


IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN MAYS, AS SPECIAL  
ADMINISTRATOR OF THE ESTATE OF  
TERRY LEE SCHNEIDER, DECEASED,  
AND AS GUARDIAN AD LITEM FOR  
MELINDA SCHNEIDER, A MINOR, AND  
GREGORY DEAN LEE, INDIVIDUALLY,  
Appellants,  
vs.  
STACIE L. RIVERS, M.D., INDIVIDUALLY  
AND D/B/A GYNECOLOGY & OBSTETRICS,  
Respondents.

No. 53032

**FILED**

JAN 12 2010

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a medical malpractice/wrongful death action and from a post-judgment order denying a new trial motion. Eighth Judicial District Court, Clark County; Michael Villani, Judge. We conclude that none of appellants' challenges warrant relief.

We first conclude that the district court did not abuse its discretion in excluding certain deposition testimony evidence that appellants sought to admit. Hansen v. Universal Health Servs., 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999).

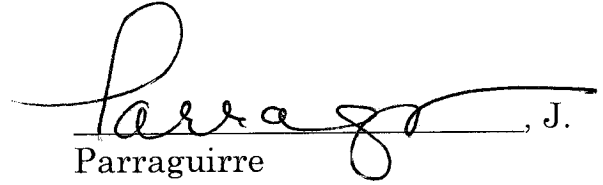
Second, we reject appellants' argument that misconduct by respondents' attorney necessitates a new trial, and we affirm the district court's denial of appellants' new trial motion, as the court did not commit an abuse of discretion. Lioce v. Cohen, 124 Nev. 1, \_\_\_, 174 P.3d 970, 980-82 (2008). (stating that we review a decision resolving a motion for a new trial for an abuse of discretion and outlining standards for granting a new trial based on attorney misconduct). We note that our review of both the

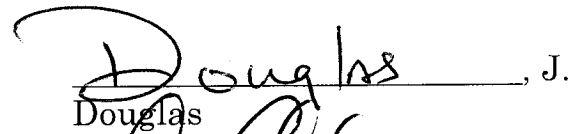
evidentiary and attorney misconduct issues was limited because appellants failed to provide sufficient documentation, including the complete trial transcripts. See Hallmark v. Eldridge, 124 Nev. \_\_\_, \_\_\_, 189 P.3d 646, 654 (2008) (holding that reversal of a district court judgment is only appropriate if appellants demonstrate from the record that the evidentiary error substantially affected their rights); Lioce, 124 Nev. at \_\_\_, 174 P.3d at 980-82 (outlining standards for granting a new trial based on attorney misconduct); Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (stating that “appellants are responsible for making an adequate appellate record” and “[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision”).

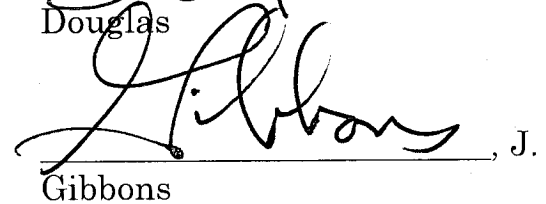
Finally, the bailiff improperly permitted an alternate juror to enter the jury room during deliberations, inappropriately communicated with jurors by advising them that they would be queried individually by the district court regarding the alternate juror’s presence in the jury room, and allowed jurors unsupervised breaks during the proceedings. We consider unimpressive the district court’s explanation that those irregularities occurred because the bailiff was a substitute officer. Nevertheless, we conclude no prejudice resulted. Accordingly, the judgment remains sound and the district court did not abuse its discretion by denying appellants’ motion for new trial. See Meyer v. State, 119 Nev. 554, 562, 80 P.3d 447, 453-54 (2003) (providing that district court is vested with broad discretion in resolving juror misconduct claims); Hale v. Riverboat Casino, Inc., 100 Nev. 299, 305, 682 P.2d 190, 193 (1984) (providing that misconduct must have improperly influenced jury or

tainted its verdict to warrant new trial), abrogated on other grounds by  
Ace Truck v. Kahn, 103 Nev. 503, 746 P.2d 132 (1987). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 , J.  
Parraguirre

 , J.  
Douglas

 , J.  
Gibbons

cc: Hon. Michael Villani, District Judge  
Lansford W. Levitt, Settlement Judge  
Gerald I. Gillock & Associates  
John H. Cotton & Associates, Ltd.  
Eighth District Court Clerk