

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALANA GARMANN, INDIVIDUALLY  
AND AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF RORY DEAN, JR., DECEASED  
MINOR CHILD,  
Appellant,  
vs.  
JOANN FATE,  
Respondent.

No. 58160

**FILED**

NOV 16 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for a new trial in a tort action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant brought an action against respondent for negligence in the death of appellant's son. After a jury trial, the jury returned a verdict in favor of respondent. Appellant brought a motion for a new trial, based on the alleged misconduct of respondent's counsel during closing arguments. The district court denied the motion, and this appeal followed. Appellant argues on appeal that respondent's counsel engaged in misconduct during his closing argument by insinuating to the jury that appellant and her counsel failed to prepare their case properly, despite having more than six years to do so, when appellant's counsel was in fact retained only shortly before trial.

“The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and this court will not disturb that decision absent palpable abuse.” Bass-Davis v. Davis, 122

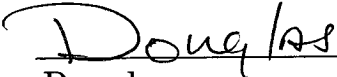
Nev. 442, 453, 134 P.3d 103, 110 (2006) (quoting Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996)). NRC 59(a) provides that a new trial may be granted based on an irregularity in the proceedings of the court or the adverse party or based on the misconduct of the prevailing party. In ruling on a motion for a new trial based on attorney misconduct, a district court must consider whether the alleged misconduct was objected to and whether the jury was admonished. Lioce v. Cohen, 124 Nev. 1, 14, 174 P.3d 970, 978 (2008).

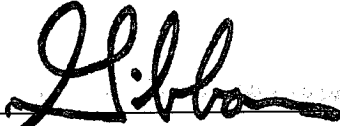
Where the alleged misconduct was not objected to, the district court should generally deem the issue waived. Id. at 19, 174 P.3d at 981. In the case of plain error, however, the district court should determine whether the attorney misconduct amounted to irreparable and fundamental error “that results in a substantial impairment of justice or denial of fundamental rights such that, but for the misconduct, the verdict would have been different.” Id. at 19, 174 P.3d at 982.

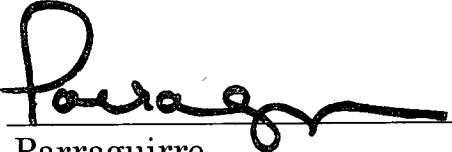
Having reviewed the parties’ arguments and the record, we conclude that the district court did not abuse its discretion in denying appellant’s motion for a new trial. The district court order states, and the record supports, that appellant’s counsel objected only to that portion of respondent’s counsel’s closing arguments discussing the discovery process. As appellant’s counsel did not object to that portion of the closing argument that appellant raised in her motion for a new trial—the discussion of appellant and her counsel’s failure to conduct investigations regarding the conditions of the accident—the district court did not abuse its discretion in determining that the issue was waived, and that there

was no showing that but for the alleged misconduct, the verdict would have been different. Id. at 19, 174 P.3d at 981-82. As we perceive no palpable abuse of discretion by the district court, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge  
Robert L. Eisenberg, Settlement Judge  
Durney & Brennan/Reno  
Watson Rounds  
Washoe District Court Clerk