

IN THE SUPREME COURT OF THE STATE OF NEVADA

AVA LANDERS-DAVIS,
Appellant,
vs.
FRANK SILVER, M.D.,
Respondent.

No. 40331

FILED

APR 06 2004

ORDER OF AFFIRMANCE

JANETTE H. ELCOCK
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This appeal is taken from a final judgment in a medical malpractice action. In that action, Ava Landers-Davis alleged that Frank Silver, M.D., negligently fired a GIA surgical stapling device into her right ureter while performing a hysterectomy on her. Landers-Davis claimed that as a result, her right ureter was obstructed, leading to a condition called hydronephrosis and the need to remove her right kidney. Following a two-day bench trial, the district court entered judgment in favor of Dr. Silver.

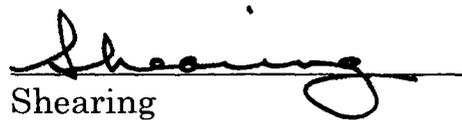
On appeal, Landers-Davis argues that the district court erred because she clearly demonstrated that Dr. Silver was negligent under a res ipsa loquitur theory. We disagree.

There was conflicting evidence presented regarding whether the obstruction in Landers-Davis' ureter was actually caused by a staple. We are not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the

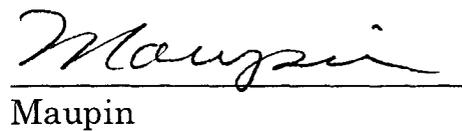
prevailing party.¹ Further, the credibility of witnesses and the weight to be given their testimony is within the sole province of the trier of fact.²

We conclude that based on the evidence presented, the district court could have reasonably found that Landers-Davis' condition did not result from Dr. Silver's negligence. Accordingly we,

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Maupin

cc: Hon. Lee A. Gates, District Judge
Raleigh, Hunt & McGarry, P.C.
John H. Cotton & Associates, Ltd.
Clark County Clerk

¹Quintero v. McDonald, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2001).

²Id. at 1184, 14 P.3d at 524.