

IN THE SUPREME COURT OF THE STATE OF NEVADA

ATC/VANCOM OF NEVADA LIMITED
PARTNERSHIP,
Appellant,
vs.
LORRAINE MACDONALD,
Respondent.

No. 49579

FILED

FEB 05 2009

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a district court judgment on a jury verdict in a tort action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On March 7, 2004, respondent Lorraine MacDonald was severely injured when a bus, which was owned and operated by appellant ATC/Vancom, Inc. struck the bicycle that she was riding. MacDonald subsequently filed this personal injury action against Vancom.

During discovery, Vancom learned that MacDonald was a citizen of Scotland and was residing in the United States illegally. Vancom also learned that MacDonald had intentionally made a false representation of United States citizenship in order to procure employment.

Prior to trial, MacDonald made an oral motion to exclude evidence of her status as an illegal immigrant. MacDonald argued that this evidence must be excluded since it is highly prejudicial and not relevant to the issues before the court. Vancom responded that MacDonald's immigration status was admissible since it was relevant to the issue of credibility. Vancom also argued that MacDonald's immigration status was relevant since it demonstrates that her claims for

future damages should be based upon the cost of future medical care in Scotland, rather than the cost of future medical care in the United States. The district court ordered additional briefing on the immigration issue, reserved its ruling, and the case proceeded to trial.

During opening statements, MacDonald told the jury that they would hear evidence “about [her] future medical needs,” including testimony from her physicians “that she should have every year, 12 visits a year, and . . . at least a one time cervical injection; . . . cervical discography;” and other general surgery. Following opening statements, MacDonald presented the deposition testimony from three physicians, which included statements relating to her future damages.

Shortly thereafter, the district court returned to the issue of MacDonald’s immigration status. Having read the additional briefing on the issue, the district court found that the evidence of MacDonald’s immigration status was admissible for the limited purpose of proving future damages; however, this evidence could not be used to prove either liability or past damages. Consequently, the district court bifurcated the trial into separate phases. The first phase consisted of a jury trial on the issue of liability and past damages. The second phase consisted of a jury trial on the issue of future damages. On appeal, Vancom argues that bifurcation at such a late stage in the trial resulted in reversible error since future damages evidence had been presented during the liability and past damages phase of the trial. We agree.

“Under NRCP 42(b), a district court, in the exercise of its sound discretion, may order a separate trial of any claim to further convenience or avoid prejudice.” C.S.A.A. v. District Court, 106 Nev. 197, 199, 788 P.2d 1367, 1368 (1990). The district court should be mindful,

however, that the “paramount consideration at all times in the administration of justice is a fair and impartial trial to all litigants.” Hines v. Joy Mfg. Co., 850 F.2d 1146, 1152 (6th Cir. 1988) (quoting Frasier v. Twentieth Century-Fox Film Corp., 119 F. Supp 495, 497 (D. Neb. 1954)).

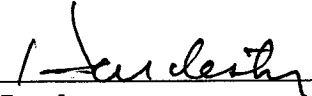
In this case, the district court bifurcated the issue of past damages and liability from that of future damages in order to provide for the admission of MacDonald’s immigration status during the future damages phase of the trial. Unfortunately, however, the district court bifurcated the trial after MacDonald presented evidence of future damages. After bifurcation was ordered, Vancom was denied any meaningful opportunity to rebut the future damages evidence which was presented during the liability and past damages phase of the trial. Consequently, bifurcation resulted in prejudice and deprived Vancom of its right to a fair trial. Accordingly, we conclude that the district court abused its discretion in ordering separate trials at such a late stage and remand for a new trial on the issue of damages.¹


Vancom also contends that a new trial is warranted on the issue of liability. Having considered this and Vancom’s additional

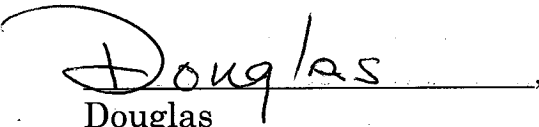
¹In so doing, we direct the district court to bifurcate the issue of past damages and future damages and thus allow for the presentation of MacDonald’s immigration status during the future damages phase of the trial, while at the same time excluding this evidence from the past damages phase of the trial.

arguments on appeal,² we conclude that they are without merit. Accordingly, we

AFFIRM the judgment of liability, REVERSE the judgment of damages on the jury verdict, and REMAND for separate trials on the issues of past and future damages in a manner that is consistent with this order.


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
William F. Buchanan, Settlement Judge
Greenberg Traurig, LLP
Vannah & Vannah
Eighth District Court Clerk

²Vancom makes several additional assertions on appeal: (1) the district court erred in excluding evidence of MacDonald's immigration status during the liability phase of the trial; (2) the district court erred in failing to give a curative instruction following the admission of future damages evidence during the past damages/liability phase of the trial; (3) the district court erred in its application of NRS 48.035 by failing to consider evidence of MacDonald's immigration status; and (4) the district court erred in allowing Vancom's post accident investigation into evidence.