IN THE SUPREME COURT OF THE STATE OF NEVADA

BEVERLY BROWN AND SHERRY BROWN,
Appellants,
vs.
CRAIG SUTTON, D/B/A NYACK TOWING; MIKE HODGES, AN INDIVIDUAL; GILBERT G. GRIEVE, AN INDIVIDUAL AND D/B/A J & E HOLDINGS, INC., GGG ENTERPRISES, INC., AND CONCOURS AUTO BODY SHOP; AND J & E HOLDINGS, INC., AND GGG ENTERPRISES, INC., NEVADA CORPORATIONS D/B/A CONCOURS BODY SHOP;
Respondents.

No. 44767

FILED

SEP 29 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a personal injury action. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellants Beverly and Sherry Brown argue that the district court erred in refusing to give several requested jury instructions. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

"The district court has broad discretion to settle jury instructions, and a district court's decision to give a particular instruction will not be overturned absent an abuse of discretion or judicial error."[1]

[1]Ringle v Bruton, 120 Nev. 82, 90, 86 P.3d 1032, 1037 (2004) (internal quotation marks omitted).

Jury instructions must be related to the issues, supported by the evidence, and must not tend to confuse or mislead the jury.[2] Any instruction that misstates the law or is adequately covered by other instructions need not be given.[3]

For the following reasons, we conclude that the district court did not abuse its discretion when it rejected the Browns' proposed instructions.

The Browns' use of seat belts

The Browns first argue that the district court should have instructed the jury to disregard all evidence concerning their removal of their seat belts before the incident. They contend such evidence is inadmissible under Nevada's seat belt law, codified at NRS 484.641. This claim lacks merit for several reasons.

First, the Browns waived the right to such an instruction by failing to raise the issue until after trial.[4] The Browns claim that they made a tactical decision to acquiesce to the admittance of the evidence in order to prevent the jurors from speculating about whether the Browns wore their seat belts. However, the Browns should have either filed a motion in limine requesting that the evidence only be allowed for the limited purpose of giving the jury a full summary of the facts surrounding the incident or issued a contemporaneous objection when the evidence was

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[2]See Village Development Co. v. Filice, 90 Nev. 305, 312, 526 P.2d 83, 87 (1974).

[3]See Eikelberger v. State ex rel. Dept. of Highways, 83 Nev. 306, 311, 429 P.2d 555, 558 (1967).

[4]Mill-Spex, Inc. v. Pyramid Precast Corp., 101 Nev. 820, 822, 710 P.2d 1387, 1388 (1985).

first introduced. Instead, the Browns failed to bring the issue to the attention of the district court and opposing counsel until both sides had rested; at that point, the jury may have become overly confused if instructed to ignore the Browns' nonuse of seat belts after it had been discussed at length throughout the trial without objection.

Second, even if the Browns had preserved the issue for appeal, this case is not the type contemplated by NRS 484.641. NRS 484.641 (4)(b) provides that evidence of seatbelt non-use is generally inadmissible to prove negligence. The present set of facts fall outside the reach of this statute because the statute is designed to preclude such evidence only when it is irrelevant or there is a risk of confusion of the issues. Although the Browns cite to out-of-state authority excluding a plaintiff's nonuse of seat belts in a negligence action, these cases involved accidents where the defendant sought to introduce the plaintiff's nonuse of seat belts to reduce recovery under theories of contributory negligence, comparative negligence, or failure to mitigate damages.[5] In these cases, the fact that the plaintiff was not wearing a seat belt was not the cause of his or her injuries; instead, the injuries were caused by the negligent driving of another, and the failure to wear a seat belt only exacerbated the plaintiff's injuries. In contrast, the Browns' injuries occurred because they unbuckled their seat belts while riding in the towed vehicle. Therefore, the Browns' nonuse of their seat belts was highly relevant to how the accident occurred and is thus not barred by NRS 484.641.

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[5]See Clarkson v. Wright, 483 N.E.2d 268, 269 (Ill. 1985); Fischer v. Moore, 517 P.2d 458, 459 (Colo. 1973); Derheim v. N. Fiorito Co., 492 P.2d 1030, 1037 (Wash. 1972).

Furthermore, even if the Browns were entitled to such an instruction, any error would be harmless. An error regarding jury instructions is harmless if, upon considering the entire record, it is not probable that a different result would ensue at a new trial absent the error.[6] "The burden is upon the appellant to show the probability of a different result."[7] Having considered the record nothing indicates that a different result is probable at a new trial absent the purported error, and appellant's have failed to carry their burden to demonstrate otherwise.

The prohibition of towing occupied vehicles in California

The Browns argue that the district court erred in refusing to give a negligence per se instruction based on respondent Mike Hodges' alleged violation of the California Vehicle Code by towing an occupied vehicle. The Browns, however, have failed to identify any California Vehicle Code provision containing such a prohibition. They assert in their supplemental brief that such conduct is prohibited by California Vehicle Code §21712(d), which states that: "[n]o person shall drive a motor vehicle that is towing a trailer coach, camp trailer, or trailer carrying any vessel, containing any passenger, except when a trailer carrying or designed to carry a vessel is engaged in the launching or recovery of the vessel." The Browns contend that the carrying of their automobile on the flatbed truck constitutes a "trailer carrying any vessel." However, a "vessel" is clearly

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[6]See Truckee-Carson Irr. Dist. v. Wyatt, 84 Nev. 662, 667, 448 P.2d 46, 50 (1968).

[7]Id.

intended to refer to a watercraft.[8] Thus, this portion of the statute prohibits passengers from riding in a boat while it is being carried on a trailer. Because the Browns have failed to demonstrate that any California Vehicle Code provision is relevant to the instant case, their claim fails.

Alleged violation of the Code of Federal Regulations

The Browns next argue that they were entitled to a negligence per se instruction because respondent Mike Hodges violated Title 49 of the Code of Federal Regulations, section 391.13(a).

Our review of the record indicates that the Browns never requested the district court to give an instruction pursuant to this section; instead, the only reference in the record to the Code of Federal Regulations is to an entirely different federal regulation (49 C.F.R. §392.60). As a result, the Browns have failed to preserve this issue for appeal

The Browns remaining arguments

The Browns also argue that the district court erred in refusing to instruct the jury that it is unlawful to place speed bumps in areas of public access and in refusing to give an instruction based on express assumption of the risk. A speed bump instruction was not warranted because there is no support for the Browns' proposition in Nevada law. In addition, an express assumption of the risk instruction was not warranted because there was no evidence that the Browns executed a contract

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[8]See Cal. Veh. Code §9840(a) (stating that, subject to several exceptions, a vessel "includes every description of watercraft used or capable of being used as a means of transportation on water").

expressly agreeing to relieve respondent for any damages suffered while riding in the towed Jeep.[9]

Sanctions against Del Hardy

The Browns' counsel,. Del Hardy, argued to the district court, in his briefs to this court, and during oral argument that California Vehicle Code §2430 prohibits the towing of occupied vehicles. Even though this court allowed Hardy to file a supplemental brief to correct this obvious mistake, he remains unable to cite to any provision in the California Vehicle Code that supports his position.

In addition, Hardy also argued that the district court erred in not giving an instruction based on Title 49 of the Code of Federal Regulations, section 391.13(a) when, as discussed above, this regulation was never raised before the district court.

Hardy's actions have wasted the time of the district court, this court, and opposing counsel. His conduct contributed to this court requesting oral argument and to the parties filing supplemental briefs that were clearly unnecessary. We will not condone such clear violations of the Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure, and Nevada Rules of Professional Conduct.[10]

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[9]See Mizushima v. Sunset Ranch, 103 Nev. 259, 264, 737 P.2d 1158, 1161 (1987).

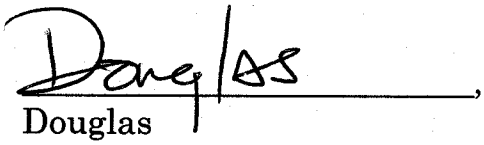
[10]See NRCP 11(b)(2) (mandating that all legal contentions advocated to the district court be warranted by existing law); NRAP 28A(a)(2) (requiring the attorney of record to certify that all representations in briefs submitted to this court are not frivolous); NRPC 3.3(a) (prohibiting a lawyer from making a false statement of law to a tribunal).

As a result, this court imposes sanctions on Hardy in the amount of five hundred dollars. We warn Hardy that any similar transgressions in the future will have more severe consequences.

Conclusion

The Browns' claims lack merit; therefore, we affirm the district court's judgment. Hardy shall personally pay the sum of five hundred dollars to the Supreme Court Law Library and provide the clerk of this court with proof of payment within fifteen days of this order's date.

It is so ORDERED.



_____, J.
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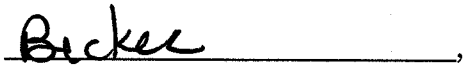

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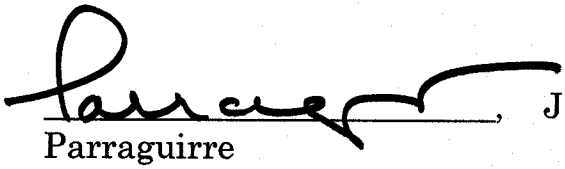
Becker



_____, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Leonard Gang, Settlement Judge
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