IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM D. WICKLAND,
Appellant/Cross-Respondent,
vs.
HOME DEPOT U.S.A., INC., A DELAWARE CORPORATION,
Respondent/Cross-Appellant.

No. 38298

FILED

MAY 0 6 2003

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

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a final judgment upon a jury verdict and an order denying motions for new trial. On appeal, the parties make several arguments.

First, Wickland argues the district court erred in finding insufficient evidence existed to support the claim of future lost earnings. We disagree. "[S]peculation not supported by evidence" is insufficient testimony.[1]

Wickland's testimony regarding future lost earnings failed to "provide the required evidentiary basis for determining a reasonably accurate award of damages."[2] Because his testimony as to future earning capacity was conjecture, the district court properly precluded the jury from considering the issue.

Second, Home Depot contends insufficient evidence existed to support a claim for past lost wages. We disagree. A jury's verdict, when supported by substantial evidence, "will not be overturned unless the

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[1]Gramanz v. T-Shirts and Souvenirs, Inc., 111 Nev. 478, 485, 894 P.2d 342, 347 (1995) (citing Advent Systems Ltd. v. Unisys Corp., 925 F.2d 670, 682 (3d Cir. 1991) ("a verdict may not be based on speculation")).

[2]Id. at 485, 894 P.2d at 347 (citing Mort Wallin v. Commercial Cabinet, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989)).

verdict is clearly erroneous when viewed in light of all the evidence presented."[3] Moreover, "where there is a conflict in the evidence, the verdict or decision will not be disturbed on appeal[4] . . . [unless] 'there is plain error in the record or . . . a showing of manifest injustice.'"[5]

A party claiming loss of earning capacity must prove the loss through "qualified expert testimony . . . or . . . equally competent evidence."[6] When seeking money damages, the party must prove both the fact of damages and the amount of damages.[7] NRS 50.265 allowed Wickland to testify about his opinions if based upon his own perceptions.[8]

Wickland testified that he had missed work and his ability to work had been reduced because of the injury. Further, he testified regarding income predating his injury to support his claim for lost wages. This was evidence "'a reasonable [jury] might accept as adequate to

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[3]Frances v. Plaza Pacific Equities, 109 Nev. 91, 94, 847 P.2d 722, 724 (1993).

[4]Id.

[5]Id. (quoting Price v. Sinnott, 85 Nev. 600, 607, 460 P.2d 837, 841 (1969)).

[6]Mort Wallin, 105 Nev. at 857, 784 P.2d at 955.

[7]Cathcart v. Robison, Lyle, Etc., 106 Nev. 477, 480, 795 P.2d 986, 987 (1990); see also Mort Wallin, 105 Nev. at 857, 784 P.2d at 955.

[8]NRS 50.265 states, "If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are . . . [r]ationally based on the perception of the witness."

support a conclusion.'"[9] As such, we conclude the jury did not err in awarding damages of $35,000 for past lost wages to Wickland.

Finally, Home Depot asserts the district court committed reversible error by allowing the jury to hear evidence regarding future lost wages. We disagree. If there is "[i]rregularity in the proceedings of the court," a new trial may be granted.[10] The party complaining of irregularity must show a reasonable presumption of injury.[11]

Home Depot speculated the jury was improperly influenced by Wickland's testimony about future lost earnings, but failed to present evidence the district court's decision injured it. In addition, nothing in the record suggests the jury was confused about the verdict. Thus, we conclude the district court acted properly in allowing Wickland to present evidence of future lost earnings. We further conclude the other contentions of Home Depot are without merit.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Gibbons

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[9]Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Edison v. Labor Board., 305 U.S. 197, 229 (1938)); quoted in McClanahan v. Raley's, Inc., 117 Nev. 921, 924, 34 P.3d 573, 576 (2001).

[10]NRCP 59(a)(1).

[11]Richardson v. Jones, 1 Nev. 405, 408 (1865).

cc: Hon. Connie J. Steinheimer, District Judge
Law Offices of Alan R. Smith
Perry & Spann/Reno
Washoe District Court Clerk