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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0233**

Martha Marisol Castaneda,
Appellant,

vs.

Gregory Luverne Hall,
Respondent.

**Filed October 9, 2017
Affirmed
Ross, Judge**

Waseca County District Court
File No. 81-CV-15-741

Martha Marisol Castaneda, Waseca, Minnesota (pro se appellant)

Beth K. Bussian, Regional Legal Staff Counsel, Eden Prairie, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Kalitowski, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

Gregory Hall negligently drove into an intersection and collided with a car occupied by Martha Castaneda. After a jury awarded Castaneda about \$8,500 in compensatory

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

damages, including damages for her past injuries and medical costs, the district court answered post-trial motions by reducing the award to nothing. Castaneda appeals from the district court's denial of her motion for a new trial, arguing that the verdict was inconsistent with the trial evidence presented, that the verdict reflected bias against her, and that she received ineffective assistance of counsel. We affirm.

FACTS

Gregory Hall drove into an intersection on a snowy afternoon in December 2012, colliding with a car that Martha Castaneda occupied as a passenger. Ambulance records show that, although Castaneda said that she suffered pain in her chest from her seatbelt, she reported no neck or back pain. Emergency room records similarly indicate that Castaneda mentioned feeling chest and abdominal pain but did not mention any neck, back, or shoulder pain. Castaneda was discharged from the hospital the same day.

Castaneda sued Hall for negligence in September 2015. Hall admitted fault, and the case proceeded to trial only to decide damages. The jury found that Castaneda suffered no permanent injury. It calculated her damages to be \$500 for past pain, disability, and emotional distress, and \$7,965.58 for past medical expenses. The district court entered judgment in Castaneda's favor for \$8,465.58.

After trial, Hall filed a motion for a collateral-source offset under Minnesota Statutes section 548.251, subdivision 2 (2016), because Castaneda's insurer paid her nearly \$20,000 in no-fault benefits. Hall also filed a notice and application for taxation of costs and disbursements, contending that he was entitled to recover those under Minnesota Rule of Civil Procedure 68.03(b) because the jury's award was less than the amount he had

offered Castaneda to settle the case before trial. Castaneda moved for a new trial, alleging jury misconduct on the theory that the jury's verdict was contrary to the evidence.

The district court found that Castaneda failed to show that the jury improperly considered the evidence and denied her motion for a new trial. It granted Hall's motion for collateral-source offset and reduced Castaneda's award to \$500. The court also recognized that the jury's damages amount was less than Hall's settlement offer, and it therefore applied rule 68.03(b) and taxed Castaneda for \$500 in costs and disbursements. After these calculations, Castaneda's adjusted net award was \$0.

Castaneda appeals.

D E C I S I O N

Castaneda offers three theories in maintaining that the district court erroneously denied her motion for a new trial. She contends first that the jury relied on inaccurate medical records, making the verdict contrary to the evidence. She argues next that Hall's questioning about her and her husband's immigration status improperly influenced the jury. And she contends last that her trial attorneys provided ineffective assistance. None of these arguments leads us to reverse.

I

Castaneda maintains that she is entitled to a new trial under rule 59.01(g) because the evidence does not justify the jury's verdict. We will not reverse the district court's denial of a motion for a new trial unless the jury verdict "is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict."

Raze v. Mueller, 587 N.W.2d 645, 648 (Minn. 1999) (quotation omitted). The record informs us that the evidence supports the verdict.

The hospital records support the jury's decision that Castaneda suffered no serious ongoing injury. Castaneda unconvincingly asserts that the hospital records are inaccurate. One problem with her argument is factual: the hospital records corroborate the ambulance records. But the argument dies before we consider its merit. Failing to object to evidence at trial typically waives the issue on appeal. *Town of Forest Lake v. Minn. Mun. Bd.*, 497 N.W.2d 289, 290 (Minn. App. 1993), *review denied* (Minn. Apr. 29, 1993). Castaneda did not object to the hospital records being admitted into evidence. In fact, she affirmatively agreed to their admission. She has waived the issue.

Expert testimony also supports the verdict. The parties based their positions at trial primarily on expert witnesses, who offered conflicting testimony about whether Castaneda suffered a compression fracture from the accident. We give the jury's verdict substantial deference when medical experts offer conflicting testimony about the nature and extent of a person's injuries. *Id.* We therefore will not reweigh the jury's acceptance of Hall's expert's opinion and the rejection of Castaneda's. Castaneda gives us no ground to reject the jury's verdict.

II

Castaneda alleges jury misconduct. The district court may in its discretion grant a new trial based on juror misconduct. *Pajunen v. Monson Trucking, Inc.*, 612 N.W.2d 173, 176 (Minn. App. 2000). A party moving for a new trial based on jury misconduct must show both misconduct and resulting prejudice. *State v. Kelley*, 517 N.W.2d 905, 910

(Minn. 1994). Castaneda argues that Hall’s questioning of prospective jurors about her immigration status may have affected the verdict. The argument fails for two reasons.

First, Castaneda is mistaken in her assertion that Hall’s attorney raised questions about her immigration status during jury selection; Hall’s attorney never asked the jurors any questions about her legal status in the country. It was Castaneda’s own attorney who explained her background, which prompted questions from a prospective juror about her immigration status. That prospective juror was not impaneled. Second, Castaneda does not establish any prejudice. She offers no evidence or explanation that suggests the jurors based their special-verdict answers on her immigration status. We reject Castaneda’s jury-misconduct argument for lack of substance.

III

Castaneda also contends that she received inadequate legal representation, which resulted in the unfavorable verdict. The constitutional right to legal representation applies only in criminal proceedings. *United States v. Gouveia*, 467 U.S. 180, 187–89, 104 S. Ct. 2292, 2297–98 (1984); *see also McDonnell v. Comm’r of Pub. Safety*, 473 N.W.2d 848, 853 (Minn. 1991) (“Without question, the right to counsel guaranteed by the [S]ixth [A]mendment . . . does not attach until formal charges are initiated.”). The argument for reversal of the civil judgment based on ineffective assistance of counsel has no legal support.

Affirmed.

A handwritten signature in blue ink that reads "Kevin G. Rose". The signature is written in a cursive style with a large initial 'K' and 'R'.