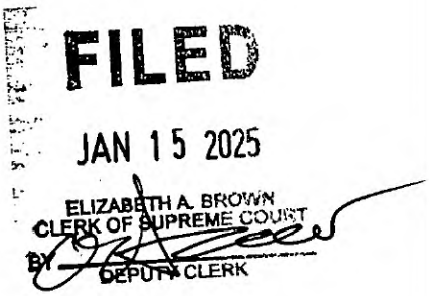
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK VONSEYDEWITZ, AN INDIVIDUAL,
Appellant,
vs.
DEREK MOELLINGER (FOUNDER/OWNER OF VICE PROPERTY MANAGEMENT A/K/A VICE REALTY),
Respondent.

No. 88657-COA



ORDER OF AFFIRMANCE

Frederick Vonseydewitz appeals from the district court's entry of judgment pursuant to a short trial verdict. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.[1]

Vonseydewitz alleged that, in or around March 2022, he contacted Vice Realty Property Management, owned by respondent Derek Moellinger, and inquired into its policy regarding renting to those with a felony conviction. An unidentified employee allegedly stated that Vice Realty does not accept applications from those with felony convictions. Vonseydewitz then engaged in an email exchange with Moellinger regarding Vice Realty's apparent policy of refusing to rent to convicted felons and whether it violated the Fair Housing Act (FHA) and/or Nevada housing laws because it disproportionately affected Hispanics. The parties were unable to come to an agreement and Vonseydewitz subsequently filed

[1]Cheryl Wingate, Pro Tempore Judge, presided over the jury trial in this case as part of the Short Trial Program and issued the order denying the motion for judgment notwithstanding the verdict or in the alternative a motion for a new trial.

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a civil action against Moellinger alleging this rental policy violated the FHA, NRS 118.100, and NRS 233.010.

This matter was assigned to the Court Annexed Arbitration Program and the parties proceeded to an arbitration hearing. Following the hearing, the arbitrator entered an award finding that Vonseydewitz failed to establish, by a preponderance of the evidence, that Moellinger's alleged policy had a disparate impact on Hispanics. Vonseydewitz filed a request for a trial de novo and the case proceeded to trial in the Short Trial Program.

Prior to the trial, the short trial judge issued an order on competing motions in limine which: (1) excluded various screenshots of Vice Realty rental advertisements, which contained language stating applicants could not have criminal records, as hearsay which did not fall within the business record exception; (2) found the arbitration award would be introduced during the trial pursuant to NAR 20(a)(1); (3) Moellinger could not introduce evidence regarding the nature of Vonseydewitz's criminal convictions but could ask him if he has been convicted of a felony and the date of said felony; and (4) the parties would use Vonseydewitz's jury instruction regarding liability under the FHA. The parties participated in a short trial on December 8, 2023, and the jury returned a verdict in favor of Moellinger.

Vonseydewitz subsequently filed a request for judgment notwithstanding the verdict[2] or, in the alternative, a motion for a new trial. Vonseydewitz argued he submitted overwhelming evidence demonstrating

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[2]Vonseydewitz titled his filing as a request for judgment notwithstanding the verdict; however, NRCP 50(b) has since adopted more modern language and refers to this as a renewed motion for judgment as a matter of law. However, for consistency, this order utilizes the terminology used by the parties.

a blanket ban on renting to those with criminal convictions disproportionately impacted Nevada Hispanics, which constitutes discrimination under the FHA, and, thus, a reasonable jury could only have found in his favor. Alternatively, Vonseydewitz argued he was entitled to a new trial because: (1) the parties inadvertently failed to redact an email, which revealed his conviction was "sex based;" (2) Moellinger made several prejudicial statements regarding sex offenders; (3) the jury instructions erroneously imposed a heightened evidentiary standard which improperly required the jury to determine whether the alleged policy had a "concrete or immediate" impact on Hispanics; (4) the rental advertisements should have been admitted as impeachment evidence; and (5) the district court erroneously admitted the arbitration award. The short trial judge denied the motion for judgment notwithstanding the verdict finding that Vonseydewitz failed to request a directed verdict during the trial and further failed to provide sufficient evidence demonstrating Moellinger's alleged rental policy caused a disparate impact on Hispanic renters. The short trial judge further denied the motion for a new trial finding: (1) Vonseydewitz himself introduced the unredacted exhibit; (2) he waived his argument regarding the jury instructions because he approved the proposed instructions and subsequently failed to object to them; (3) NAR 20(a)(1) required the introduction of the arbitration award; and (4) the screenshots he sought to introduce were hearsay and did not fall within the business record exception.

After the short trial judge held a hearing on Vonseydewitz's motions, but before a written order was issued, Vonseydewitz subsequently filed a motion to vacate the arbitration award arguing that the arbitrator demonstrated a manifest disregard for the law. Moellinger opposed the

motion, arguing Vonseydewitz's motion was an improper attempt to relitigate the issues presented during the short trial program. The short trial judge subsequently denied Vonseydewitz's motion to vacate the arbitration award.

Following the denial of Vonseydewitz's post-trial motions, the short trial judge entered judgment upon the short trial jury verdict. Vonseydewitz did not file an objection, and the district court subsequently entered judgment upon the short trial jury verdict. This appeal followed.

On appeal, Vonseydewitz challenges the denial of his request for a judgment notwithstanding the verdict and the denial of his motion for a new trial, arguing he was not required to file a motion for a directed verdict because the alleged errors fell within an exception and/or the various errors entitled him to a new trial.

"Decisions concerning motions for judgment notwithstanding the verdict or for a new trial rest within the district court's sound discretion and will not be disturbed absent abuse of that discretion." *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 362, 212 P.3d 1068, 1077 (2009). NRCP 50(b) allows a party to renew a motion for judgment as a matter of law, notwithstanding the verdict, after trial. Judgment as a matter of law[3] is proper when "the evidence is so overwhelming for one party, that any other verdict would be contrary to the law." *M.C. Multi-Family Dev. v. Crestdale Assocs.*, 124 Nev. 901, 910, 193 P.3d 536, 542 (2008) (internal citation and quotation omitted). However, a "renewed" motion filed under subdivision (b) requires the party to have previously filed a motion for judgment as a

[3]Judgment as a matter of law is synonymous with a directed verdict for the purposes of NRCP 50(a). *Bliss v. DePrang*, 81 Nev. 599, 601, 407 P.2d 726, 727 (1965).

matter of law. NRCP 50(b)(1); *see also Lehtola v. Brown Nev. Corp.*, 82 Nev. 132, 136, 412 P.2d 972, 975 (1966). A court may nevertheless grant a motion for judgment as a matter of law absent a preceding NRCP 50(a) motion when there is plain error or "a showing of manifest injustice." *Avery v. Gilliam*, 97 Nev. 181, 183, 625 P.2d 1166, 1168 (1981) (internal quotation marks omitted) (applying the exception when the verdict was "manifestly and palpably contrary to the evidence").

On appeal, Vonseydewitz argues the short trial judge abused her discretion by denying his motion for judgment notwithstanding the verdict based on his failure to file a motion for judgment as a matter of law. He asserts that his motion should have been granted despite this fact because the allegedly erroneous jury instructions, and other alleged errors, constituted a manifest injustice. However, in making this argument on appeal, Vonseydewitz fails to challenge the district court's alternative finding that he was not entitled to judgment notwithstanding the verdict because he failed to establish a causal connection between the alleged rental policy and a disparate impact on Hispanic renters. And because Vonseydewitz has failed to challenge all of the alternate grounds on which the court denied his motion for judgment notwithstanding the verdict, we necessarily affirm the district court's denial of his motion for such relief.[4] *See Hung v. Genting Berhard*, 138 Nev. 547, 547-48, 513 P.3d 1285, 1286

[4]Vonseydewitz's informal opening brief contains a single summary statement requesting, without explanation, that this court direct the entry of judgment notwithstanding the verdict in his favor based upon the "uncontested evidence." Because Vonseydewitz fails to provide any cogent argument or explanation in support of the request, we do not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are unsupported by cogent arguments).

(Ct. App. 2022) (holding that, when a district court provides independent and alternative grounds to support its ruling, the appellant must properly challenge all of the grounds or the ruling will be affirmed).

We now turn to Vonseydewitz's arguments regarding his motion for a new trial. Under NRCP 59(a)(1), a new trial may be granted for various reasons set forth in that rule, including irregularities in the proceedings, any abuse of discretion that prevents a party from having a fair trial, and objected to errors of law that occurred in the case. In this case, however, Vonseydewitz has failed to provide an adequate record on appeal for this court to adequately analyze his claims for a new trial. Thus, we affirm the short trial judge's order denying his new trial motion. Although there is no formal reporting of short trials unless paid for by the parties, NSTR 20, it is an appellant's burden to provide the "portions of the record essential to [the] determination of issues raised in appellant's appeal," NRAP 30(b)(3). And where, as was apparently the case here, the trial proceedings were not reported or recorded, "the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection," which "shall be served on the respondent, who may serve objections or proposed amendments within 14 days after being served." NRAP 9(d). Here, Vonseydewitz failed to utilize this option, resulting in a deficient record on appeal that, as discussed more fully below, leaves us unable to fully evaluate his arguments pertaining to the denial of his motion for a new trial.

For example, Vonseydewitz argues Moellinger, while testifying, made at least two comments alluding to the nature of his criminal offense in violation of the short trial judge's granting of a prior motion in limine. But he further suggests the short trial judge sustained his objections to

those comments. Given the deficient record before us on appeal, this court has no way to verify what the allegedly offending comments were, how frequently they occurred, or whether the short trial judge properly responded to Vonseydewitz's objections, assuming he did object. Under these circumstances, we presume the missing portions of the record support the short trial judge's determination that a new trial was not warranted on this basis. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

We likewise presume the missing portion of the record supports the short trial judge's determination that a new trial was unwarranted based on Vonseydewitz's argument that an unredacted copy of an e-mail detailing the nature of his offense was improperly introduced at trial. *See id.* Notably, the short trial judge concluded relief was unwarranted on this point because Vonseydewitz himself had introduced the unredacted e-mail and, given the deficient record, we are unable to fully evaluate this determination.

Next, Vonseydewitz argues a new trial should have been granted because the short trial judge allowed erroneous jury instructions to be given. But in denying the motion, the short trial judge found that the parties agreed to the instructions and that Vonseydewitz failed to object to the instructions used at trial, such that he waived any objection to the jury instructions. Given the deficient record, however, we are unable to evaluate the short trial judge's findings on this issue and, thus, we presume the

missing portions of the record support the denial of the new trial motion. *See id.*[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Mark R. Denton, District Judge
Frederick Vonseydewitz
Kajioka & Associates
Eighth District Court Clerk

[5]Insofar as Vonseydewitz raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.