

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH HARTMANN,
Appellant,
vs.
EDWARD O'DONNELL AND LEWIS
HOMES MANAGEMENT
CORPORATION, A NEVADA
CORPORATION,
Respondents.

No. 36960

FILED

MAR 29 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment entered on a jury verdict and an order denying a motion for a new trial. On appeal, appellant Kenneth Hartmann argues that the district court erred in denying his motions for a directed verdict and a new trial. We disagree.

Motion for directed verdict

Hartmann argues that the district court should have granted his motion for a directed verdict on the issue of liability because there were no issues of material fact at the time he made his motion. We disagree.

NRCP 50(a) provides that a motion for a directed verdict can be made at the close of a case and "[i]f the evidence is sufficient to sustain a verdict for the opponent, the motion shall not be granted." On reviewing a denial of a motion for a directed verdict, this court views the evidence and all inferences to be drawn therefrom in the light most favorable to the party against whom the motion is made.¹ If facts are in dispute or if reasonable people could draw different conclusions from the facts, the

¹Bliss v. DePrang, 81 Nev. 599, 601, 407 P.2d 726, 727 (1965).

question is one for the jury and not one of law for the court.² Where there is conflicting testimony on material issues, the court should not direct a verdict.³

We find that there was conflicting testimony at trial as to whether respondent Edward O'Donnell was lawfully in the intersection at the time of the collision, whether he failed to yield to Hartmann, and whether he failed to signal prior to changing lanes. Viewing the conflicting evidence in a light most favorable to O'Donnell, we conclude that the district court did not err in denying Hartmann's motion for a directed verdict on the issue of liability.

Motion for a new trial

Hartmann also argues that the district court should have granted a new trial because the jury disregarded evidence and jury instructions in rendering a verdict in favor of O'Donnell. We disagree.

NRCP 59(a)(5) states that a new trial may be granted when there is a "[m]anifest disregard by the jury of the instructions of the court." This court has held that "[i]n 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."⁴

²Id. at 602, 407 P.2d at 728.

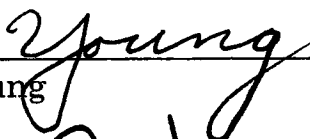
³Id.

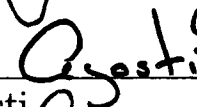
⁴M & R Investment Co. v. Mandarino, 103 Nev. 711, 716, 748 P.2d 488, 491 (1987) (quoting Weaver Brothers, Ltd. v. Misskelley, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982)).

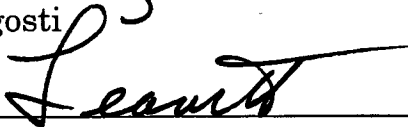
At trial, there was an issue as to whether O'Donnell was the proximate cause of Hartmann's injuries. The jury was presented evidence that supports the inference that Hartmann's injuries were due to a pre-existing condition. Specifically, Dr. Cichon, an independent medical examiner, testified that in his opinion, none of the complaints Hartmann made were attributable to the accident.

Hence, we find that there was conflicting evidence as to whether O'Donnell was the proximate cause of Hartmann's injuries. Thus, it was not impossible for the jury to reach a verdict in favor of O'Donnell. Accordingly, we conclude that the district court did not err in denying Hartmann's motion for new trial.⁵

Having considered Hartmann's arguments, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Gene T. Porter, District Judge
Albert D. Massi, Ltd.
Lincoln, Gustafson & Cercos
Clark County Clerk

⁵Hartmann also argues that the jury disregarded court instructions regarding liability because they found O'Donnell was not negligent. After careful consideration, we conclude that this argument lacks merit because, based on the evidence, it would not have been impossible for the jury to reach a verdict for O'Donnell.