IN THE SUPREME COURT OF THE STATE OF NEVADA

DUANE RIPPLINGER, INDIVIDUALLY,
Appellant,
vs.
PERINI BUILDING COMPANY; AND DAVID MILLER,
Respondents.

No. 46996

FILED

JAN 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment entered on a jury verdict in a defamation action. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

In this case, respondent David Miller sent a letter to appellant Duane Ripplinger's employer, the City of Henderson, alleging that Ripplinger had a conflict of interest and that he had behaved unethically and unprofessionally in a number of instances. Ripplinger instituted a district court action against Miller and Miller's employer, respondent Perini Building Company, for defamation.

The district court entered a judgment in favor of Miller and Perini pursuant to a jury verdict. Ripplinger appeals the district court's entry of judgment on the jury verdict as unsupported by substantial evidence and also argues that a new trial is warranted based on claims of attorney misconduct during closing arguments. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

08-02395

This court reviews a direct appeal from a jury verdict for proof that the verdict is supported by substantial evidence.[1] "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'"[2] We do not weigh evidence anew[3] and will not overturn the jury's verdict unless it "was clearly erroneous when viewed in light of all the evidence presented."[4] In determining whether substantial evidence existed to support the jury's verdict, we assume that the jury believed those portions of the evidence most favorable to Miller and Perini and draw all inferences in favor of Miller and Perini.[5] Having reviewed the record in light of these principles, we conclude that substantial evidence existed to support the district court's entry of judgment on a jury verdict in favor of Miller and Perini on Ripplinger's defamation claim.[6]

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[1]Taylor v. Thunder, 116 Nev. 968, 974, 13 P.3d 43, 46 (2000); Steen v. Gass, 85 Nev. 249, 253, 454 P.2d 94, 97 (1969).

[2]Taylor, 116 Nev. at 974, 13 P.3d at 46 (quoting Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998)).

[3]El Dorado Hotel v. Brown, 100 Nev. 622, 626, 691 P.2d 436, 440 (1984) (overruled on other grounds by Vinci v. Las Vegas Sands, 115 Nev. 243, 984 P.2d 750 (1999)).

[4]Powers v. United Servs. Auto. Ass'n, 114 Nev. 690, 698, 962 P.2d 596, 601 (1998).

[5]See El Dorado Hotel, 100 Nev. at 626, 691 P.2d at 440 ("On appeal we assume that the jury believed all the evidence favorable to the prevailing party and drew from the evidence all reasonable inferences in his favor.").

[6]See Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) ("[T]o establish a prima facie case of defamation, a plaintiff must prove: (1) a false and defamatory statement by defendant concerning

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Ripplinger also argues that counsel for Miller and Perini made numerous statements during closing arguments that constitute attorney misconduct, and that he is therefore entitled to a new trial. But, Ripplinger did not object to any of the statements at trial, nor did he move for a new trial in the district court. A party must object to purportedly improper argument to preserve the issue for appeal and preserve it for motions for new trial in the district court.[7] This court will, however, review unobjected-to conduct when it amounts to plain error.[8] With regard to unobjected-to attorney misconduct, plain error is "[i]rreparable and fundamental error . . . that . . . is only present when it is plain and clear that no other reasonable explanation for the verdict exists."[9]

Having reviewed the record containing the challenged statements, we conclude that Ripplinger failed to establish that any of the statements made by counsel for Miller and Perini amounted to attorney misconduct.[10] In any case, Ripplinger failed to object to any of the statements during trial, and we conclude that, under a plain-error review,

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. . . continued

the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.").

[7]Lioce v. Cohen, 122 Nev. ___, ___, 149 P.3d 916, 927 (2006).

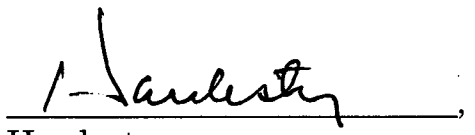
[8]Id.

[9]Ringle v. Bruton, 120 Nev. 82, 96, 86 P.3d 1032, 1041 (2004).

[10]See Lioce, 122 Nev. at ___, 149 P.3d at 929 ("[A]n attorney shall not state to the jury a personal opinion as to the justness of a cause, the credibility of witness, or the culpability of a civil litigant").

the alleged misconduct did not amount to irreparable and fundamental error such that no other reasonable explanation for the verdict existed. Ripplinger is not entitled to a new trial. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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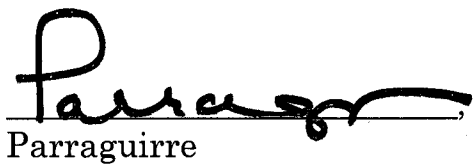

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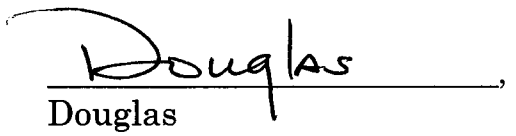

_____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
Leonard I. Gang, Settlement Judge
Kirk T. Kennedy
Lewis & Roca, LLP/Las Vegas
Lincoln, Gustafson & Cercos
Eighth District Court Clerk