

IN THE COURT OF APPEALS OF IOWA

No. 6-327 / 05-1595

Filed May 10, 2006

**SHAD BALTIMORE and ONE SOURCE
HEATING AND COOLING,**
Plaintiffs-Appellants,

vs.

JACKSON DROST and THOMAS DROST,
Defendants-Appellees.

Appeal from the Iowa District Court for Mahaska County, Annette J.
Scieszinski, Judge.

Plaintiff appeals a district court ruling excluding medical testimony in a
personal injury action. **AFFIRMED.**

Marc S. Harding of Harding Law Office, Des Moines, for appellant.

Rene Lapierre of Klass Law Firm, L.L.P., Sioux City, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

HUITINK, J.

Shad Baltimore appeals a district court ruling excluding medical testimony in the jury trial of his personal injury action against the defendants, Jackson and Thomas Drost. We affirm.

I. Background Facts and Proceedings

Baltimore filed this personal injury action, arising from an automobile accident, on January 16, 2004. A scheduling order was filed June 21, 2004. The order required disclosure of plaintiff's expert witnesses by January 31, 2005, and defendant's expert witnesses by April 1, 2005. Trial was set for August 29, 2005.

On April 21, 2005, approximately three months after the deadline set in the scheduling order, Baltimore served an expert witness designation listing Dr. Kurt Smith and Kent Jayne as experts. On May 5, 2005, he served an amendment to the designation, listing the following additional potential expert witnesses: Dr. Douglas Brenton, Dr. Q. Stokes Dickins, and Dr. Matthew Horvath.¹

The Drostes filed a motion to strike Baltimore's experts, noting that Baltimore had not produced any report or opinion, and arguing that the untimely designation together with the failure to provide opinions prejudiced their ability to prepare for trial and created unfair surprise. In his response to the motion, Baltimore argued Dr. Kurt Smith was a treating physician and did not need to be disclosed as an expert. Baltimore further stated his condition had worsened, which required designation of an additional expert.

¹ Dr. Horvath is a psychiatrist who began treating Baltimore for depression in August 2004.

Following a hearing, which was unreported, the district court entered a written ruling, which struck Baltimore's designation of expert witnesses. The court noted the designation "did not include the required reports pursuant to the statute." The court concluded, "to allow the late designation would be prejudicial to defendant, especially since no reports were filed at the time of the designation, and there is no indication as to when any report will be filed." The court's order did permit Dr. Kurt Smith to testify as a treating physician.

Prior to trial, Baltimore filed a witness list which include Dr. Horvath. The Drost's filed an objection to the witness list, objecting to testimony from Dr. Horvath based on the court's previous order. In addition, the Drost's filed a motion in limine, seeking to exclude testimony from experts, particularly Dr. Horvath, pursuant to the court's prior order. Baltimore resisted the motion, arguing Dr. Horvath's deposition testimony should be admitted as that of a treating physician. The district court, relying on the previous order, granted the motion in limine. The court, however, permitted Baltimore to introduce into evidence Dr. Horvath's records and bills, and permitted Baltimore to testify about the mental health issues Dr. Horvath was treating.

The jury returned a verdict of \$23,834 in favor of Baltimore. Baltimore appeals, arguing the district court erred in excluding Dr. Horvath's testimony.

II. Standard of Review

Our review is for correction of errors at law. Iowa R. App. P. 6.4. The trial court has broad discretion in ruling on the admissibility of evidence. *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 149 (Iowa 2002). Reversal of an

evidentiary ruling is warranted where the court clearly abused its discretion to the complaining party's prejudice. *Id.*

An abuse of discretion occurs "when the court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000) (citations omitted). 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.*

III. Discussion

Baltimore argues the district court erred by excluding the testimony of Dr. Horvath. He contends that because Dr. Horvath was his treating physician, the holdings in *Day by Ostby v. McIlrath*, 469 N.W.2d 676, 677 (Iowa 1991) (holding that disclosure pursuant to Iowa Rule of Civil Procedure 1.508 was not required with regard to treating physician), *Carson v. Webb*, 486 N.W.2d 278, 280-81 (Iowa 1992) (concluding plaintiff's failure to disclose treating physician's opinions in expert witness interrogatories did not require exclusion of those opinions), and *Morris-Rosdail v. Schechinger*, 576 N.W.2d 609, 612 (Iowa Ct. App. 1998) (holding exclusion of testimony of treating physicians was an abuse of discretion), apply, and therefore Dr. Horvath's testimony should have been admitted.

We find it unnecessary to characterize Dr. Horvath as an expert witness or a treating physician. Regardless of the label, the district court did not abuse its considerable discretion in excluding his deposition testimony. Although Baltimore saw Dr. Horvath for the first time in August 2004, he was not identified as a witness until May 2005. Baltimore did not supplement discovery to provide

defendants with information relevant to Dr. Horvath and his treatment of Baltimore until July 6, 2005, just a few weeks prior to trial. Defendants did not have an opportunity to question Dr. Horvath until August 23, 2005, less than one week before trial. Baltimore's delay in disclosing the evidence related to his mental health claim prejudiced defendants by introducing a new issue on the eve of trial. We conclude the district court did not err in excluding the deposition testimony of Dr. Horvath at trial.²

AFFIRMED.

² We note that even if the district court erred in excluding Dr. Horvath's deposition testimony, such error would be harmless because the district court admitted Dr. Horvath's records and bills, and permitted Baltimore to testify as to his mental health at trial. Dr. Horvath's records attributed Baltimore's depression to certain "life stresses," including continuing neck and back pain resulting from the automobile accident which gave rise to this lawsuit.