

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CITY OF RENO, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,  
Appellant,  
vs.  
JACOB BEDIAN F/K/A HAGOB  
WARJEBEDIAN,  
Respondents.

No. 62047

FILED

DEC 22 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
CHIEF CLERK

**ORDER OF REVERSAL AND REMAND**

This is an appeal from a district court order granting a post-trial motion for judgment as a matter of law and additur in a personal injury action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

On June 2, 2007, Officer Bernard LaMere of the Reno Police Department took Respondent Jacob Bedian, formerly known as Hagob Warjabedian, into custody. With Bedian in the backseat of his patrol car, Officer LaMere proceeded toward the Washoe County Jail. While en route, Bedian became unresponsive. Based on his belief that Bedian required medical attention, Officer LaMere “went Code 3” — using emergency lights and sirens — toward St. Mary’s Hospital. Traveling southbound on Sierra Street with his lights and sirens activated, Officer LaMere entered the intersection of Sierra Street and Maple Street against a red light. Adam Jasa, who was driving his Jeep Cherokee eastbound on the freeway off-ramp that becomes Maple Street, entered the intersection under a green light and collided with the passenger side of Officer LaMere’s patrol car. Bedian was the only person injured in the collision.

Bedian subsequently filed a Complaint asserting claims for negligence and negligence per se against the City of Reno and Jasa, and the matter proceeded to a jury trial. After the close of evidence, Bedian moved for the dismissal of certain claims or arguments, but Bedian did not bring any motion for judgment as a matter of law concerning either defendant's liability. The jury returned a verdict finding in favor of the City and Jasa.

Bedian filed Plaintiff's Motion for New Trial, or in the Alternative, Motion for Judgment Notwithstanding the Verdict and Additur (the "Motion") within ten days after the district court entered judgment in accordance with the jury's verdict. In the Motion, Bedian asked the district court to either: 1) vacate the verdict in favor of the City and order a trial; or 2) enter judgment in favor of Bedian and against the City, and to assess damages in the amount of \$64,745.00 for medical expenses and \$40,000.00 for pain and suffering. The district court granted Bedian's request for judgment as a matter of law against both defendants and ordered a new trial as to the issue of damages only, unless the City and Jasa agreed to an additur in the amount of \$92,745.00.<sup>1</sup> The district court's order is silent as to Bedian's alternative motion for new trial.

Both the City and Jasa appealed; however, Jasa and Bedian subsequently reached a resolution and Jasa's appeal was dismissed. Accordingly, only the City's appeal remains.

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<sup>1</sup>As set forth in *Lee v. Ball*, 121 Nev. 391, 394-95, 116 P.3d 64, 66-67 (2005), "additur may not stand alone as a discrete remedy; rather it is only appropriate when presented to the defendant as an alternative to a new trial on damages."

“This court reviews a district court's order granting judgment as a matter of law de novo.” *Reyburn Lawn v. Plaster Development Co.*, 127 Nev. \_\_\_, 255 P.3d 268, 275 (2011).

Post-trial motions for judgment as a matter of law (JMOL) are governed by NRCP 50. NRCP 50 is patterned after Rule 50 of the Federal Rules of Civil Procedure (FRCP); indeed, the two rules are virtually identical. Prior to 2005, NRCP 50 differed from FRCP 50 by permitting a court to grant a post-trial motion for JMOL even though a similar motion seeking JMOL had not been filed earlier in the case. However, in 2005, NRCP 50 was amended to model FRCP 50, and both rules now expressly state that a post-trial motion for JMOL cannot be granted unless a companion motion was made earlier in the trial by the same party. As it now reads, NRCP 50(a) states as follows:

(1) If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at the close of the evidence offered by the nonmoving party or at the close of the case. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

If the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, “[t]he movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment and may alternatively

request a new trial or join a motion for new trial under Rule 59.” NRCP 50(b). If the court grants the renewed motion, “the court shall also rule on the motion for new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for new trial.” NRCP 50(c)(1).

Here, Bedian did not bring a motion for judgment as a matter of law against the City pursuant to NRCP 50(a) before the case was submitted to the jury. Because there was no NRCP 50(a) motion to renew, the Motion was procedurally improper. See NRCP 50(b) (“[t]he movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment . . .” (emphasis added)); see also NRCP 50(b) Drafter’s Note 2004 (noting that the Nevada rule “takes the same approach as the federal rule” in that “a post-verdict motion for judgment as a matter of law is a renewal of an earlier motion made before or at the close of evidence.”).


Federal courts interpreting FRCP 50 have uniformly held that a ‘renewed’ motion filed under subdivision (b) must have been preceded by a motion filed at the time permitted by subdivision (a)(2). See *EEOC v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009) (“A Rule 50(b) motion for judgment as a matter of law is not a freestanding motion. Rather, it is a renewed Rule 50(a) motion.” (internal quotation marks omitted)); *Tortu v. Las Vegas Metropolitan Police Dept.*, 556 F.3d 1075, 1083 (9th Cir. 2009) (“Failing to make a Rule 50(a) motion before the case is submitted to the jury forecloses the possibility of considering a Rule 50(b) motion.”).


In this case, the district court erred by granting judgment as a matter of law in Bedian's favor, and therefore, no valid judgment exists holding the City liable to Bedian underlying the district court's order for additur. The district court's entry of post-trial JMOL must therefore be vacated.


Additionally, the record does not clearly indicate whether the district court ruled on Bedian's alternative NRCP 59 motion for new trial. See NRCP 50(c)(1). On remand, the district court must address this motion, or clarify whether it was intended to have been denied.<sup>2</sup>

We therefore,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

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

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

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

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<sup>2</sup>We note that neither party cited *Cramer v. Peavy*, 116 Nev. 575, 3 P.3d 665 (2000) in their briefing on appeal, and it is not clear whether the district court considered it.

cc: Hon. Patrick Flanagan, District Judge  
Margo Piscevich, Settlement Judge  
Reno City Attorney  
Galloway & Jensen  
Washoe District Court Clerk