

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH SMITH,
Appellant,
vs.
HUMBERLINDO JIMENEZ AND
DONALD MATT,
Respondents.

No. 52883

FILED

DEC 04 2009

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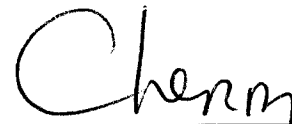
ORDER OF AFFIRMANCE


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

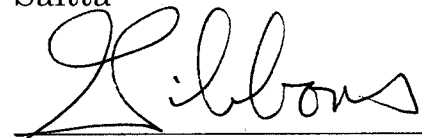
Having reviewed the briefs and appendices on appeal, we affirm the judgment of the district court. The jury's verdict is supported by substantial evidence; therefore, we will not disturb it on appeal. Taylor v. Thunder, 116 Nev. 968, 974, 13 P.3d 43, 46 (2000). Similarly, the district court did not abuse its discretion in denying appellant's motion for a new trial or additur. Grosjean v. Imperial Palace, 125 Nev. ___, ___, 212 P.3d 1068, 1077 (2009) (stating that this court reviews the district court's order resolving a new trial motion for an abuse of discretion and holding that a new trial is only appropriate "if, as a matter of law, the jury could not have reached the conclusion that it reached"); Lioce v. Cohen, 124 Nev. 1, ___, 174 P.3d 970, 980-82 (2008) (outlining standards for granting a new trial based on attorney misconduct); Donaldson v. Anderson, 109 Nev. 1039, 1041, 862 P.2d 1204, 1206 (1993) (providing that the district court's decision concerning additur is reviewed for an abuse of discretion). Furthermore, we conclude that the

district court did not abuse its discretion in giving a comparative negligence jury instruction. Bass-Davis v. Davis, 122 Nev. 442, 447-48, 134 P.3d 103, 106 (2006). Finally, the district court did not err in dismissing respondent Donald Matt from the lawsuit, as there was no evidence that the employee driver was under the control of Matt at the time of the accident. Evans v. Southwest Gas Cp., 108 Nev. 1002, 1005-06, 842 P.2d 719, 721 (1992), overruled on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11 (2001); Molino v. Asher, 96 Nev. 814, 817, 618 P.2d 878, 879-80 (1980). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James M. Bixler, District Judge
William F. Buchanan, Settlement Judge
Greenman Goldberg Raby & Martinez
Atkin Winner & Sherrod
Eighth District Court Clerk