

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE JOHNSON AND MARK MILLS,
Appellants,
vs.
WALGREENS CORPORATION, AN
ILLINOIS CORPORATION,
Respondent.

No. 49082

FILED

MAY 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

This case arises out of an allegation by appellants that they were the victims of racial discrimination during a visit to a Walgreens store. Specifically, appellants alleged that, while attempting to pay for photographs that they had developed at Walgreens, the Walgreens employee that was processing the sale became upset and angry, walked away during the middle of the transaction, and while walking away called appellants a racial epithet. Appellants further alleged that Walgreens did not properly discipline the employee or apologize to them for the alleged racial discrimination. Following a trial, the jury returned a verdict in favor of Walgreens. Appellants then filed the present appeal.

This court reviews questions of law de novo. Martinez v. Maruszczak, 123 Nev. ___, ___, 168 P.3d 720, 724 (2007). A jury's verdict will be upheld if it is supported by substantial evidence. Prabhu v. Levine, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (1996). In addition, we "will not

reverse an order or judgment unless error is affirmatively shown.” Schwartz v. Estate of Greenspun, 110 Nev. 1042, 1051, 881 P.2d 638, 644 (1994). Furthermore, we presume that any missing portions of the district court record necessary for our appellate review support the district court judgment. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. ___, ___, 172 P.3d 131, 135 (2007).

Appellants raise several arguments on appeal that they assert require a reversal of the district court judgment and a remand for a new trial. First, they assert that the district court erred in excluding from evidence the medical history of the Walgreens’ employee who appellants allege caused the racial discrimination and in excluding evidence of other complaints to Walgreens regarding alleged discrimination by Walgreens’ employees. Appellants also challenge the award of attorney fees to respondent. Additionally, appellants argue that respondent and its attorneys withheld relevant information from them that they could have used to challenge the credibility of one of the witnesses.

We review a district court’s rulings on admissibility of evidence for an abuse of discretion. Hansen v. Universal Health Servs., 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999). We conclude that the district court did not abuse its discretion in excluding evidence of the prior medical records or of other complaints of racial discrimination. The district court properly excluded the prior medical history evidence because it was more prejudicial than probative and was not sufficiently relevant. See NRS 48.035(1); NRS 48.025(2); Prabhu, 112 Nev. at 1548, 930 P.2d at 110. The district court also properly excluded the evidence and proposed testimony regarding other racial discrimination complaints, as appellants failed to establish that the complaints were sufficiently similar to the

circumstances in this case to allow for their admissibility, Chowdhry v. NLVH, Inc., 109 Nev. 478, 484-85, 851 P.2d 459, 463 (1993), and the evidence and proposed testimony had not been timely disclosed under NRCP 16.1(a)(3).

As for appellants' challenge to the award of attorney fees and costs to respondent, we review such an award for an abuse of discretion. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 673, 137 P.3d 1110, 1129 (2006). The district court awarded attorney fees and costs pursuant to NRCP 68 and NRS 17.115, as appellants did not obtain a judgment in excess of the offers of judgment made by respondent to appellants. In awarding attorney fees, the district court reviewed the necessary factors outlined in Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). We conclude that the district court did not abuse its discretion in its award of attorney fees and costs in favor of respondent.

Finally, appellants also argue on appeal that their new trial motion, claiming that respondent and its attorneys withheld information, should be considered by this court or that the matter should be remanded to allow consideration by the district court. This issue was previously resolved in our October 1, 2008, order. As stated in that order, the motion for a new trial under NRCP 59 was untimely so that the district court lacked jurisdiction to consider the motion. See NRAP 4(a)(4) (providing that a timely motion for new trial tolls the time for filing an appeal). Thus, the motion for a new trial is not properly before this court on this appeal and we will not consider it.

We have considered appellants' other arguments raised on appeal and conclude that they lack merit. Accordingly, as the judgment based on the jury verdict is supported by substantial evidence, the district

court did not abuse its discretion in excluding evidence of prior medical history or of other racial discrimination complaints, and it did not abuse its discretion in awarding attorney fees and costs, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Pickering, J.
Pickering

cc: Hon. Janet J. Berry, District Judge
Carolyn Worrell, Settlement Judge
Bruce Johnson
Mark Mills
Jones Vargas/Reno
Lemons Grundy & Eisenberg
Washoe District Court Clerk