

IN THE SUPREME COURT OF THE STATE OF NEVADA

SECURITY GUARD I.T.T. ALARM
SYSTEMS OF LAS VEGAS, INC. A
NEVADA CORPORATION; AND C & T
COMMUNICATIONS, INC.,
Appellants/Cross-Respondents,

vs.

SPRINT SOLUTIONS, INC., A
DELAWARE CORPORATION; SPRINT
COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP, A
DELAWARE LIMITED PARTNERSHIP;
SPRINT/UNITED MIDWEST
MANAGEMENT COMPANY, A
KANSAS CORPORATION; SPRINT
INTERNATIONAL
COMMUNICATIONS CORPORATION,
A DELAWARE CORPORATION; AND
CENTRAL TELEPHONE COMPANY,
D/B/A SPRINT OF NEVADA,
Respondents/Cross-Appellants.

No. 44097

FILED

FEB 13 2007

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

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court judgment on a jury verdict, an order denying a motion for new trial, and a post-judgment order awarding costs and denying attorney fees in an action for negligence, breach of contract, breach of express and implied warranties, and strict products liability.¹ Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

¹Because respondents/cross-appellants fail to raise any arguments with respect to their cross-appeal from the order denying attorney fees, we decline to address it. Similarly, because appellants/cross-respondents fail

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Appellant Security Guard I.T.T. Alarm Systems of Las Vegas, Inc. (Security Guard) raises four issues on appeal.² First, Security Guard contends that the district court abused its discretion in setting aside the defaults of certain of the respondent Sprint entities. Second, Security Guard asserts that substantial evidence does not support the jury verdict. Third, Security Guard argues that it is entitled to a new trial because the district court improperly allowed Sprint to continue arguing causation after Sprint withdrew its contributory negligence defense. Fourth, Security Guard asserts that it is entitled to a new trial because of alleged jury misconduct.

We will discuss each of Security Guard's arguments, in turn, below. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition. For the following reasons, we affirm.

Default

First, Security Guard contends that the district court abused its discretion in setting aside the defaults of certain Sprint entities.

"[A] motion to set aside a default . . . is addressed largely to the sound discretion of the court and will not be disturbed on review,

. . . continued

to raise any arguments regarding their appeal from the order awarding costs, we decline to address that portion of the appeal.

²Security Guard raises several new arguments in its reply brief. Specifically, Security Guard argues that defense counsel's misconduct at trial inflamed the jury's passions and prejudiced the jury's verdict. However, "[r]epley briefs shall be limited to answering any new matter set forth in the opposing brief," and thus, these arguments are not properly before the court. NRAP 28(c). Accordingly, we will not consider them.

unless there has been abuse of such discretion. This discretion is a legal discretion, however, and cannot be sustained where there is no competent evidence to justify the court's action.”³

NRCP 55(a) provides that when a defending party fails to plead or otherwise defend an action, the court shall enter the party's default. However, pursuant to NRCP 55(c), the district court may set aside an entry of default for good cause shown. As used in NRCP 55(c), the phrase “for good cause shown” includes mistake, inadvertence, surprise or excusable neglect.⁴

In this case, Security Guard entered default against all of the Sprint entities except Sprint Solutions on the first day of trial. After considering the matter in open court, the district court set aside the defaults. We conclude that the district court did not abuse its discretion in setting the defaults aside because (1) Security Guard received a letter from Sprint's attorney in February 2003 stating that he represented all of the Sprint entities, and (2) Sprint's attorney filed a timely answer in the action on behalf of Sprint Solutions. While Sprint's attorney probably should have filed an answer encompassing all of the Sprint entities, the answer he did file, when combined with his letter, demonstrates that the failure to do so was mere inadvertence or mistake.

Jury verdict

Second, Security Guard contends that there is insufficient evidence to support the jury's verdict in favor of Sprint.

³Lukey v. Thomas, 75 Nev. 20, 22, 333 P.2d 979, 979 (1959).

⁴Intermountain Lumber v. Glens Falls, 83 Nev. 126, 129, 424 P.2d 884, 886 (1967).

This court has repeatedly held that a “jury’s findings will be affirmed on appeal if they are based upon substantial evidence in the record.”⁵ “Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion.”⁶ In addition, “[t]his court is not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party.”⁷

Because the jury’s verdict was reasonable and not clearly erroneous, we conclude that substantial evidence supports the verdict. Evidently, the jury either believed Sprint’s expert witness or simply did not accept the testimony of Security Guard’s experts as true and credible. This court will not weigh the evidence anew, and there is no reason to upset the jury’s verdict in this case.

Sprint’s causation argument

Third, Security Guard argues that it is entitled to a new trial pursuant to NRCP 59(a)(1) because of irregularities in the proceedings at trial. Specifically, Security Guard challenges the district court’s decision to allow Sprint to withdraw its contributory negligence jury instruction but continue to argue causation.

⁵Prabhu v. Levine, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (1996).

⁶Id. (internal quotations omitted).

⁷Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998).

“The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court and will not be disturbed on appeal absent palpable abuse.”⁸

Security Guard cites to no authority supporting the proposition that the withdrawal of a contributory negligence jury instruction prevents a defendant from arguing that it did not cause the plaintiff’s injuries. After Sprint withdrew its contributory negligence instruction, causation remained a highly disputed fact that was relevant to each of Security Guard’s claims.⁹ Accordingly, we conclude that there was no procedural irregularity in allowing Sprint to continue to argue causation after withdrawing its contributory negligence instruction.

Jury misconduct

Fourth, Security Guard asserts that it is entitled to a new trial because of jury misconduct.

After trial, Security Guard submitted an affidavit from one of its expert witnesses alleging that certain jurors improperly discussed the case before the court submitted it to them. On appeal, Security Guard cites Viray v. State¹⁰ for the proposition that the district court should have dismissed those jurors that violated the court’s admonishment not to discuss the case prior to its submission. However, in Viray, the

⁸Pappas v. State, Dep't Transp., 104 Nev. 572, 574, 763 P.2d 348, 349 (1988).

⁹At no point after the withdrawal of the instruction did Sprint claim that Security Guard acted unreasonably; instead, Sprint argued that there was another possible source of the fire besides Sprint’s surge protector.

¹⁰121 Nev. 159, 111 P.3d 1079 (2005) (affirming a district court’s dismissal of a juror for discussing the case prior to submission).

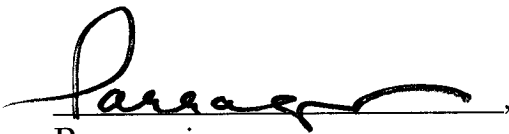
misconduct came to the attention of the court prior to the jury's deliberation and verdict, and the court held an evidentiary hearing regarding the misconduct.¹¹

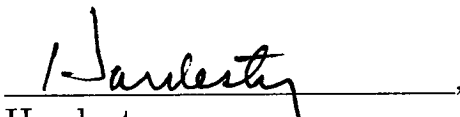
In this case, Security Guard did not allege juror misconduct until after the jury returned an unfavorable verdict. We conclude the present situation is analogous to this court's previous decisions barring the use of jury affidavits to impeach verdicts,¹² and thus, there was no palpable abuse on the part of the district court in denying Security Guard's motion for new trial.


Conclusion

Security Guard has failed to raise any colorable reason why this court should reverse the judgment of the district court. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

¹¹Id. at 163-64, 111 P.3d at 1082-83.

¹²See ACP Reno Assocs. v. Airmotive & Villanova, 109 Nev. 314, 317, 849 P.2d 277, 279 (1993).

cc: Hon. Stewart L. Bell, District Judge
Stephen E. Haberfeld, Settlement Judge
Bowen Law Offices, Chtd.
Ranalli, Zaniel & Jordan, LLC
Clark County Clerk