


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HARRAH'S LAUGHLIN, LLC,
Appellant,
vs.
CANDICE MADISON,
Respondent.

No. 88109-COA

FILED

AUG 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Harrah's Laughlin, LLC (Harrah's), appeals from a district court post-judgment order denying a motion for a new trial in a tort action. Eighth Judicial District Court, Clark County: Jacqueline M. Bluth, Judge.

In March 2018, respondent Candice Madison commenced the underlying negligence action against Harrah's. Madison alleged that while she was playing with her young children at a beach on Harrah's property, Harrah's "carelessly and negligently opened a fire sprinkler valve causing a forceful flood of water to be released onto the[] beach." Madison further alleged that, in her effort to protect her children from being swept away, she sustained injuries to her head, back, neck, shoulders, arms, and legs. Ultimately, she underwent surgery on her neck.

During discovery, Harrah's produced two surveillance videos related to the subject incident along with surveillance logs. After discovery closed, Madison asserted that there was missing "close-up" video of the incident and possibly other relevant video evidence. Anticipating a spoliation argument and request for sanctions from Madison, Harrah's filed

a motion in limine to preclude any reference to Harrah's alleged spoliation of evidence at trial, arguing that no "close-up" footage existed, all relevant video surveillance had been produced, and Madison failed to present evidence to the contrary. Madison opposed Harrah's motion in limine, asserting that if Harrah's was correct that no additional video evidence existed, it was because Harrah's had destroyed it. She moved to strike Harrah's answer as an NRCP 37 sanction for spoliating evidence. Madison asserted that Harrah's surveillance logs suggested there was relevant video footage that had not been produced. Madison further asserted that, based on the available metadata, the video footage had been modified after it was exported from Harrah's video surveillance system to be reviewed by Harrah's before it was produced during discovery. Harrah's opposed Madison's motion, reiterating its position that it had not spoliated evidence, intentionally or otherwise, and had produced all relevant surveillance video.

Following a hearing, the district court also entered an order denying Madison's motion to strike, finding that Madison failed to demonstrate Harrah's had engaged in the spoliation of evidence. At or near the same time, the district court also entered an order partially granting Harrah's motion in limine in part (the spoliation order), which incorporated the court's findings from its order denying Madison's motion to strike. In the spoliation order, the court precluded Madison from arguing that Harrah's purposefully tried to conceal or spoliage evidence. However, the court stated in the order that its ruling "[did] not preclude [Madison] from asking questions in regard to how [Harrah's] and its investigators chose to get which videos from which cameras."

During her opening statement, Madison vaguely asserted that Harrah's took "defensive action" when it reviewed the surveillance footage. In response, Harrah's requested a sidebar and, at the bench, raised concerns that Madison was attempting to argue that Harrah's spoliated evidence in violation of the district court's pretrial order. Based on the confusion regarding what was allowed under the spoliation order, the court clarified that the order prohibited Madison from arguing that Harrah's purposely tried to conceal relevant video evidence but that she could question the investigators' methodology for choosing the relevant videos from specific cameras to be produced in the litigation.

At the end of the first day of trial, the parties made the district court aware that they were discussing how the video deposition of Harrah's facility manager, Scott Bayliss—Harrah's NRCP 30(b)(6) deponent who was unavailable to testify at trial—would be presented to the jury to ensure "the flow" of his testimony. The parties agreed to remove the attorneys' objections made during Bayliss's video deposition and so advised the court. Although the final version of the edited video deposition was provided to Harrah's counsel in advance of it being played to the jury, Harrah's counsel admitted that he had not reviewed it before it was played at trial.

During trial the next day, Madison played portions of Bayliss's video deposition for the jury. As the video was played, Harrah's requested a bench conference and raised concerns that the deposition was "skipping forward" through certain testimony. In response, Madison's counsel explained that part of the video deposition had been edited so that Bayliss's answers to questions concerning the location of the incident were played together and, therefore, the order of Bayliss's testimony as presented to the jury differed from that in the video deposition. Harrah's counsel indicated

that it was his understanding the video deposition would be played in its original order with only objections being omitted. Although the district court expressed concerns with how the video had been edited, the court overruled Harrah's objection to it being played because it had already been played to the jury prior to Harrah's objection.

Next, in her case-in-chief, Madison called Harrah's risk manager, Susan Moffett, regarding the preservation of Harrah's video surveillance and whether any modifications had been made before it was disclosed. Moffett testified that video surveillance cannot be modified or altered once it is exported from the video surveillance system for production and that the exported video was watermarked to prevent modification. Madison asked Moffett why the video's metadata indicated that it had been modified at a particular time. Moffett explained that anytime a video is accessed to be reviewed, its last-modified date, as reflected in the metadata, changes, but that did not mean that the video itself had been modified. Madison then asserted that Moffett had previously admitted in her deposition that surveillance video could be modified. Moffett again explained that any video which had been exported and encrypted could not be altered in any way. When Madison began questioning the veracity of Moffett's statement, Harrah's counsel asked to approach the bench.

Harrah's objected to Madison's line of questioning, arguing that it violated the district court's pretrial spoliation order because Madison's line of questioning insinuated that Harrah's had purposefully concealed or spoliated evidence. Notwithstanding Moffett's explanation, Madison argued that the metadata supported that the video footage had been modified. The district court agreed with Harrah's, finding that the line of questioning violated its spoliation order and admonished counsel not to pursue that line

of questioning. Harrah's then requested that the court give a jury instruction to cure Madison's alleged insinuation that there had been some type of purposeful concealment or spoliation of evidence, which the court indicated it would consider. Harrah's did not request that the jury be orally admonished.

When Madison resumed questioning, Moffett was asked to confirm that Harrah's did not preserve video showing water flowing down the hill by the beach at other times throughout the day. Harrah's again asked to approach the bench. Harrah's again objected and argued that Madison was still insinuating that Harrah's had spoliated relevant video footage. Madison responded that the questioning had nothing to do with spoliation but rather preservation of other surveillance video, not necessarily depicting the event that purportedly led to Madison's injuries. The district court overruled Harrah's objection and held that the witness could respond to the question but instructed Madison's counsel to move on.

On recross, Madison asked whether the video surveillance was accessed at a time not recorded on the video surveillance log. Harrah's again objected, and the district court asked both parties to approach the bench. The court scolded Madison's counsel, stating that the questions insinuated that Harrah's purposefully spoliated evidence, which was outside the permissible questioning permitted by the spoliation order. The court terminated Madison's recross of Moffett, who the court then excused.

During the settling of jury instructions, the district court asked Harrah's to propose an instruction to address Madison's violation of its pretrial spoliation order. The court again scolded Madison's counsel for asking certain questions of Moffett during recross. The court warned

Madison's counsel that, although it did not like "dressing down" counsel in front of the jury, it would do so if counsel violated the spoliation order again.

The following day, Madison submitted a trial brief, which asserted that her counsel should be allowed to argue that Harrah's negligently, as opposed to purposefully, spoliated evidence. The district court disagreed and reiterated that the spoliation order specifically limited Madison to questioning witnesses about where the cameras were placed and from which cameras videos were taken. Harrah's argued that the district court should reprimand Madison's counsel for his misconduct in engaging in this line of questioning that suggested that spoliation of the video surveillance tapes had occurred, admonish the jury about counsel's improper conduct, and issue a curative instruction both admonishing counsel and advising the jury that Harrah's had not purposefully hid or spoliated evidence. The court agreed and Instruction 9 was read to the jury as follows:

The Court has found as a matter of law that Harrah's Laughlin did not purposefully attempt to hide or spoil evidence. You are to disregard any arguments or statements that Harrah's Laughlin purposely destroyed or manipulated evidence, including but not limited to, surveillance video pre- and post- incident.

During Madison's closing arguments, Madison's counsel commented that Harrah's "started saving the video shortly before the event occurred and did not preserve the portion of the video that would have shown exactly who was on the beach." He reminded the jury that Harrah's policy was to save video whenever Harrah's employees were alleged to be involved in an incident and commented that "Harrah's paid for a private investigator to follow [Madison] around for three days but didn't save an extra ten minutes of surveillance footage." Harrah's objected, stating that

Madison's comment about Harrah's failure to preserve extra video footage suggested that Harrah's "did not save it because they knew it would help [Madison]" and "that there was some malicious [intent]." The district court sustained the objection but did not admonish the jury, nor did Harrah's counsel request an admonishment. During closing, Madison also argued that Harrah's was asking the jury to "give them a pass" so it could continue engaging in bad conduct. Harrah's did not object to this argument.

Although Madison requested damages in excess of three million dollars, the jury returned a verdict in favor of Madison for \$800,000 in damages, which did not include future pain and suffering. The district court later awarded Madison \$358,558.89 in pre-judgment interest and entered judgment on the jury verdict for a total of \$1,158,558.80.¹ Subsequently, the district court granted Madison's motion for additur, awarding her \$75,000 for future pain and suffering.

Harrah's then moved for a new trial, arguing that Madison's counsel committed attorney misconduct pursuant to Nevada Rules of Professional Conduct (RPC) 3.4(b), (c), and (e) by *implying* that Harrah's had spoliated evidence in violation of the court's spoliation order and by improperly editing Bayliss's video deposition. Harrah's argued that there were repetitive instances of attorney misconduct such that the effect of the misconduct was incurable, especially in the absence of a contemporaneous admonishment of Madison's counsel by the district court. Madison opposed, arguing that Harrah's could not demonstrate that Madison's counsel engaged in misconduct under the rules. Alternatively, Madison argued that

¹We recognize that the judgment on the jury verdict is \$.09 less than the total of Madison's damages plus her pre-judgment interest. This de minimis discrepancy is not at issue on appeal.

even if Harrah's demonstrated that misconduct occurred, and the district court failed to properly address the misconduct, Harrah's was not entitled to a new trial under NRCP 59 because it could not demonstrate that any such error adversely affected the outcome of the trial.

The district court denied Harrah's motion for a new trial, finding that while Madison's counsel engaged in attorney misconduct by violating its spoliation order, no misconduct occurred related to Bayliss's edited video deposition. However, the court found that Harrah's failed to demonstrate that any additional admonishment to the jury would have resulted in a different outcome, particularly because a curative instruction was given. The court also found that Harrah's failed to demonstrate that Madison's counsel committed persistent or repeated misconduct warranting a new trial. This appeal followed.

On appeal, Harrah's challenges the denial of its motion for a new trial, reiterating its arguments from below concerning attorney misconduct. Harrah's essentially argues that Madison's counsel committed misconduct by failing to comply with the district court's pretrial spoliation order when questioning Moffett, and by arguing during closing that Harrah's failed to preserve surveillance video as required. Harrah's also argues that Madison's counsel committed misconduct by improperly editing Bayliss's video deposition.

We review a district court's decision to grant or deny a motion for a new trial based on attorney misconduct for an abuse of discretion. *Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008). However, whether an attorney's comments qualify as misconduct is a question of law to be reviewed de novo, with deference given to the district court's factual findings. *Id.* A new trial is appropriate if the aggrieved party's substantial

Harrah's contends that Madison's counsel committed attorney misconduct because he failed to comply with the district court's spoliation order during his questioning of Moffett and in statements made during closing argument, in violation of RPC 3.4(b), (c), and (e). Madison disagrees. However, we need not resolve the parties' dispute concerning whether attorney misconduct occurred in this respect because, even assuming it did, Harrah's has not shown that the district court abused its discretion in determining that a new trial was not warranted under the applicable legal standards enunciated in *Lioce*. Thus, assuming without deciding that the district court correctly found that Madison's counsel committed attorney misconduct during his questioning of Moffett and in his closing arguments, we address whether the district court abused its discretion in denying Harrah's motion for a new trial.

On appeal, Harrah's focuses on Madison's counsel's questions to Moffett concerning the video's metadata and whether the metadata demonstrates that another employee, who had access to the video, modified it before it was produced. Harrah's also contends that Madison's counsel's arguments during closing insinuated that Harrah's failed to preserve video that would have shown which of its employees were nearby or present at the time of the incident.² In each of these instances, Harrah's objected to

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Madison's examination of Moffett and closing arguments, and with one exception the district court agreed with Harrah's and admonished counsel. *See Cox v. Copperfield*, 138 Nev. 235, 246-47, 507 P.3d 1216, 1227 (2022) (applying *Lioce*'s objected-to-misconduct standard to statements that were objected to during a sidebar, outside of the presence of the jury). However, rather than orally admonishing the jury to disregard the objected-to misconduct, the district court issued a curative jury instruction, with Harrah's agreement, advising the jury that there was no evidence Harrah's purposefully spoliated evidence and directing the jury to disregard any arguments or statements made to the contrary.

In cases in which an objection has been made to attorney misconduct, the district court should both sustain the objection and admonish the jury and counsel. *Lioce*, 124 Nev. at 17, 174 P.3d at 980. Generally, when a party objects to attorney misconduct, and the court sustains the objection and orally admonishes the jury, courts apply the *Lioce* standard which requires the party moving for a new trial to demonstrate that the objection and admonishment could not cure the effect of the misconduct. *Id.* at 18, 174 P.3d at 981. When the district court issues a curative instruction rather than admonishing the jury, the supreme court has treated the curative instruction as the functional equivalent of an admonishment for purposes of the *Lioce* standard.

Indeed, in *Paley v. Desert Palace, LLC.*, the plaintiff objected to alleged misconduct at trial and, after sustaining the objection, the district

Harrah's has not requested plain error review, and the issue is therefore forfeited. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (declining to consider arguments not raised on appeal).

court admonished the plaintiff, rather than the jury, but issued a curative instruction directing the jury not to consider plaintiff's improper statements. 2025 WL 1014244, at *2 (Nev. Apr. 1, 2025) (Order of Affirmance). Applying *Lioce*'s standard for objected-to and admonished misconduct, the supreme court affirmed the district court's denial of the defendant's motion for a new trial, reasoning that the alleged misconduct was not so egregious that the admonishment to plaintiff and curative instruction could not remove the adverse effect. *Id.* at *3. Thus, in light of *Paley*, which we can consider for its persuasive value under NRAP 36(c)(3), we evaluate whether the alleged misconduct discussed above warranted a new trial based on *Lioce*'s standard for objected-to and admonished misconduct, notwithstanding Harrah's argument that this court should instead apply the standard set forth in *Gunderson v. D.R. Horton, Inc.*, for evaluating objected-to and unadmonished misconduct. 130 Nev. 67, 77, 319 P.3d 606, 613 (2014).³

In applying *Lioce*, we analyze whether Harrah's has demonstrated that the district court's admonishment to Madison's counsel at the bench followed by a curative jury instruction was sufficient to cure the alleged misconduct's effect. We conclude that Harrah's has not

³Notably, in resolving Harrah's motion for a new trial, the district court incorrectly applied *Gunderson* instead of *Lioce* when considering whether an admonishment to the jury would have affected the jury's verdict. 130 Nev. at 77, 319 P.3d at 613. While the district court incorrectly applied the *Gunderson* standard rather than the *Lioce* standard, the court nevertheless reached the right result by denying Harrah's motion for a new trial. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (holding that we will affirm the district court if it reaches the correct result, even if for the wrong reason). As discussed in detail below, based on *Lioce*'s standard for objected-to and admonished misconduct, a new trial was unwarranted.

demonstrated that the objections made at the bench and admonishment to counsel, followed by a curative jury instruction, could not cure the effect of the alleged attorney misconduct. The curative instruction provided to the jury specifically stated that the district court had found as a matter of law that purposeful spoliation had not occurred and instructed the jury to “disregard any arguments or statement that suggest Harrah’s purposely destroyed or manipulated evidence.” We presume that the jury followed the district court’s instructions, *Krause Inc. v. Little*, 117 Nev. 929, 937, 34 P.3d 566, 571 (2001), and, therefore, reached its verdict based on the evidence presented at trial. In this case, Madison, her husband, and her mother provided ample testimony regarding the events that gave rise to the subject incident, which provided substantial evidence to support the jury’s decision to find in her favor.

Although Harrah’s argues that Madison’s testimony was inconsistent with the video surveillance and suggests that Madison’s counsel violated the spoliation order because the evidence was otherwise unfavorable to Madison, Harrah’s is essentially asking this court to reweigh the evidence and witness credibility, which this court does not do, as the jury is in the best position to evaluate the witnesses’ testimony presented at trial. See *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) (“[C]redibility determinations and the weighing of evidence are left to the trier of fact.”). Thus, we conclude that the alleged misconduct at issue here was sufficiently cured by Harrah’s objections and the district court’s admonishment of Madison’s counsel followed by the curative instruction, and therefore the district court did not abuse its discretion by denying Harrah’s motion for a new trial insofar as it related to that conduct. See *Paley*, 2025 WL 1014244 at *2.

Additionally on appeal, Harrah's contends that a new trial was warranted based on Madison's questioning of Moffett concerning whether Harrah's preserved video footage showing water flowing from the hillside to the river during other times of the day. Harrah's argues that this question insinuated that Harrah's failed to preserve relevant video surveillance.

Although Harrah's objected to counsel's question, the district court overruled the objection. Under *Lioce's* standard for objected-to and overruled attorney misconduct, the party moving for a new trial must demonstrate that the district court abused its discretion by overruling the party's objection. *Lioce*, 124 Nev. at 18, 174 P.3d at 981. If the district court abused its discretion by overruling the party's objection, then Harrah's must demonstrate that if the court had sustained its objection, it would have affected the outcome of the trial such that a verdict would have been rendered in its favor. *Id.*

In this case, the district court overruled Harrah's objection on the grounds that Moffett could testify whether she had sufficient knowledge to answer Madison's question and, in this case, she stated she did not. Harrah's fails to explain how the district court abused its discretion in permitting Moffett to answer the objected-to question and how sustaining the objection with an admonishment would have affected the outcome of the case, particularly since no testimony adverse to Harrah's was elicited, as Moffett was unable to answer the question. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived); *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that Nevada's appellate courts need not consider issues that are unsupported by citation to relevant legal authority). Thus, because

Harrah's has not demonstrated why the district court should have sustained its objection or that an admonishment would have affected the outcome of this case in its favor, we conclude that the court did not abuse its discretion by denying Harrah's motion for a new trial on these grounds. *Lioce*, 124 Nev. at 18, 174 P.3d at 981.

Harrah's also contends on appeal that Madison's counsel committed attorney misconduct in its presentation of Bayliss's video deposition, which was edited in a fashion contrary to the parties' agreement to only remove objections from the video. However, while Harrah's objects as to the sequencing of Bayliss's deposition testimony on the final edited version of the deposition video, it does not challenge the accuracy of the testimony itself, nor has it directed this court's attention to any legal authority to support the proposition that reorganizing the testimony in a video deposition, standing alone, violates RPC 3.4(b), (c), or (e) or otherwise constitutes attorney misconduct. This is particularly noteworthy where counsel had the opportunity to review the edited video in advance of it being played to the jury but did not do so, and where the accuracy of the deponent's testimony is not challenged.⁴ See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Thus, we conclude that the district court did not abuse its discretion by denying Harrah's motion for a new trial on this basis.⁵

⁴We strongly caution counsel that when counsel mutually agree that a video deposition may be edited for use by the parties at trial, the final edited video should be prepared exactly as stated in the agreement, and reviewed by all counsel in advance of trial to ensure that the edited video reflects the parties' agreement to avoid the situation that occurred here.

⁵As an alternative basis for our decision, because Harrah's failed to provide this court with a copy of Bayliss's deposition transcript or the edited

Finally, Harrah's argues that a new trial was required due to persistent and repeated misconduct of counsel, which could not be cured. In *Lioce*, the supreme court explained that even if individual misconduct does not merit a new trial, if the misconduct is persistent or repeated, the district court must consider that "by engaging in continued misconduct, the offending attorney has accepted the risk that the jury will be influenced by his misconduct." *Lioce*, 124 Nev. at 18-19, 174 P.3d at 981. Although a single instance of misconduct may be cured by an objection and admonishment, the same may not be true when the misconduct is repeated. *Grosjean*, 125 Nev. at 369, 212 P.3d at 1082.

We agree with the district court that Madison's counsel's alleged misconduct in the aggregate was not so persistent or egregious as to warrant a new trial. *Cf. id.* (holding that a new trial was warranted for punitive damages where the non-moving party's attorney repeatedly made statements that risked jury nullification). Given the ample evidence supporting the jury's verdict, independent of the video surveillance, and the curative instruction provided to the jury instructing it to disregard any suggestion that Harrah's purposefully spoliated evidence, we discern no basis to conclude that the alleged misconduct in this case was incurable. *Lioce*, 124 Nev. at 18-19, 174 P.3d at 981. Thus, Harrah's has not met its burden to show that Madison's counsel's alleged misconduct prejudiced the

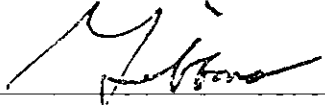
video deposition, we presume that the missing materials supported the district court's decision to deny Harrah's motion for a new trial insofar as it related to the presentation of the edited video deposition. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that it is appellant's burden to ensure that a proper appellate record is prepared and that Nevada's appellate courts presume that materials missing from the trial court record support the district court's decision)

outcome of this case such that a new trial pursuant to NRCP 59 is warranted.

Therefore, we determine that the district court did not abuse its discretion in denying Harrah's motion for a new trial pursuant to NRCP 59. Accordingly, we,

ORDER the judgment of the district court AFFIRMED.⁶


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
Keating Law Group
Claggett & Sykes Law Firm
Injury Lawyers of Nevada
The Galliher Law Firm
Eighth District Court Clerk

⁶Insofar as Harrah's 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.