

IN THE COURT OF APPEALS OF IOWA

No. 8-774 / 08-0023
Filed October 15, 2008

DENNIS W. GRAY,
Plaintiff-Appellant,

vs.

KYRA SEE,
Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Nancy Tabor, Judge.

Plaintiff appeals following a trial in which the jury found the automobile accident between plaintiff and defendant was not a proximate cause of any damage to the plaintiff. **AFFIRMED.**

William J. Bribiesco of William J. Bribiesco and Associates, Bettendorf, for appellant.

Patrick L. Woodward and Heather L. Carlson of McDonald, Woodward & Ivers, P.C., Davenport, for appellee.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

MAHAN, P.J.

Dennis Gray appeals following a trial in which the jury found his automobile accident with Kyra See, which occurred on August 10, 2005, was not a proximate cause of any damage he alleged. Gray claimed a vehicle driven by See ran a red light and struck his vehicle at an intersection in Davenport, Iowa. Gray filed a lawsuit against See for alleged injuries arising out of the accident. Prior to trial, See filed written objections and three motions in limine requesting that Gray, his attorneys, and his witnesses be prohibited from referring to whether Gray was telling the truth about his injuries, whether he sincerely believed he was injured, and whether his pain was real. Specifically, See moved to exclude testimony of Gray's treating orthopedic physician, Dr. Congdon, as to his opinion of whether Gray exaggerated or magnified his symptoms with regard to the injuries Gray alleged to have sustained in the accident. The court granted See's objections and excluded that portion of Dr. Congdon's deposition.

After the close of See's case, Gray moved for a directed verdict on the issue of fault. The court granted the motion, but the jury found the car accident was not a proximate cause of any damage to Gray. Gray filed a motion for a new trial, which the district court denied. Gray now appeals, arguing the district court abused its discretion when it excluded portions of Dr. Congdon's testimony.

We review claims of error in the exclusion of evidence for abuse of discretion. *State v. Boggs*, 741 N.W.2d 492, 499 (Iowa 2007); *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 160 (Iowa 2004). An abuse of discretion occurs when the trial court exercises its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Parker*, 747

N.W.2d 196, 203 (Iowa 2008). A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law. *Id.* Even if an abuse of discretion is found, reversal is not required unless prejudice is shown. *State v. Buenaventura*, 660 N.W.2d 38, 50 (Iowa 2003).

Under Iowa law, expert testimony expressing an opinion on the credibility or truthfulness of a witness is not admissible. *State v. Allen*, 565 N.W.2d 333, 338 (Iowa 1997); *State v. Myers*, 382 N.W.2d 91, 97 (1986). Because the ultimate determination of the credibility or truthfulness of a witness is not a fact in issue, but a matter to be generally determined solely by the jury, expert opinions as to the truthfulness of a witness are not admissible pursuant to Iowa Rule of Evidence 5.702. *Myers*, 382 N.W.2d at 97.

Upon our review of the record, we cannot say the district court abused its discretion in excluding the challenged testimony of Dr. Congdon. Dr. Congdon's testimony is inadmissible under Iowa law. Even assuming any possibility of abuse of discretion, the exclusion of this testimony would be harmless error. We therefore affirm.

AFFIRMED.