

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK POTTER,
Appellant,
vs.
MOHAVE TRUCKING COMPANY,
INC.,
Respondent.

No. 43696

FILED

NOV 17 2005

ORDER OF AFFIRMANCE

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from a district court judgment on a jury verdict, awarding nothing to appellant in his negligence action, and from an order awarding costs and attorney fees to respondent. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant filed a complaint alleging that, as he was driving his moped, traveling behind one of respondent's trucks, a "large spray of liquid" emerged from under the truck's rear door, splashing into appellant's face and eyes. Appellant further alleged that he then followed the truck for several blocks until "he crossed the slick trail of liquid which had been leaking from the [] truck," causing his moped to crash. On appeal, appellant argues that that the district court erred by entering judgment on the verdict and awarding costs and attorney fees to respondent.¹

A jury is allowed wide latitude in deciding whether to award tort damages, and its "findings will be upheld if supported by substantial evidence. Substantial evidence is that which a reasonable mind might

¹Appellant further argues that the court erred by not "properly inform[ing the] jury before deliberation," but the record contravenes this conclusory assertion. Thus, we perceive no error with regard to the jury instructions.

accept as adequate to support a conclusion.”² Where the evidence is conflicting, “all favorable inferences must be drawn towards the prevailing party.”³ Additionally, credibility determinations are within the jury’s province.⁴

Upon review of the record and consideration of appellant’s arguments, we conclude that the district court did not err by entering judgment on the jury’s verdict. The jury’s verdict was supported by appellant’s: (1) complaint, (2) concession that respondent elicited evidence supporting that appellant knew that there was liquid coming from the back of respondent’s truck, and (3) accident report, describing the liquid as spraying from the truck like a fountain. Thus, the jury could have reasonably inferred that appellant’s own negligence in continuing to follow a truck that had just sprayed liquid into his face proximately caused the accident that led to his injuries.⁵

We review a district court’s decision to award attorney fees for an abuse of discretion.⁶ When a party makes a reasonable offer of judgment, which is rejected by the offeree, and the judgment ultimately

²Quintero, 116 Nev. at 1183, 14 P.3d at 523 (internal citations and quotations omitted).

³Id. (internal quotation omitted).

⁴Id. (citation omitted).

⁵See El Dorado Hotel v. Brown, 100 Nev. 622, 691 P.2d 436 (1984) (recognizing that issues of proximate causation are generally for the jury to determine, and affirming a jury’s negligence finding based on substantial evidence in the record), overruled in part on other grounds by Vinci v. Las Vegas Sands, 115 Nev. 243, 984 P.2d 750 (1999).

⁶Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995).

rendered is less favorable to the offeree than the offer of judgment, the district court may award attorney fees to the offeror.⁷

Here, the district court found that a partial award of attorney fees was appropriate given that respondent's offer of judgment was made in good faith. Given that respondent set forth its affirmative defense early in the proceedings and appellant nevertheless chose to reject the offer and proceed to trial, the district court did not abuse its discretion by awarding attorney fees.⁸ Accordingly, we

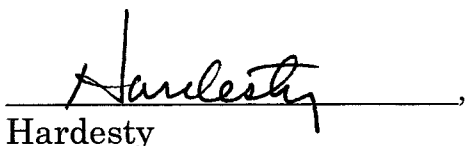
ORDER the judgment and order of the district court
AFFIRMED.⁹

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁷See NRCP 68; NRS 17.115; Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983); Chavez v. Sievers, 118 Nev. 288, 296, 43 P.3d 1022, 1027 (2002).

⁸Because the award of costs was non-discretionary here, it is not subject to challenge on appeal. NRS 17.115(4)(c); NRCP 68(f)(2); NRS 18.020(3) (requiring that the court allow costs to the prevailing party in an action for the recovery of damages, where the plaintiff seeks to recover more than \$2,500).

⁹In light of this order, we deny as moot appellant's request for transcripts. Additionally, although we have considered the proper person documents appellant provisionally submitted to this court, we deny as moot his NRAP 46(b) motion for leave to file proper person documents.

cc: Hon. Stewart L. Bell, District Judge
Patrick Potter
Earley Savage
Clark County Clerk