

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN TAYLOR,  
Appellant,  
vs.  
ROBERT J. KILROY,  
Respondent.

No. 64283

**FILED**

SEP 30 2015

TRADIE 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 on damages in a personal injury action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Steven Taylor and respondent Robert Kilroy were involved in a serious automobile accident. Following the accident, Taylor sued Kilroy, and Kilroy counterclaimed against Taylor; both parties alleged negligence. The jury returned a verdict finding each party was 50 percent negligent and proximately caused the other party's damages. However, the jury awarded a tiny fraction of Kilroy's proven damages. Kilroy moved for a new trial on his claims limited to the issue of damages, and the district court granted Kilroy's motion. Taylor's appeal from the district court's order followed.<sup>1</sup>

Taylor raises three primary arguments on appeal. First, Taylor argues the district court abused its discretion by granting Kilroy's

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<sup>1</sup>As the parties are familiar with the facts of the present case, we do not recount them further except as necessary to our disposition.

motion for a new trial limited to damages because Kilroy waived his argument that the jury manifestly disregarded the district court's instructions. Second, Taylor contends a new trial on both liability and damages is warranted because the district court (a) failed to question the jury sua sponte regarding an inconsistent verdict before the jury's discharge, and (b) entered judgment on an inconsistent verdict.<sup>2</sup> Third, Taylor asserts the district court abused its discretion by granting a new trial on damages alone because liability and damages were interrelated.

A district court's decision granting or denying a motion for a new trial will not be reversed "absent a palpable abuse of discretion." *Krause, Inc. v. Little*, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001).

*Manifest disregard of jury instructions*

Taylor asserts that because Kilroy failed to object to the verdict before the district court discharged the jury, Kilroy waived his argument that the jury manifestly disregarded the district court's instructions. As such, Taylor contends that the district court abused its discretion by granting Kilroy's motion for a new trial limited to damages.

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<sup>2</sup>Taylor also argues that the district court abused its discretion by allowing testimony from Kilroy's trucking safety expert—Veryl Paul Herbert. Taylor specifically contends that Mr. Herbert lacked sufficient qualification to testify regarding the national standard of care for professional truck drivers. Taylor's argument, however, lacks merit. The record reflects that Mr. Herbert has substantial knowledge, experience, and training arising from a career spanning nearly four decades in the trucking industry. Under NRS 50.275 and *Hallmark v. Eldridge*, 124 Nev. 492, 499, 189 P.3d 646, 650-51 (2008), Mr. Herbert is sufficiently qualified as a trucking safety expert to testify regarding the national standard of care for professional truck drivers.

Although Nevada law requires a party to raise the manifest disregard argument before the district court discharges the jury, *Cramer v. Peavy*, 116 Nev. 575, 583, 3 P.3d 665, 670 (2000), Taylor failed to argue before the district court that Kilroy waived his manifest disregard argument. Because Taylor did not raise this issue before the district court, we will not consider it on appeal.<sup>3</sup> *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

### *Inconsistent Verdicts*

Taylor contends that the jury returned an inconsistent verdict, and that the district court was required to sua sponte question the jury regarding the inconsistent verdict. Because the district court failed to question the jury regarding the inconsistent verdict and because the district court entered judgment on the inconsistent verdict, Taylor argues the district court abused its discretion by failing to grant a new trial on both liability and damages. We disagree. Even if we concluded that the

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<sup>3</sup>To the extent that Taylor asserts the district court erred because it failed to specify, in the order granting a new trial limited to damages, which instructions the jury manifestly disregarded, his argument lacks merit. Findings of fact and conclusions of law are not required in an order granting or denying a motion for a new trial, and the record, as submitted by Taylor, adequately supports the district court’s determination. NRCP 52(a); see *In re Estate of Williams*, 109 Nev. 941, 493, 860 P.2d 166, 168 (1993) (providing that “[w]here findings of fact and conclusions of law are not required by NRCP 52(a), . . . the record must nonetheless indicate the support for the lower court’s decision”); see also *Cuzze v. Univ. & Cmty. Coll. Sys. Of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (concluding that “[w]hen an appellant fails to include the necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision”).

district court abused its discretion, Taylor has cited no legal authority to support the proposition that a new trial on both liability and damages is mandatory where a district court fails to question a jury regarding an inconsistent verdict or enters a judgment on an inconsistent verdict. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (recognizing arguments not cogently argued or supported by relevant authority need not be considered on appeal). Thus, the remaining question is whether the district court abused its discretion by limiting the new trial to the issue of damages.

*New trial limited to damages*

Taylor argues that the district court abused its discretion by granting a new trial limited to damages because the liability and damages issues were interrelated.<sup>4</sup> Kilroy, on the other hand, contends that the evidence supported the jury's liability determination, and, therefore, the district court properly granted a new trial on damages alone.

In support of their respective arguments, Taylor and Kilroy cite case law from jurisdictions throughout the United States. However, neither party cites *Shere v Davis*, 95 Nev. 491, 596 P.2d 499 (1979) or *Hogle v. Hall ex rel. Evans*, 112 Nev. 599, 916 P.2d 814 (1996)—the two Nevada cases that directly address whether a district court may properly

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<sup>4</sup>Because Taylor does not challenge the district court's determination that the damages award was "grossly inadequate, demonstrate[d] a manifest disregard or misapplication of the jury instructions, and [was] contrary to the evidence[.]" we do not consider whether the district court abused its discretion by granting a new trial based on the jury's manifest disregard of the jury instructions. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised by a party on appeal are deemed waived).

limit a new trial to the issue of damages. We are bound by those cases and apply them today.<sup>5</sup>

The Nevada Supreme Court has held that a new trial limited to damages is inappropriate where the issues of liability and damages are interrelated. *Shere*, 95 Nev. at 493, 596 P.2d at 500.

The supreme court first applied that test in *Shere*. There, the defendant in a negligence action arising from an automobile accident argued that the plaintiff's back injury was attributable to natural causes rather than the accident. *Id.* at 492 & n.1, 596 P.2d at 500 & n.1. On appeal from the district court's order granting a new trial on liability and damages, the Nevada Supreme Court concluded that a new trial on damages alone was inappropriate because the liability and damages issues were interrelated. *Id.* at 492, 493, 596 P.2d at 500

By contrast, in *Hogle*, the supreme court concluded that a new trial on liability and damages was unnecessary because the issues of liability and damages were not interrelated. 112 Nev. at 609, 916 P.2d at 821. In reaching that conclusion, the supreme court reasoned that the defendant pharmaceutical company conceded that the plaintiff's injuries

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<sup>5</sup>Taylor also asserts that the issues of liability and damages were interrelated because the jury returned a compromise verdict, but other than pointing to Kilroy's modest damages award, Taylor offered no evidence that this is the case. *See Hogle*, 112 Nev. at 609, 916 P.2d at 821 (concluding that given the lack of evidence of a compromise verdict, the district court did not err by granting additur rather than a new trial on both liability and damages); *see also Smallwood v. Dick*, 761 P.2d 1212, 1217 (Idaho 1988) (reasoning that "[t]he fact that the jury awarded the plaintiffs less than the amount of special damages that was supported by the unrebutted evidence at trial . . . does not prove that the verdict was a compromise"). As such, we need not further consider Taylor's argument.

were caused by his mother's use of the defendant's acne medication while she was pregnant. *Id.* Thus, the supreme court distinguished *Hogle* from *Shere*, explaining:

In *Shere*, the respondent suffered various injuries in a car accident. Some evidence suggested that a back injury of which respondent complained was not caused by the accident. There was clearly an interrelationship between liability and damages because if the back injury was not caused by the accident, then the damages would be decreased.

*Id.* Moreover, the supreme court observed, the jury in *Hogle* was clear in its assessment of the defendant's comparative fault. *Id.*

After a thorough review of the record in the present case, we conclude the issues of liability and damages are not interrelated. Nothing in the record suggests this case involved the question of whether the accident caused all of Kilroy's injuries. Instead, as revealed by the record, this case focused on the parties' liability.<sup>6</sup> And the jury was clear in its assessment of Taylor's and Kilroy's respective liability for the accident—a finding which the district court correctly concluded was supported by the evidence. Given the issues at trial, once the jury determined that Taylor was negligent, Kilroy became entitled to proven damages (subject to the rules of comparative fault). Thus, the present case is distinguishable from *Shere* where the damages could have been decreased if the injury was not

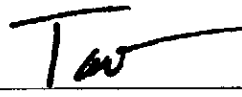
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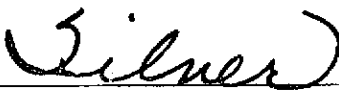
<sup>6</sup>We note that Taylor's appendix omitted key portions of the trial transcripts as well as a significant majority of the jury instructions, and we assume the missing materials supported the district court's determination. See *Cuzze v. Univ. & Cmty. Coll. Sys. Of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). However, the trial testimony included in the appendix reveals the witnesses focused on liability without discussing whether the accident caused Kilroy's injuries.

caused by the automobile accident. *See Shere*, 95 Nev. at 493, 596 P.2d at 500; *see also Hogle*, 112 Nev. at 609, 916 P.2d at 821. Instead, this case is similar to *Hogle* where liability and damages were not interrelated because the defendant conceded causation of the plaintiff's damages. *Hogle*, 112 Nev. at 609, 916 P.2d at 821. Because the issues of liability and damages were not interrelated in the present case, the district court did not abuse its discretion by granting Kilroy's motion for a new trial limited to damages. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Timothy C. Williams, District Judge  
Jack C. Cherry, Settlement Judge  
Schuetze & McGaha, P.C.  
Winner & Carson, P.C.  
Atkin Winner & Sherrod  
Eighth District Court Clerk