family's closing argument should address whether or not the surgery was proximately caused by the accident.

**IV. Jury Instruction.** American Family complains that the district court improperly instructed the jury. Specifically, it contends Instruction No. 7 should not have been given. The instruction reads:

If Shirley Richardson had a pre-existing spinal condition making her more susceptible to injury than a person of normal health, then the defendant is responsible for all injuries and damages which are experienced by Shirley Richardson proximately caused by the motor vehicle collision, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

American Family argues that the instruction is not proper where, as here, the sole question to the jury was one of proximate cause.

The supreme court rejected this argument in *Benn v. Thomas, K-G, Ltd.*, 512 N.W.2d 537, 539 (Iowa 1994).

Defendant contends that plaintiff's proposed instruction was inappropriate because it concerned damages, not proximate cause. Although the eggshell plaintiff rule has been incorporated into the Damages section of the Iowa Uniform Jury Instructions, we believe it is equally a rule of proximate cause.

The district court did not err in submitting the eggshell plaintiff instruction to the jury.

**V. Cumulative Error.** We have reviewed the remainder of American Family's claims of error and, whether specifically addressed or not, find them to be without merit. The district court has the duty and the responsibility to exercise reasonable control over the mode and order of a trial. See Iowa R. Evid. 5.611. The district court acted within its discretion in requiring defendant to question the plaintiff about the contents of the affidavit and deposition, rather than allowing defendant to simply read them into the record.

**Summary.** The district court did not err in excluding evidence of Richardson's prior claims for benefits. The court did not unduly restrict defendant's closing arguments. The court properly submitted an eggshell plaintiff jury instruction on the matter of proximate causation. American Family was not denied a fair trial. We affirm.

**AFFIRMED.**