IN THE SUPREME COURT OF THE STATE OF NEVADA

LOIS LUNN,
Appellant,
vs.
PEPPERMILL HOTEL AND CASINO,
Respondent.

No. 47647

FILED

JUL 0 3 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a gaming matter.[1] Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Lois Lunn (appellant) won the four-of-a-kind progressive jackpot on a video poker slot machine at the Peppermill Hotel and Casino (respondent) when, playing the maximum amount, she obtained a hand of four sevens. Although the overhead progressive meter showed a jackpot amount of $32.55 for Lunn's four-of-a-kind hand, the machine displayed $808,022.65 as the winning amount. When the Peppermill refused to pay Lunn the $808,022.65, she administratively contested that decision.

After a Nevada Gaming Control Board agent denied Lunn the requested amount, awarding $32.55 (plus her remaining credits) instead, Lunn moved the Board for reconsideration. On reconsideration, the Board affirmed the agent's decision to deny Lunn the requested amount,

[1]Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this case.

07-14563

determining that the machine had incorrectly displayed $808,022.65 as the winning amount and that $32.55, as displayed on the progressive meter, was the valid jackpot amount. Lunn petitioned for judicial review, which was ultimately denied. Consequently, Lunn appeals, asserting that (1) the Board ignored its statutory and policy-based mandate to promote public confidence and trust when it allowed the Peppermill, despite its "unclean hands," to deny or restrict payment based upon a non-posted limit, and (2) the Board's decision is not based on any evidence, since the record contains no competent and reliable evidence showing that the machine contained a "malfunction voids all plays" type of disclaimer, and in any case, the Peppermill should not be allowed to benefit from its "unilateral mistake" resulting from any communication error between the machine and the progressive meter.[2]

A Gaming Control Board decision is entitled to great deference by this court.[3] Accordingly, while we examine purely legal questions de

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[2]In her reply brief, Lunn appears to raise, for the first time, a spoliation of the evidence argument, with respect to any disclaimer language located on the machine. Because this argument was not previously raised, we need not consider it. See Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005) (pointing out that this court need not consider arguments raised only in a reply brief); Dermody v. City of Reno, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997) (pointing out that arguments raised for the first time on appeal need not be considered).

[3]See Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000); Redmer v. Barbary Coast Hotel & Casino, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994).

novo,[4] we, like the district court, will not disturb the Board's decision unless our review of the record indicates that the appellant's substantial rights were prejudiced by the decision because it, among other things, is unsupported by any evidence whatsoever, was rendered in excess of the Board's statutory authority or jurisdiction, or is "arbitrary or capricious or otherwise not in accordance with law."[5]

Here, having reviewed the parties' briefs and the record, we conclude that the Board's decision is based on evidence and does not in any way prejudice Lunn's substantial rights. In particular, the Board's decision was based on evidence showing that two different jackpot amounts were displayed, which inconsistency, it was surmised, must have resulted from a communication error. In determining which amount was correct, the Board relied on evidence that a four-of-a-kind progressive jackpot, in the amount of $32.25, was won approximately fifteen minutes before the jackpot at issue in this case, that the machine then reset (at a base value of $31.25), and that calculations based on the number of credits thereafter played at a progressive increment (of $0.000625) demonstrated that the correct amount was $32.55, which corresponded to the overhead progressive meter's display. Thus, regardless of any malfunction with respect to the communication systems, or any lack of a malfunction

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[4]Redmer, 110 Nev. at 378, 872 P.2d at 344.

[5]NRS 463.3666(3); Sengel, 116 Nev. at 569-70, 2 P.3d at 260-61.

disclaimer, the Board's conclusion that the progressive jackpot amount won by Lunn was $32.55 is based on evidence.[6]

Moreover, as the district court pointed out, whether the Peppermill violated any regulations governing the posting of progressive jackpot limits is not relevant with respect to determining the amount of Lunn's jackpot, as nothing suggests that the Board's decision was based on any jackpot limit, posted or un-posted.[7] And in any case, the Board's determination that the progressive meter display's limit was merely evidence of a communication error and was not designed to restrict the potential amount of any jackpot is supported by evidence.

Accordingly, as the Board's decision, which is entitled to great deference, is based on evidence, was rendered within the Board's authority and jurisdiction over gaming matters, was not arbitrary or capricious, and did not prejudice Lunn's substantial rights, we cannot conclude that the

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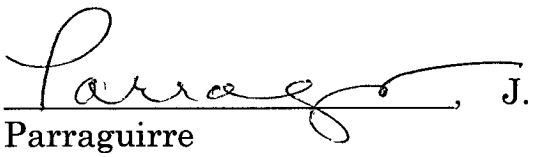
[6]Additionally, no argument has been made in this case that the communication error or malfunction voided Lunn's play; indeed, Lunn has received the Peppermill's $32.55 payment for the win. Thus, the existence or non-existence of any disclaimer voiding all play when a malfunction occurs does not appear decisive here. Cf. Sengel, 116 Nev. at 573, 2 P.3d at 263 (noting that the standard disclaimer language was sufficient to include the type of door tilt code malfunction that occurred in that case, and thus the play was void).

[7]See also Gravelle v. Burchett, 73 Nev. 333, 341-42, 319 P.2d 140, 145 (1957) (recognizing that the equitable doctrine of "unclean hands" is not available when the alleged inequitable conduct is not connected with the subject controversy).

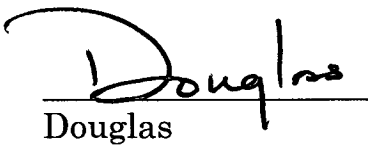
district court erroneously denied judicial review.[8] Accordingly, we affirm the district court's order.

It is so ORDERED.

_____, J.
Hardesty



_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
John W. Hawkins, Settlement Judge
Bradley Paul Elley
Lionel Sawyer & Collins/Las Vegas
Washoe District Court Clerk

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[8]We have considered Lunn's other appellate arguments, including those relating to unilateral mistake and perjury, and in light of the evidence supporting the Board's order, we conclude that these arguments lack merit and thus do not warrant reversal.