

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT MCGHIE,  
Appellant,  
vs.  
PEGGY LYNNE ASHMAN,  
Respondent.

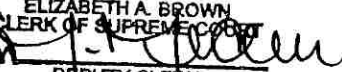
No. 86225-COA

FILED

MAY 28 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

ORDER OF AFFIRMANCE

BY   
DEPUTY CLERK

Scott McGhie appeals from judgment entered, pursuant to a jury verdict, in a negligence action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

In February 2018, in the midafternoon on a clear day, McGhie, then age 38, and respondent Peggy Lynne Ashman, a longtime Las Vegas resident, were involved in a motor vehicle accident. McGhie was driving his work vehicle, a commercial plumbing van, and Ashman was driving a 2010 Mercedes-Benz ML-350 SUV. They were driving northbound on North Buffalo Drive, which has three lanes of traffic, near Summerlin Parkway in Las Vegas. Ashman was driving, for business purposes, to an unfamiliar address and had a passenger in her car.<sup>1</sup> McGhie, a plumber, was driving from a plumbing supply house to a job site. Ashman realized that she was unsure of the way to the address and intended to pull into a parking lot on the righthand side of the road to reorient herself. Ashman was not driving in the righthand lane when she made this decision. The parking lot was close to where the accident occurred, but it appears that Ashman did not have to immediately change lanes to enter the parking lot.

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<sup>1</sup>The passenger did not provide a statement at the scene and did not testify at trial.

McGhie was driving in the far-right lane while Ashman was driving either in the middle lane or the far-left lane, no other vehicles were in the vicinity.<sup>2</sup> McGhie testified that he saw Ashman make a sharp turn then start to move towards him. McGhie stated that he honked his horn and “just barely had enough time to clinch and hold on.” Ashman testified that she put on her turn signal and proceeded to merge across the road into the far-right lane. Ashman also testified that she checked her mirrors and looked over her shoulder for traffic before changing lanes.

Regardless of any preventative actions taken by Ashman, Ashman hit McGhie’s vehicle while she changed lanes. In an interrogatory, Ashman stated that she thought McGhie might have been speeding or suddenly increased his speed. During trial, Ashman testified that she had no evidence that McGhie was speeding or suddenly sped up. Ashman and McGhie both testified that they were travelling at 35 mph, which was below the posted speed limit of 45 mph. The front passenger portion of Ashman’s vehicle, near the wheel, struck the driver’s side of McGhie’s van. Once McGhie’s vehicle was struck by Ashman, his van hit the front corner of an island in the roadway. Both vehicles sustained visible damage but were able to be driven after the accident. The parties contacted Nevada Highway Patrol and gave statements to the responding trooper. McGhie told the trooper that he was injured and was experiencing soreness in his shoulder and hip. Yet, we note that during his deposition, McGhie stated that he did not experience soreness and pain until about two days after the accident. The state trooper cited Ashman for causing the accident, but the record is

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<sup>2</sup>We note that Ashman testified that she did not merge across several lanes of traffic before the accident, but it is undisputed that McGhie was in the far-right lane.

silent as to what, if anything, subsequently happened related to that citation.

McGhie traveled to Texas a few days after the accident to visit family and stated, in his deposition, that his lower back began to hurt while on the trip. During trial, McGhie testified that he was sore after the accident and began feeling agonizing pain while in Texas. Once he returned home, McGhie began receiving chiropractic treatment. The treatments initially provided McGhie some relief, but he was eventually referred to a pain specialist for further treatment. McGhie's pain continued to persist, and he developed radiating pain in his left hip and leg. An MRI revealed McGhie had two disc herniations. McGhie received two steroid injections to treat his pain, but the injections failed to provide McGhie with lasting pain relief. Additionally, a July 2020 surgery resolved McGhie's leg pain, but not his low back pain. McGhie's doctor has therefore stated that McGhie will likely need lumbar fusion surgery in the future.

McGhie filed a complaint in August 2019 in which he alleged that Ashman negligently caused the accident that caused the injury to his lower back. During the eight-day jury trial, both parties, McGhie's wife, an accident reconstructionist for Ashman, and several doctors testified. The trooper did not testify, and McGhie offered no evidence showing an adjudication of the cited traffic violation.

McGhie's doctors testified on direct that the accident caused his back injuries, but admitted during cross examination that McGhie's condition could have been degenerative and could have been present before the motor vehicle accident. Ashman also emphasized that McGhie worked as a plumber before and after the motor vehicle accident, which likely either exacerbated or caused his lower back pain. During closing argument,

McGhie requested that the jury award him \$7,650,203 in damages. The jury returned a special verdict in favor of Ashman and found that Ashman was not negligent.

McGhie moved for a new trial and argued that the jury manifestly disregarded the jury instructions, jury nullification occurred, Ashman is judicially estopped from arguing the inconsistent position that the jury could have found Ashman not negligent, and Ashman made a judicial admission of liability. The district court denied McGhie's motion after a hearing, and also denied his later motion for reconsideration. McGhie now appeals and argues that substantial evidence does not support the jury's verdict, and that the district court abused its discretion when it denied his motion for a new trial. We disagree.

*Sufficient evidence supports the jury's verdict*

McGhie argues that there is no evidence to support the jury's verdict and that Ashman made judicial admissions that she caused the accident. Ashman replies that she presented evidence from which the jury could reasonably conclude that she was not negligent.

We will not overturn a jury's verdict if it is supported by substantial evidence. *Clark Cnty. Sch. Dist. v. Payo*, 133 Nev. 626, 636, 403 P.3d 1270, 1278 (2017). Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." *Id.* at 636, 403 P.3d at 1278-79 (quoting *Finkel v. Cashman Pro., Inc.*, 128 Nev. 68, 73, 270 P.3d 1259, 1262 (2012)). This court assumes that the jury believed all evidence favorable to the prevailing party and drew all reasonable inferences in the prevailing party's favor. *Paullin v. Sutton*, 102 Nev. 421, 423, 724 P.2d 749, 750 (1986).

The jury was instructed that negligence is “the failure to do something, which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, to avoid injury to themselves or others.” The jury was also instructed that, under NRS 484B.223(1), drivers are required to stay within their lane unless they give an appropriate turn signal and determine that it is possible to safely change lanes. The jury was instructed that violating NRS 484B.223(1) is negligence. The jury special verdict form first asked the jury to decide if Ashman was negligent before deciding whether Ashman’s negligence proximately caused McGhie’s damages. The jury did not find Ashman negligent, so it never decided if Ashman was the proximate cause of McGhie’s damages.

While Ashman admitted that she was cited as the at-fault driver for the accident, no evidence was introduced establishing an at-fault adjudication of this citation.<sup>3</sup> Additionally, while Ashman admitted that she was confused about her direction of travel to her ultimate destination, she also testified that she used her turn signal, checked her mirrors, and looked over her shoulder to determine if the lane was clear before she changed lanes. Ashman could not explain why she did not see McGhie’s van, so the jury was tasked with determining if McGhie had proven that Ashman was not reasonably careful in light of her testimony about crashing despite using her turn signal and checking her surroundings. Substantial evidence supports the jury’s finding that Ashman was not negligent.

McGhie also argues that since Ashman did not argue that McGhie was comparatively negligent, the jury should have disregarded all

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<sup>3</sup>We also note that none of the jury instructions mentioned the citation.

of Ashman's testimony that sought to avoid fault for the accident. This argument is not persuasive. Even though Ashman decided not to pursue a comparative negligence defense at trial as an alternative or primary defense, she did not admit liability. Therefore, the jury was obligated to determine if she acted without reasonable care. The jury apparently found that McGhie had not proven that Ashman acted without reasonable care and the evidence, while also supporting the opposite conclusion, could support the jury's finding with all credibility determinations and inferences taken in favor of Ashman.

Finally, McGhie argues that Ashman made judicial admissions that she caused the accident. A judicial admission is a "deliberate, clear, unequivocal statement[ ] by a party about a concrete fact within that party's knowledge." *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011) (internal quotation marks omitted). "What constitutes a judicial admission should be determined by the circumstances of each case and evaluated in relation to the other testimony presented in order to prevent disposing of a case based on an unintended statement made by a nervous party." *Id.* However, "oral testimony should not be considered a judicial admission but, rather, should be evaluated as evidence and considered in context with any other testimony." *Id.* at 343, 255 P.3d at 276-77. A judicial admission is conclusively binding. *Palmer v. Pioneer Inn Assocs.*, 118 Nev. 943, 954 n.31, 59 P.3d 1237, 1244 n.31 (2002).

Here, McGhie argues that Ashman deliberately and unequivocally admitted that she hit McGhie's vehicle which means that the jury should have relied upon this statement to conclude that Ashman was negligent. First, this was an oral statement, which is not considered a

judicial admission. Second, even if this was a judicial admission, it does not mean that Ashman was negligent. As discussed above, negligence was defined for the jury as “the failure to do something, which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, to avoid injury to themselves or others.” Just because Ashman said she drove into McGhie does not automatically mean that she was negligent. Ashman testified that she turned on her turn signal, checked her mirrors, and checked over her shoulder before changing lanes.

Finally, McGhie argues that Ashman admitted during closing argument that she negligently caused the accident. We note that the portion of the record cited by McGhie merely reveals that Ashman referred back to her direct examination and stated that she was responsible for hitting McGhie. This does not mean that Ashman was negligent because, once again, Ashman testified that she turned on her turn signal, checked her mirrors, and checked over her shoulder and did not see McGhie before changing lanes. Accordingly, we conclude that “a reasonable mind might accept [this evidence] as adequate to support a conclusion” as stated in the jury’s verdict. *Payo*, 133 Nev. at 636, 403 P.3d at 1278-79 (internal quotation marks omitted).

*The district court acted within its discretion when it denied McGhie’s motion for a new trial*

McGhie argues that the district court abused its discretion when it denied his motion for a new trial because the jury disregarded the court’s instructions and committed misconduct by engaging in what amounted to jury nullification. Ashman replies that the district court did not abuse its discretion and that the jury properly considered all instructions and did not engage in misconduct.

This court reviews a district court's decision to deny a motion for a new trial for an abuse of discretion. *Wyeth v. Rowatt*, 126 Nev. 446, 460, 244 P.3d 765, 775 (2010). An abuse of discretion occurs when a district court makes an obvious error of law. *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 563, 598 P.2d 1147, 1149 (1979). A district court may grant a new trial if there is jury misconduct or if the jury manifestly disregards the court's instructions. NRCP 59(a)(1)(B), (E). "Jury nullification is the knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue . . . or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness." *Evans-Waiiau v. Tate*, 138 Nev., Adv. Op. 42, 511 P.3d 1022, 1028 (2022) (internal quotation marks omitted).

Here, McGhie argues that the jury did not properly apply and disregarded jury instructions 26 (providing the jury with an explanation of "negligence") and 29 (providing that violating NRS 484B.223(1) is negligence). As discussed above, the evidence provided at trial was such that a reasonable mind might accept it as adequate to support the conclusion of the failure to prove negligence, which supports the jury's verdict and shows that the jury properly followed the instructions. Ashman admitted that she hit McGhie's van, but she also testified that she used her turn signal, checked her mirrors, and looked over her shoulder and did not see McGhie's vehicle in the travel lane. From this evidence, the jury could reasonably have concluded that Ashman acted prudently and that this was an unavoidable accident. Accordingly, McGhie has not demonstrated that the jury disregarded the instructions. Therefore, the district court did not abuse its discretion when it denied McGhie's motion for a mistrial.



McGhie also draws attention to the district court's statement during a hearing on his motion for a new trial where the court stated that it likely would have granted a directed verdict as to liability if McGhie had asked for one. McGhie argues that because "[a] directed verdict is proper only in those instances where the evidence is so overwhelming for one party that any other verdict would be contrary to the law," it is absurd that the jury reached a finding of not negligent. *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 482, 851 P.2d 459, 461 (1993) (alteration in original) (internal quotation marks omitted). We note that, despite McGhie's assertion, the district court never definitively stated that it would have granted the hypothetical motion. Further, if the district court really thought that a directed verdict was proper, it could have granted the post-trial motion for a new trial. Yet it did not. The district court was in the best position to determine if the jury acted beyond reason and, as discussed above, substantial evidence supports the jury's verdict and does not support the assumption that the jury disregarded the court's instructions.

Finally, McGhie argues that the jury engaged in jury nullification because it refused to accept Ashman's testimony that she caused the accident and therefore refused to follow the law as instructed. As discussed above, substantial evidence supports that the jury considered Ashman's culpability for the accident and scant evidence supports that the jury knowingly, deliberately, and improperly rejected evidence. The jury heard that Ashman turned on her turn signal, checked her mirrors, and checked over her shoulder and did not see McGhie before changing lanes. The jury evidently believed that McGhie had not proven that Ashman was negligent while she was driving, despite her admission that she hit

McGhie's van. Therefore, we conclude that the district court did not abuse its discretion when it denied McGhie's motion for a new trial.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Susan Johnson, District Judge  
Prince Law Group  
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Messner Reeves LLP  
Eighth District Court Clerk