IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO C. MARTINEZ,
Appellant,
vs.
JESUS E. SALAS A/K/A JESUS E. SALAS-CRUZ, AN INDIVIDUAL,
Respondent.

No. 58600

FILED

DEC 14 2012

TRACIE 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 short trial proceeding and from a post-judgment order denying a new trial motion. Eighth Judicial District Court, Clark County; David Barker, Judge.

In a tort action against respondent, appellant presented evidence that he had incurred $18,448.96 in medical bills as a result of an altercation with respondent. On its verdict form, the jury determined that the "total amount of damages" appellant suffered was $9,224.48. The jury also determined that appellant was 50 percent at fault. The jury was then discharged without being questioned as to whether it had adjusted its damages award in accordance with its allocation of fault. Days later, upon respondent's request, the short trial judge reduced the damages award by 50 percent based on the jury's allocation of fault and entered a judgment in favor of appellant for $4,612.24. Appellant then moved for a new trial, which the short trial judge denied.

"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

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disturb that decision absent palpable abuse." Nelson v. Heer, 123 Nev. 217, 223, 163 P.3d 420, 424-25 (2007) (internal quotation omitted).

On appeal, appellant first contends that the short trial judge committed legal error in reducing the jury's damages award by 50 percent because, according to appellant, the jury had already made this reduction.[1] NRCP 59(a)(7) (permitting a new trial when there has been an "[e]rror in law occurring at the trial and objected to by the party making the motion"). Because appellant failed to seek clarification from the jury before it was discharged, however, this could not be determined.[2] Cf. Brascia v. Johnson, 105 Nev. 592, 596 n.2, 781 P.2d 765, 768 n.2 (1989) (noting that a failure to object to a jury verdict before the jury is discharged generally constitutes a waiver of the right to later contest the

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[1]Appellant also contends that the short trial judge committed legal error by failing to instruct the jury on principles of comparative negligence. According to appellant, if the jury was so instructed, it would have realized that it was not supposed to reduce its damages award in accordance with its fault allocation. Appellant never requested such an instruction, which makes this argument an inappropriate basis for a new trial. NRCP 59(a)(7) (requiring an alleged legal error to be "objected to by the party making the motion").

[2]Citing Lehrer McGovern Bovis v. Bullock Insulation, 124 Nev. 1102, 197 P.3d 1032 (2008), appellant suggests that the short trial judge should have sought clarification of the jury's verdict sua sponte. We disagree. In Lehrer McGovern Bovis, we explained that a district court has such a duty when the general verdict returned by the jury is "logically incompatible" with its answers to special interrogatories. Id. at 1112, 197 P.3d at 1039 (quotation omitted). Here, as the short trial judge pointed out, the jury may have disbelieved appellant's testimony that all of his medical expenses were necessary and were caused by the altercation with respondent. Quintero v. McDonald, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000) ("The credibility of witnesses and the weight to be given their testimony is within the sole province of the trier of fact."). Thus, a logical explanation existed for the jury's verdict.

verdict). As such, the short trial judge properly applied NRS 41.141's comparative negligence principles to the verdict form, which stated unequivocally that appellant's "total amount of damages" was $9,224.48. Accordingly, we perceive no legal error in the short trial judge's subsequent 50-percent reduction of this amount.

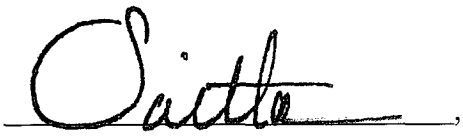
Appellant next contends that the jury manifestly disregarded its instructions when it failed to award him damages for pain and suffering. NRCP 59(a)(5) (permitting a new trial when there has been a "[m]anifest disregard by the jury of the instructions of the court"). "In determining the propriety of the granting of a new trial under NRCP 59(a)(5), the question is whether we are able to declare that, had the jurors properly applied the instructions of the court, it would have been impossible for them to reach the verdict which they reached." Weaver Brothers, Ltd. v. Misskelley, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982).

Here, the jury was instructed to award a sum of money "sufficient to reasonably and fairly compensate" appellant for his pain and suffering. The jury was also instructed that its award should be "just and reasonable in light of the evidence." Applying these instructions, it was possible that the jury determined that appellant's pain and suffering during the one-month healing process did not rise to a level that warranted compensation. See Stackiewicz v. Nissan Motor Corp., 100 Nev. 443, 454-55, 686 P.2d 925, 932 (1984) ("[T]he elements of pain and suffering are wholly subjective. It can hardly be denied that, because of their very nature, a determination of their monetary compensation falls peculiarly within the province of the jury." (internal quotation omitted)). Alternatively, it was possible that the jury determined that appellant's

pain and suffering was not a result of the altercation with respondent.[3] Quintero, 116 Nev. at 1183, 14 P.3d at 523 ("A jury is permitted wide latitude in awarding tort damages, and the jury's findings will be upheld if supported by substantial evidence.").

As appellant has failed to establish that the short trial judge abused his discretion in denying the motion for a new trial, Nelson, 123 Nev. at 223, 163 P.3d at 424-25, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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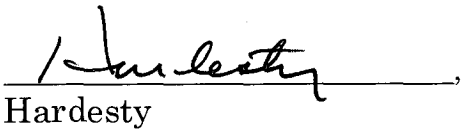

_____, J.
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cc: Hon. David Barker, District Judge
M. Nelson Segel, Settlement Judge
Law Firm of Chasey Honodel
Gary D. Thompson
Bremer Whyte Brown & O'Meara, LLP
Eighth District Court Clerk

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[3]In this regard, Shere v. Davis, 95 Nev. 491, 596 P.2d 499 (1979), is distinguishable. In Shere, the plaintiff presented unrefuted evidence that her injuries had been caused by the defendant. Id. at 492-93 & n.1, 596 P.2d at 500 & n.1.