IN THE UTAH COURT OF APPEALS

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Sergio Pruneda and Iris Pruneda, as parents and guardians of A.G., D.G., S.P., C.P., M.P., and Z.P., minor children, Plaintiffs and Appellants, v. Columbia Steel Casting Co., Inc., an Oregon corporation; and Richard D. Gray, Defendants and Appellees.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060598-CA F I L E D (November 16, 2007) 2007 UT App 371

Fourth District, Provo Department, 030402552
The Honorable Fred D. Howard

Attorneys: Edward T. Wells and Mel S. Martin, Murray, for Appellants
Robert L. Janicki, Peter H. Christensen, and Heather Waite-Grover, Salt Lake City, for Appellees

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Before Judges Greenwood, Billings, and Thorne.

THORNE, Judge

Plaintiffs Sergio and Iris Pruneda appeal from a jury verdict, arguing that the jury's award to Sergio Pruneda was insufficient because it did not include general damages. The Prunedas also challenge various evidentiary rulings pertaining to expert witnesses. We affirm.

The Prunedas' challenge to the jury's damages award[1] relies on the general rule that "it is improper for a jury to award special damages without awarding any general damages." Balderas

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1. Sergio Pruneda was awarded special damages in the amount of $4763. Each of the Prunedas' six children was awarded special damages in the amount of $220 for their visits to a medical clinic the day after the accident. The jury awarded no general damages.

v. Starks, 2006 UT App 218, ¶ 16, 138 P.3d 75; see also Langton v. International Transp., Inc., 26 Utah 2d 452, 491 P.2d 1211, 1214 (1971) ("[I]t must be conceded that if plaintiff were entitled to an award of special damages, he was entitled to be compensated . . . for pain and suffering."). While we recognize the continuing validity of the general rule, we also agree with the trial court that the Prunedas waived any entitlement to general damages when they stipulated to the jury instructions and verdict form used below.

The jury instructions stated that if the jury was to find in the Prunedas' favor, it was obligated to award "such damages, if any, that . . . will fairly and adequately compensate the [Prunedas] for the injury and damage sustained." (Emphasis added.) The instructions also properly instructed the jury that it could not award any general damages "unless there is an award of medical expenses exceeding $3000 and/or a finding of permanent disability or permanent impairment." See Utah Code Ann. § 31A-22-309 (2005). The special verdict form more specifically combined these two concepts, stating as regards each of the plaintiffs that "[i]f, and only if, the amount of special damages is $3,000 or more, then state the amount of general damages, if any, you award." (Emphasis added.)

In Balderas v. Starks, 2006 UT App 218, 138 P.3d 75, this court found waiver where the plaintiff did not object "when the court instructed the jury that it could award '[a]ny amount' of general damages to make the verdict consistent." Id. ¶ 19. We stated that, "[u]nderstandably, the jury likely believed that it was acting consistently with the instruction when it awarded a nominal sum." Id. (citing Wright v. Jackson, 329 S.W.2d 560, 561-62 (Ky. 1959)). Although the jury in this case awarded no general damages at all, the jury's award was nevertheless consistent with the "if any" language in the instruction and verdict form approved by the Prunedas' counsel. See Wright, 329 S.W.2d at 561-62 (stating that counsel should have objected to instruction containing the phrase "if any" after each category of damages, because the instruction led the jury to believe it had "the right to grant or deny" both general and special damages (emphasis omitted)). Accordingly, we deem any objection to the jury's failure to award general damages to have been waived. See Balderas, 2006 UT App 218, ¶ 19.[2]

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2. We also note the existence of an exception to the rule that general damages must accompany special damages in situations where "the issue of general damages is contested . . . [and] the plaintiff's complaints are subjective and his or her credibility is questioned." 22 Am. Jur. 2d Damages § 43 (1988). At least one court has applied this exception in a case similar to the

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The Prunedas next challenge the testimony of two of Defendants' expert witnesses, accident reconstructionist Dr. Paul France and medical expert Dr. Jayne Clark. "'The trial court has wide discretion in determining the admissibility of expert testimony,' and 'we will not reverse unless the decision exceeds the limits of reasonability.'" Id. ¶ 27 (quoting State v. Larsen, 865 P.2d 1355, 1361 (Utah 1993)).

The Prunedas contend that France's testimony should have been excluded because of a lack of proper foundation, claiming that the methodology France used to determine impact speed was unreliable and had never been subjected to scientific testing. See Utah R. Evid. 702. Where an expert's methods are not novel or unusual, admissibility is governed by State v. Clayton, 646 P.2d 723 (Utah 1982):

> [O]nce the expert is qualified by the court, the witness may base his opinion on reports, writings[,] or observations not in evidence which were made or compiled by others, so long as they are of a type reasonably relied upon by experts in that particular field. The opposing party may challenge the suitability or reliability of such materials on cross-examination, but such challenge goes to the weight to be given the testimony, not to its admissibility.

Id. at 726. France's testimony was based on his application of long-established principles of physics to photographs of the Prunedas' vehicle and other information reasonably relied on by others in his field. Therefore, the trial court did not exceed the bounds of its discretion in admitting France's testimony. See also Balderas, 2006 UT App 218, ¶¶ 26-31 (addressing the same witness's methodologies and allowing his testimony as an expert accident reconstructionist).

Similarly, the Prunedas challenge Clark's testimony regarding the treatment provided by chiropractor Dr. Gordon McClean on the grounds that, ordinarily, a practitioner of one school of medicine is not competent to testify as an expert against a practitioner of another school. See Dikeou v. Osborn,

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2. (...continued)
Prunedas'. See Eisele v. Rood, 551 P.2d 441, 443 (Or. 1976) (holding, in rear-end collision case with conflict of opinions between plaintiff's chiropractor and defendant's medical expert, that "the jury could consistently find that the plaintiff suffered special damages but no general damages [and that] a verdict for special damages alone was proper").

881 P.2d 943, 947 (Utah Ct. App. 1994). However, "'[a]n exception is made when a witness is knowledgeable about the standard of care of another specialty or when the standards of different specialties on the issue in a particular case are the same.'" Id. (quoting Arnold v. Curtis, 846 P.2d 1307, 1310 (Utah 1993)).

Both grounds for the exception apply here. Clark, a medical doctor, stated in deposition testimony that she "practices all kinds of spinal medicine and rehabilitation therapies" and "felt confident to testify as to the standard of care for spine care problems, whether they're chiropractic or physical therapy, orthopedic or rehabilitative medicine." Further, the issue in this particular case was not chiropractic malpractice, but rather the extent, propriety, and necessity of care that McClean provided to the Prunedas. We cannot say that the trial court's acceptance of Clark as an expert in these circumstances was unreasonable or exceeded its permitted discretion.

Finally, the Prunedas challenge the trial court's limitation of McClean's expert testimony as the Prunedas' treating physician. The trial court, relying on rule 26(a)(3) of the Utah Rules of Civil Procedure, granted Defendants' motion to prevent McClean from testifying as to causation of the Prunedas' injuries because the Prunedas' expert report identified McClean as an expert only as to "treatment and care." While the Prunedas argue on appeal that rule 26(a)(3) does not apply to McClean because he is a treating physician rather than a retained expert, this interpretation of the rule has been rejected. See Pete v. Youngblood, 2006 UT App 303, ¶¶ 11-15, 141 P.3d 629. Accordingly, we see no error in the decision of the trial court.

For these reasons, we affirm the judgment of the trial court.

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William A. Thorne Jr., Judge

WE CONCUR:

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Pamela T. Greenwood,
Associate Presiding Judge

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Judith M. Billings, Judge