IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD SIMPSON,
Appellant,
vs.
ROBERT STOVER,
Respondent.

No. 46806

FILED

MAR 09 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's motion for a new trial in an automobile accident personal injury case. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Respondent, a passenger in one vehicle, collided with another vehicle, driven by appellant. Respondent sued appellant for personal injury damages, and the jury returned a verdict in respondent's favor. The district court entered a judgment on the verdict and later denied appellant's motion for a new trial.

On appeal, appellant argues that the district court improperly denied his motion for a new trial, because (1) the court should not have allowed evidence of respondent's driver allegedly driving with a suspended driver's license; (2) the court should not have allowed evidence related to respondent's medical insurance; and (3) respondent failed to meet his burden of proof during trial.

The district court's decision to deny a motion for a new trial is within its sound discretion, and this court will not disturb that decision on

appeal absent palpable abuse.[1] Likewise, the decision to admit or exclude relevant evidence, after balancing the evidence's probative value and any prejudicial effect, is within the district court's sound discretion.[2]

First, appellant contends that in his counsel's post-verdict discussions with the jury, counsel discovered that the jury was confused as to which driver was allegedly driving with a suspended driver's license, and further, who was cited at the accident's scene. Appellant asserts that the jury's confusion improperly influenced its verdict.

It is well established in Nevada that, as a general rule, the court is not allowed to consider jurors' affidavits to impeach the verdict.[3] Similarly, this court cannot consider appellant's counsel's affidavit alleging the jurors' impeachment of their own verdict.

Next, appellant argues that the district court improperly allowed evidence related to respondent's medical insurance. Our review of the record indicates that respondent's alleged lack of medical insurance was first mentioned in his answer to appellant's counsel's question on cross-examination. The subject was also briefly mentioned, with

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[1]Allum v. Valley Bank of Nevada, 114 Nev. 1313, 1316, 970 P.2d 1062, 1064 (1998).

[2]Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1506, 970 P.2d 98, 123 (1998).

[3]ACP Reno Assocs. v. Airmotive & Villanova, 109 Nev. 314, 317-18, 849 P.2d 277, 279 (1993); see also Edwards v. Emperor's Garden Rest., 122 Nev. __, __, n.38, 130 P.3d 1280, 1288 n.38 (2006).

appellant's counsel's sustained objection, during respondent's counsel's closing statement.[4]

The district court's order concluded that respondent's counsel's remarks did not inflame the jury or cause them to award excessive damages, and the court therefore denied appellant's new trial motion. We are not persuaded that the district court abused its discretion in this regard.[5]

Lastly, appellant argues that respondent did not meet his burden of proving appellant's negligence during the trial.

The district court may not substitute its own judgment in place of the jury's verdict on a motion for a new trial unless the jury erred as a matter of law.[6] Our review of the record demonstrates that, at trial, both parties presented substantial evidence in this personal injury negligence case and that the jury, after weighing the evidence, returned a verdict in respondent's favor. Since appellant does not argue, nor did he establish, that he was free of negligence as a matter of law, the district court correctly denied appellant's motion for a new trial.

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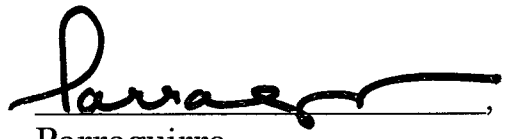
[4]Appellant's argument that the district court refused to allow respondent's deposition testimony concerning medical insurance for impeachment purposes is not supported by the record.

[5]See Allum, 114 Nev. 1313, 970 P.2d 1062; see also Lioce v. Cohen, 122 Nev. __, __, 149 P.3d 916, 927 (2006).

[6]Brascia v. Johnson, 105 Nev. 592, 594, 781 P.2d 765, 767 (1989).

Accordingly, we conclude that the district court did not palpably abuse its discretion by denying appellant's new trial motion, and we affirm its order.[7]

It is so ORDERED.



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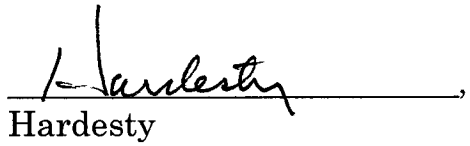

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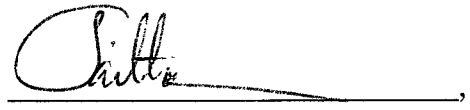

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cc: Hon. Jerome Polaha, District Judge
Lester H. Berkson, Settlement Judge
Emerson & Manke, LLP
Law Offices of Terry A. Friedman, Ltd.
Washoe District Court Clerk

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[7]We have considered the other arguments raised by appellant and conclude that they lack merit. Further, because no appeal lies from the denial of a motion for judgment notwithstanding the verdict, and appellant has not made any arguments related to the award of fees and costs, we have not addressed these issues. See Quintero v. McDonald, 116 Nev. 1181, 14 P.3d 522 (2000) (providing that no appeal lies from an order denying a motion for judgment notwithstanding the verdict); Smith v. I.O.O.F.B.A., 46 Nev. 48, 205 P. 796 (1922) (noting that grounds of appeal not raised by appellant will be deemed waived and will not be considered by this court).