IN THE SUPREME COURT OF THE STATE OF NEVADA

STACEY D. WILLIAMS,
Appellant,
vs.
GLEN J. LERNER AND ASSOCIATES, A CORPORATION AND A KNOWN BUSINESS ENTITY,
Respondent.

No. 44052

FILED

JAN 31 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment entered on a jury verdict and an order denying a motion for new trial in a contract dispute concerning a contingency fee agreement between the parties.[1] Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

The parties are familiar with the facts; therefore, we do not recount them in this order except as is necessary for our disposition.

Judgment entered on jury verdict

"We will not overturn the jury's verdict if it is supported by substantial evidence, unless, from all the evidence presented, the verdict was clearly wrong."[2] Substantial evidence is evidence that "'a reasonable

[1]Ross v. Giacomo, 97 Nev. 550, 555, 635 P.2d 298, 301 (1981) (noting that "an appeal from the denial of an alternative motion for judgment [notwithstanding the verdict] or for a new trial may be viewed as an appeal from a final judgment.") (abrogated on other grounds).

[2]Bally's Employees' Credit Union v. Wallen, 105 Nev. 553, 555-56, 779 P.2d 956, 957 (1989).

mind might accept as adequate to support a conclusion.'"[3] It can be "inferentially shown by [a] lack of [certain] evidence" in the record.[4] After reviewing the record in this case, we conclude that substantial evidence supports the jury's verdict.

Motion for new trial

In her motion for retrial, Williams argued, among other things, that she was prevented from having a fair trial because of irregularities that occurred during the trial, the jury disregarded evidence and was controlled by passion,[5] and she has obtained newly discovered evidence which she was not able to present at trial.

NRCP 59(a)(7) authorizes a party to move the district court for a new trial if an error in law occurred during the trial and the moving party objected to that error. "The decision to grant or deny a motion for new trial rests within the sound discretion of the trial court and will not be disturbed on appeal absent palpable abuse."[6] Furthermore, this court "must assume that the jury believed the evidence favorable to [the non-moving party] and made all reasonable inferences in [that party's] favor."[7]

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[3]State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

[4]City of Reno v. Estate of Wells, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

[5]Williams failed to direct us to any specific evidence of jury misconduct.

[6]Southern Pac. Transp. Co. v. Fitzgerald, 94 Nev. 241, 244, 577 P.2d 1234, 1236 (1978).

[7]Wallen, 105 Nev. at 555, 779 P.2d at 957.

Williams' basis for her first two arguments centers on her assertions that her evidence and testimony were more credible than Lerner's. However, we have concluded that there is substantial evidence therein to support the jury's verdict, so we cannot conclude it was clearly wrong. It appears that the jury simply believed the evidence favorable to Lerner over the evidence Williams presented. Williams is not entitled to a new trial on those grounds.

Newly discovered evidence can be the basis for a new trial, under limited circumstances.[8] "Newly discovered evidence, to have any weight in the consideration of a trial court, must be material or important to the moving party."[9] "It must be sufficiently strong to make it probable that a different result would be obtained in another trial. The new evidence must be of a decisive and conclusive character, or at least such as to render a different result reasonably certain."[10]

In this case, Williams alleges that had she been given access to the names and addresses of the other parties in her class earlier, she could have called them as witnesses at trial. She asserts that given their testimony, the jury would have found in her favor. However, Williams admits that in a similar trial, wherein a co-class member alleged substantially the same claims against Lerner, her co-class member had the benefit of that information and presented it at trial. That case also ended in favor of Lerner. Therefore, we are unconvinced that Williams'

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[8]NRCP 59(a)(4).

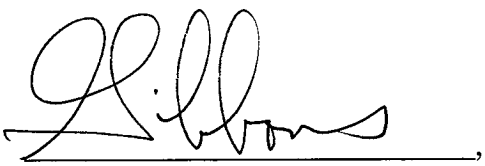
[9]Whise v. Whise, 36 Nev. 16, 24, 131 P. 967, 969 (1913).

[10]Id.

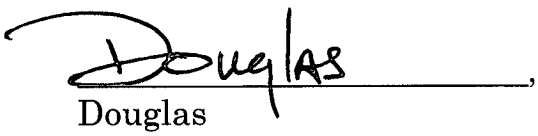
new evidence is reasonably certain to render a different result in a new trial.

We have considered Williams' other arguments and conclude that they lack merit.[11] Therefore, as the jury's verdict is supported by substantial evidence and the district court did not abuse its discretion by denying Williams' motion for a new trial, we affirm the district court's judgment and order.

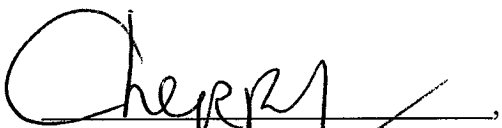
It is so ORDERED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. Lee A. Gates, District Judge
Stacey D. Williams
Laxalt & Nomura, Ltd./Las Vegas
Eighth District Court Clerk

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[11]See Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995) (holding that "no appeal may be taken from an order denying a motion for judgment notwithstanding the verdict.") (abrogated on other grounds).