IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

ADANELLY AGUILAR GARCIA,

Plaintiff-Appellee,

v. **No. A-1-CA-41324**

ADRIAN DELEON and LOYA INSURANCE COMPANY,

Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Lisa Chavez Ortega, District Court Judge

Ferrance Law, P.C.
David A. Ferrance
Albuquerque, NM

for Appellee

Jennings Haug Keleher McLeod
Waterfall LLP
Joseph A. Brophy
Phoenix, AZ

for Appellants

MEMORANDUM OPINION

BACA, Judge.

{1} Defendants Adrian DeLeon and Loya Insurance Company appeal three orders from the district court, which granted Plaintiff Adenelly Aguilar Garcia's motions for summary judgment regarding medical expenses she incurred after an automobile

collision. The sole issue on appeal is whether the district court erred in granting the motions for summary judgment. For the following reasons, we affirm.

BACKGROUND

{2} In December 2020, Plaintiff and Defendant DeLeon were involved in a rear-end automobile collision in which DeLeon struck Plaintiff's vehicle. Following the collision, Plaintiff sought treatment at an urgent care facility, chiropractic care, and physical therapy. Plaintiff moved for summary judgment on the issue of whether the medical expenses she incurred from this treatment were reasonable, necessary, and causally related to the accident. In support of her motions, Plaintiff attached copies of her medical bills.

{3} After a hearing on the motions, the district court granted Plaintiff's motions, finding that Plaintiff had established a prima facie case for summary judgment, and that Defendants did not submit evidence to support their counterarguments.

{4} The case was then tried before a jury. Defendant DeLeon stipulated that he was negligent with regard to the collision. Thus, the only issues at trial were those of comparative fault and the total amount of damages. The jury returned a verdict in favor of Plaintiff, finding Defendant DeLeon fully responsible for compensatory damages in the amount of $70,783.62. This appeal followed.

DISCUSSION

{5} In this appeal, Defendants contend that the district court erred by granting summary judgment in favor of Plaintiff related to her medical costs for postaccident care Plaintiff received from three treatment providers. We are not persuaded and explain.

I. The District Court Did Not Err in Granting Summary Judgment

A. Standard of Review

{6} "Summary judgment is reviewed on appeal de novo." *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280 (internal quotation marks and citation omitted). "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Id.* (internal quotation marks and citation omitted); *see* Rule 1-056(C) NMRA (same). "In New Mexico, summary judgment may be proper when the moving party has met its initial burden of establishing a prima facie case for summary judgment." *Romero*, 2010-NMSC-035, ¶ 10. "By a prima facie showing is meant such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted." *Id.* (internal quotation marks and citation omitted). "Once this prima facie showing has been made, the burden shifts to the non[]movant to demonstrate the existence of specific evidentiary facts which would require trial on the merits." *Id.* (internal quotation marks and citation omitted). The nonmovant "may not simply

argue that such evidentiary facts might exist, nor may it rest upon the allegations of the complaint." *Id.* (alteration, internal quotation marks, and citation omitted). "Rather, the [nonmovant] . . . must adduce evidence to justify a trial." *Id.* (alteration, internal quotation marks, and citation omitted). "At the same time, we reiterate that it is the appellant's burden to demonstrate, by providing well-supported and clear arguments, that the district court has erred." *Premier Tr. of Nevada, Inc. v. City of Albuquerque*, 2021-NMCA-004, ¶ 10, 482 P.3d 1261.

B. Plaintiff Established a Prima Facie Case for Summary Judgment

{7} Defendants argue that Plaintiff failed to establish a prima facie case as to her medical expenses because all three of the experts' affidavits were conclusory and failed to adequately explain how each provider arrived at their opinion that Plaintiff's medical treatment was reasonable, necessary, and causally related to the accident.[1] In support of this argument, Defendants correctly assert that an expert's purely conclusionary affidavit is not evidence upon which a party can rely in meeting

[1]Defendants challenge the jury instruction for damages for the first time in their reply brief, arguing that the instruction was unsupported by evidence and did not accurately state the law. Defendants further contend that the verdict must be vacated because the allegedly erroneous instruction deprived the jury of the opportunity to decide the issues of causation and damages. Because this argument was raised for the first time in Defendants' reply brief, we decline to address it. *See* Rule 12-318(C) NMRA ("A reply brief shall . . . reply only to arguments or authorities presented in the answer brief."); *Valerio v. San Mateo Enters., Inc.*, 2017-NMCA-059, ¶ 27, 400 P.3d 275 (declining to address an argument raised for the first time in a reply brief).

their prima facie burden—in a summary judgment proceeding, an expert's affidavit "must explain how [they] arrived at [their] opinion, setting forth such supportive facts as would be properly admissible in evidence." *Trujillo v. Treat*, 1988-NMCA-017, ¶ 10, 107 N.M. 58, 752 P.2d 250. After reviewing the affidavits from each provider, we conclude that each affidavit adequately set forth the factual basis for their opinions, and thus were competent evidence upon which Plaintiff could rely in meeting her prima facie burden. We explain.

{8} Our uniform jury instructions allow damage awards for "the reasonable expense of necessary medical care, treatment, and services received." UJI 13-1804 NMRA. A plaintiff seeking admission of medical bills to prove damages "must . . . establish through expert testimony that [the] medical bills are reasonable and related to the claimed injuries." *Segura v. K-Mart Corp.*, 2003-NMCA-013, ¶ 26, 133 N.M. 192, 62 P.3d 283. Thus, Plaintiff had the burden of demonstrating, through expert testimony, that her medical expenses were reasonable, necessary, and causally related to the accident.

{9} Here, each affidavit details the providers' credentials, their experience, and their area of practice. In each affidavit, the providers declared that they reviewed Plaintiff's medical records and bills, and conclude that, based upon their knowledge, education, training, and experience, "the treatment and billing . . . are reasonable and necessary medical care received by Plaintiff . . . as a direct result of the automobile

collision on December 16, 2020." Two of the experts were Plaintiff's treating providers, and further based their conclusions upon personal observation of Plaintiff. **{10}** Defendants maintain that the providers needed to present a more detailed explanation of how they arrived at their conclusions, and fault the doctors for failing to discuss specific treatment or medical conditions in their affidavits. But, Plaintiff's medical diagnoses, conditions, and treatment history were presumably part of the medical records, which the doctors reviewed when reaching their conclusions. Moreover, the doctors did not necessarily have to discuss any specific treatment or medical conditions in their affidavits; rather, they only needed enough factual support to support their conclusions. *See Gonzales v. Sansoy*, 1984-NMSC-098, ¶ 10, 102 N.M. 136, 692 P.2d 522 ("An expert's opinion will not be considered incompetent or lacking in factual basis if he gives an explanation as to how he arrived at it.").

{11} Each doctor set forth an explanation as to how they arrived at the conclusion that Plaintiff's expenses were reasonable, necessary, and causally related to the accident—the doctors' conclusions were based upon their knowledge, education, training, experience, and their respective review of Plaintiff's medical and billing records.[2] Because each doctor set forth an explanation as to how they arrived at their

[2]Defendants make a specific challenge to the urgent care affidavit, arguing that the doctor opining on Plaintiff's urgent care expenses made a conclusory determination about causation because the urgent care medical records do not

conclusion, their opinions were not incompetent, and as a result, Plaintiff successfully established a prima facie case for summary judgment.

C. No Issue of Material Fact Remained That Precluded Entry of Summary Judgment

{12} Defendants further argue that even if Plaintiff met her prima facie burden, summary judgment was not appropriate because (1) there remained unresolved issues of fact; and (2) summary judgment based on uncontradicted expert testimony is improper because it deprives the jury of the opportunity to reject the expert's testimony. We address each argument in turn.

{13} Defendants first assert that Plaintiff's medical records contained various alleged discrepancies, which the experts did not address, and thus there were several equally logical inferences that could have been drawn from the medical records. But a movant for summary judgment "need not demonstrate beyond all possibility that no genuine factual issue exists." *Parker v. E.I. DuPont de Nemours & Co.*, 1995-NMCA-086, ¶ 10, 121 N.M. 120, 909 P.2d 1. Rather, to meet her prima facie burden, Plaintiff only needed to present "such evidence as is sufficient in law to raise a

---

attribute any of the diagnostic codes to the collision. In other words, Defendants maintain that there was no explanation for how the doctor attributed a nonspecific diagnosis to a specific event. But, the urgent care records clearly indicate that Plaintiff presented at the facility "for evaluation of back and neck [one] day post [motor vehicle accident]." Thus, even though the diagnostic codes do not attribute Plaintiff's injuries to any specific event, the records clearly establish a presumption that the treatment Plaintiff received at urgent care was causally related to the accident.

presumption of fact or establish the fact in question unless rebutted." *See Romero*, 2010-NMSC-035, ¶ 10 (internal quotation marks and citation omitted). Once Plaintiff made her prima facie showing, the burden shifted to Defendants "to prove the existence of one or more genuine factual issues." *See Parker*, 1995-NMCA-086, ¶ 10. *See generally Romero*, 2010-NMSC-035, ¶ 10 (observing that once a prima facie showing is made, the burden shifts to the party opposing the motion to demonstrate the existence of specific evidentiary facts, which would require trial on the merits). Defendants, however, failed to do so, instead relying on what they perceive to be discrepancies within Plaintiff's medical records.

{14} While it is true that the nonmoving party for summary judgment is entitled to resolution of all inferences in their favor, "such inferences must be reasonably based on facts established by the evidence, not upon conjecture." *Hisey v. Cashway Supermarkets, Inc.*, 1967-NMSC-081, ¶ 7, 77 N.M. 638, 426 P.2d 784. It is only when facts are presented, which "specifically controvert" the proponent's prima facie case that an opponent of summary judgment is entitled to all reasonable inferences from those facts. *Tapia v. McKenzie*, 1971-NMCA-128, ¶ 27, 83 N.M. 116, 489 P.2d 181 (Sutin, J., specially concurring) (referring to "the facts and the inferences to be drawn therefrom"). If there are no facts, there can be no inferences

from those facts, only unsupported speculation.[3] *See id.* (affirming the district court's directed verdict because no reasonable inference could be drawn on an issue of liability when there was no evidence to support the alleged reasonable inferences).

{15} Defendants' next argument rests upon the suggestion that a jury must hear all expert testimony, even when there is no issue of material fact for a jury to resolve. The authorities that Defendants cite do not stand for that specific proposition, and we decline to issue such a holding. A rule requiring that the jury receive an opportunity to reject an expert's testimony at trial, regardless of the existence of a genuine issue of fact, would undermine an important purpose of Rule 1-056(C)—"disposing of groundless claims, or claims which cannot be proved, without putting the parties and the courts through the trouble and expense of full blown trials on these claims." *Kreutzer v. Aldo Leopold High Sch.*, 2018-NMCA-005, ¶ 30, 409 P.3d 930 (internal quotation marks and citation omitted); *see Schmidt v. St. Joseph's Hosp.*, 1987-NMCA-046, ¶ 4, 105 N.M. 681, 736 P.2d 135 (recognizing that Rule 1-056 "expedite[s] litigation" by providing a procedure to "determin[e] whether a party has competent evidence to support [their] pleadings"). Where, as here, no

[3]Even if we were to accept the alleged discrepancies as true, Defendants do not explain how those discrepancies create an issue of material fact. For example, Defendants state that each doctor failed to acknowledge that Plaintiff did not begin chiropractic treatment until three weeks after the accident, and that three sets of X-rays showed no evidence of injury. But even accepting these facts as true, it is unclear how those facts rebut the presumption that Plaintiff's expenses were reasonable, necessary, or causally related to the accident.

admissible evidence is presented to refute the facts brought forward, a court is required to grant summary judgment. *See* Rule 1-056(E).

{16} For these reasons, we conclude that no genuine issue of material fact existed as to the narrow issue of Plaintiff's medical expenses, and therefore the district court properly granted Plaintiff's motions for summary judgment.

D. Defendants' Remaining Argument Was Not Preserved

{17} Defendants also argue that, by entering summary judgment that Plaintiff's medical treatment was "reasonably priced, medically necessary, and causally related to the automobile collision," the district court implicitly decided, as a matter of law, that (1) Plaintiff was injured in the automobile collision; (2) Plaintiff's injuries—and the pain resulting from those injuries—lasted for a certain minimum amount of time; (3) the automobile collision was the specific cause of Plaintiff's injuries; (4) Plaintiff's neck and back were injured; and (5) Plaintiff sustained at least $10,983.82 in damages as a result of the automobile collision. Defendants further contend that the district court infringed upon the jury's function as the fact-finder by implicitly resolving these factual issues as a matter of law in its summary judgment orders.

{18} Plaintiff asserts that this argument is not preserved because Defendants did not raise this argument in their responses to the summary judgment motions. Defendants maintain that the argument was preserved because their responses to the summary judgment motions argued, in part, that the motions should be denied

because "Plaintiff has actively chosen to rely solely upon the only testimony and evidence offered in a trial which the jury is specifically instructed they may completely disregard if they so choose." Defendants also note that the conclusions in the summary judgment order were ultimately included in the jury instructions at trial, and that Defendants objected to the jury instruction. We agree with Plaintiff that this argument was not preserved for our review.

{19} "To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked" on the same grounds argued in the appellate court. Rule 12-321(A) NMRA. In order to preserve an issue for review, a party "must have made a timely and specific objection that apprised the district court of the nature of the claimed error and that allows the district court to make an intelligent ruling thereon." *Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-NMCA-095, ¶ 56, 146 N.M. 853, 215 P.3d 791; *see* Rule 12-321(A) ("To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked."). "The primary purposes for the preservation rule are: (1) to specifically alert the district court to a claim of error so that any mistake can be corrected at that time, (2) to allow the opposing party a fair opportunity to respond to the claim of error and to show why the court should rule against that claim, and (3) to create a record sufficient to allow this Court to make an informed decision regarding the contested issue." *Sandoval*, 2009-NMCA-095, ¶ 56.

{20} During the hearing on the motions, Defendants argued that summary judgment was improper because (1) they intended to call an expert at trial who would rebut the testimony of Plaintiff's expert witnesses, and that the jury should have the opportunity to weigh the experts' competing opinions; and (2) none of Plaintiff's experts ruled out a psychogenic basis as the cause of Plaintiff's pain in their affidavits. Neither the written responses to the motions nor the oral arguments at the hearing on the motions alerted the district court to this specific claim of error—that by entering summary judgment on the issue of Plaintiff's damages, the court would be usurping the jury's role as fact-finder. As a result, Plaintiff did not have the opportunity to respond to this alleged error, and the district court did not have an opportunity to make an intelligent ruling on the alleged error. We therefore conclude that Defendants did not preserve this argument and do not address it further. *See Vill. of Angel Fire v. Bd. of Cnty. Comm'rs*, 2010-NMCA-038, ¶ 15, 148 N.M. 804, 242 P.3d 371 ("We will not review arguments that were not preserved in the district court."); *see also Cubra v. State ex rel. Child., Youth & Fams. Dep't* , 1996-NMCA-035, ¶ 13, 121 N.M. 465, 913 P.2d 272 (explaining that "we review the case litigated below, not the case that is fleshed out for the first time on appeal").

CONCLUSION

{21} For the foregoing reasons, we affirm the district court's grant of summary judgment.

{22} **IT IS SO ORDERED.**

GERALD E. BACA, Judge

WE CONCUR:

J. MILES HANISEE, Judge

JANE B. YOHALEM, Judge