

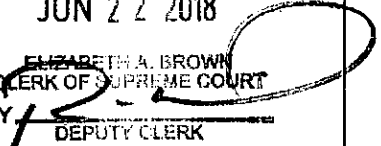
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WELLS CARGO, INC.,
Appellant,
vs.
JOHN ARMSTRONG,
Respondent.

No. 73842

FILED

JUN 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Wells Cargo appeals from a judgment, entered following a jury trial, awarding property damage for a damaged automobile. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Wells Cargo is a construction company. Respondent John Armstrong crashed his 1988 Ferrari Testarossa in front of Wells Cargo's place of business. The crash injured Armstrong and significantly damaged his Ferrari. Armstrong sued Wells Cargo for negligence, arguing Wells Cargo's work trucks spilled loose gravel onto the road and that this gravel caused Armstrong to lose control of his Ferrari. At trial, Armstrong presented evidence that his Ferrari was a constructive total loss pursuant to NRS 487.790 and that the repair costs approached or exceeded the Ferrari's pre-accident fair market value. Wells Cargo's expert likewise testified the Ferrari was a constructive total loss under the statute. Armstrong did not present evidence establishing the Ferrari's post-accident value.

After Armstrong rested his case-in-chief, Wells Cargo moved for judgment as a matter of law, arguing Armstrong failed to establish the damage element because Armstrong did not present evidence of the Ferrari's post-accident value. The district court denied the motion, concluding a directed verdict was improper because Armstrong had

presented evidence supporting his claim that the Ferrari was a total loss. At the close of evidence, Wells Cargo again moved for judgment as a matter of law on the same grounds. The district court again denied the motion.

Over Wells Cargo's objection, the district court gave instruction 29, which directed the jury to award as damage the pre-accident fair market value of the Ferrari if the jury determined the Ferrari was lost or destroyed because of the accident. The district court also gave Wells Cargo's proffered instruction, number 30, which alternatively allowed the jury to award as damage the difference between the Ferrari's pre-accident and post-accident fair market values.

The jury found that Wells Cargo's negligence contributed to the accident. The jury further determined that the Ferrari had been destroyed in the accident, and awarded Armstrong the pre-accident fair market value of the Ferrari in property damage.¹ Wells Cargo appeals.

On appeal, Wells Cargo argues the district court erred by denying Wells Cargo's two motions for judgment as a matter of law, and that the court further erred by giving instruction 29. We disagree.

Under NRCP 50(a) a party may move for judgment as a matter of law after a party has presented its evidence or at the close of the case. We review de novo a district court's decision on a motion for judgment as a matter of law. *D&D Tire v. Ouellette*, 131 Nev. 462, 466, 352 P.3d 32, 35 (2015). The court should enter a directed verdict under this rule where a party cannot maintain its claim under the evidence and controlling law. *Id.* Conversely, a directed verdict is improper if there is conflicting evidence on a material issue, as it is for the jury to draw inferences and determine

¹We do not recount the facts except as necessary to our disposition.

questions of fact. *Banks ex rel. Banks v. Sunrise Hosp.*, 120 Nev. 822, 839, 102 P.3d 52, 64 (2004); *see also Bliss v. DePrang*, 81 Nev. 599, 602, 407 P.2d 726, 727 (1965). In reviewing a district court's decision regarding a directed verdict, we view the evidence and all inferences in favor of the nonmoving party and will not weigh conflicting evidence or determine witness credibility. *D&D Tire*, 131 Nev. at 466, 352 P.3d at 35; *Bliss*, 8 Nev. at 601-02, 407 P.2d at 727;

The record demonstrates the district court did not err by denying Wells Cargo's first motion for judgment as a matter of law following Armstrong's case-in-chief. Armstrong claimed his Ferrari had been totaled, and presented expert testimony establishing that the repairs would exceed 70 percent of the Ferrari's pre-accident value. Armstrong's expert further opined that the repair costs could exceed the Ferrari's pre-accident value. NRS 487.790 states that a vehicle is a "total loss" where the cost of repairs exceeds 65 percent of the vehicle's pre-market value. Thus, under Nevada law, Armstrong presented sufficient evidence to support his claim that the Ferrari was a total loss.

The record likewise demonstrates the district court did not err by denying Wells Cargo's second motion for judgment as a matter of law at the close of evidence. Importantly, Wells Cargo's expert conceded that the Ferrari was a constructive total loss under NRS 487.790, and to the extent that there was conflicting evidence on whether the Ferrari was in fact a total loss or how much to award for property damage, these issues were questions of fact for the jury to determine. *See Banks*, 120 Nev. at 839, 102 P.3d at 64. Thus, the district court properly denied Wells Cargo's second motion for judgment as a matter of law and submitted the case to the jury.

Finally, we consider whether the district court erred by giving instruction 29. Parties are entitled to jury instructions on every theory of their case that is supported by the evidence. *Johnson v. Egtedar*, 112 Nev. 428, 432, 915 P.2d 271, 273 (1996). District courts have broad discretion in settling jury instructions, and we review the court's decision for an abuse of discretion. *Bass-Davis v. Davis*, 122 Nev. 442, 447, 134 P.3d 03, 106 (2006).


We conclude the district court did not abuse its discretion by giving instruction 29. Wells Cargo relies on *Hornwood v. Smith's Food King No. 1*, 107 Nev. 80, 807 P.2d 208 (1991), to argue that the correct measure of damage here was the difference between the fair market value of the Ferrari before and after the accident, as provided by instruction 30, not the pre-accident value alone, as provided by instruction 29.² But, *Hornwood* addressed the calculation of damage where the property's value was diminished, as opposed to destroyed. *Id.* at 86, 807 P.2d at 212. In contrast here, Armstrong argued his Ferrari was a total loss and presented evidence to support this argument. The district court therefore gave the jury instruction 29, a Nevada pattern instruction,³ a correct statement of Nevada law, for determining damage where property is lost or destroyed. Because Wells Cargo fails to provide this court with Nevada authority requiring Armstrong to present evidence of the Ferrari's salvage value, in

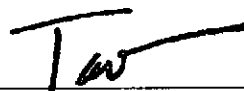
²Wells Cargo also contends instructions 29 and 30 conflicted, resulting in prejudice. This argument is without merit, as instructions 29 and 30 were alternative pattern instructions under which the jury could assess Armstrong's property damage.


³See Nev. J.I. 10.10 ("PERSONAL PROPERTY LOST OR DESTROYED. The plaintiff's property that was lost or destroyed in, or because of, the accident. That amount is the fair market value of such property at the time of its loss or destruction.").

addition to the pre-accident value, to support his damage claim, we need not address this argument further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (this court need not consider arguments not supported by relevant authority). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Jay Young, Settlement Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Hicks & Brasier, PLLC
Nettles Law Firm
Eighth District Court Clerk