

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAROLINA GUILLEN AND JOSEPH
GUILLEN,
Appellants,
vs.
NASARIO ISIDRO GARCIA,
Respondent.

No. 50299

FILED

NOV 19 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a new trial in a tort action conducted under the short trial program. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Respondent Nasario Garcia instituted the underlying action after he purportedly sustained injuries in a car accident involving appellant Carolina Guillen.¹ The matter proceeded to mandatory arbitration, where the arbitrator found in Garcia's favor and awarded him \$9,019.38. Guillen requested a trial de novo, and at trial, a jury also found in Garcia's favor, finding Guillen 90 percent at fault, but failing to award damages to Garcia.

Garcia subsequently moved the district court for a new trial, arguing that the jury erroneously believed that Garcia had received compensation under the arbitrator's award when the district court instructed the jury that the arbitrator had found in Garcia's favor and

¹It appears that Joseph Guillen was named as a defendant but was subsequently dismissed from the underlying action and is thus not a party to this appeal.

awarded him money. Guillen opposed the new trial motion. Ultimately, the district court granted Garcia's motion for new trial. This appeal followed.

On appeal, Guillen argues that the district court improperly considered a juror's affidavit to impeach the verdict. Garcia contends, however, that the district court properly granted a new trial, under NRCPC 59(a)(5), based on the jury's disregard of the district court's jury instructions.

This court will not disturb the district court's decision to grant a new trial absent an abuse of discretion.² Generally, a district court's decision to grant a new trial may not be based on juror's affidavits.³ Thus, in this appeal, to determine if the district court properly granted a new trial under NRCPC 59(a)(5), we do not consider the affidavit that was improperly submitted to the district court.⁴ Instead, we review the appellate record to determine whether it would have been impossible for the jury to reach the verdict that was rendered had the jurors properly applied the trial court's instructions.⁵

²Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1505, 970 P.2d 98, 122 (1998), disapproved on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11 (2001).

³Weaver Brothers, Ltd. v. Misskelley, 98 Nev. 232, 233, 645 P.2d 438, 439 (1982).

⁴See id.

⁵M & R Investment v. Anzalotti, 105 Nev. 224, 226, 773 P.2d 729, 730 (1989).

Because we must consider whether the jury misapplied the trial court's instructions, it is important for us to review, at a minimum, the trial transcripts, the jury instructions that were given, the verdict or judgment entered upon the verdict, and any hearing transcripts that pertain to the new trial motion.⁶ And we have consistently held that "[w]hen evidence on which a district court's judgment rests is not properly included in the record on appeal, it is assumed that the record supports the lower court's findings."⁷

In this matter, Guillen failed to provide a sufficient appellate record for our consideration and, based on the limited information provided, we conclude that the district court did not abuse its discretion in granting a new trial. Although it is not clear if the district court considered the juror affidavit that was improperly submitted for its review, the jury verdict demonstrates that a new trial is warranted. Specifically, the jury verdict shows that even though the jurors found Guillen negligent and that Guillen's negligence proximately caused Garcia's injuries, the jury failed to award Garcia any damages. Therefore, it appears that the district court properly granted a new trial.⁸ Accordingly, we

⁶See Jaramillo v. Blackstone, 101 Nev. 316, 704 P.2d 1084 (1985).

⁷Stover v. Las Vegas Int'l Country Club, 95 Nev. 66, 68, 589 P.2d 671, 672 (1979).

⁸Cf. Shere v. Davis, 95 Nev. 491, 596 P.2d 499 (1979) (concluding that a new trial was properly granted when the jury found for the plaintiff and failed to award damages despite undisputed evidence that plaintiff suffered injuries).

ORDER the judgment of the district court AFFIRMED.⁹

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

cc: Hon. Jessie Elizabeth Walsh, District Judge
William F. Buchanan, Settlement Judge
David L. Riddle & Associates
Law Offices of Romeo R. Perez, P.C.
Eighth District Court Clerk

⁹We note that respondent's counsel failed to comply with NRAP 32(a). In particular, respondent's answering brief was not submitted with a red cover as required by our appellate rules. We admonish respondent's counsel that failure to comply with our appellate rules of procedure in the future may result in sanctions.