IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREA MORAN,
Appellant,
vs.
BONNEVILLE SQUARE ASSOCIATES, A NEVADA LIMITED PARTNERSHIP; AMTECH ELEVATOR SERVICES, A FOREIGN CORPORATION; AND B. MAX, INC., D/B/A MAXTON MANUFACTURING, A FOREIGN CORPORATION,
Respondents.

No. 38381

ORDER OF AFFIRMANCE

This is an appeal of a district court order denying Andrea Moran's motions for additur and a new trial pursuant to a jury trial for negligence in which she was awarded damages for medical expenses and lost wages, but no damages for pain and suffering.

Under Nevada law, a district court has wide discretion in deciding motions for additur.[1] Accordingly, a district court's decision to deny a motion for additur will not be disturbed on appeal absent an abuse of that discretion.[2] Nonetheless, this court has granted additur on appeal when the damages awarded were clearly inadequate or shocking to this court's conscience.[3]

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[1]Donaldson v. Anderson, 109 Nev. 1039, 1041, 862 P.2d 1204, 1206 (1993).

[2]Id. (citing Harris v. Zee, 87 Nev. 309, 486 P.2d 490 (1971)).

[3]Donaldson, 109 Nev. at 1041, 862 P.2d at 1206.

In Donaldson v. Anderson, this court explained that:

> Although Drummond[4] articulates two threshold determinants before additur is available (clearly inadequate and ripe for new trial), in practical application there is only one primary consideration. In essence, if damages are clearly inadequate or "shocking" to the court's conscience, additur is a proper form of appellate relief.[5]

Here, Moran claims that the verdict awarding $40,000 for medical damages but nothing for the pain and suffering associated with her medical treatment shocks the conscience. The jury in this case heard testimony that cast doubt upon the credibility of Moran. She withheld information related to prior injuries and her testimony conflicted with the notes and opinions of her doctors. She also failed several tests related to her alleged pain and its relation to any of her injuries. Thus, the jury had ample reason to doubt Moran's claims of pain and suffering or were unable to arrive at a monetary value for pain and suffering due to these inconsistencies.

The Nevada Rules of Civil Procedure provide:

> A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: . . . (5) [m]anifest disregard by the jury of the instructions of the court . . . .[6]

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[4]Drummond v. Mid-West Growers, 91 Nev. 698, 542 P.2d 198 (1975).

[5]Donaldson, 109 Nev. at 1042, 862 P.2d at 1206.

[6]NRCP 59(a)(5).

Here, Moran claims that the jury failed to properly apply an instruction which stated that "in making an award of pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence."

A jury's findings are upheld if supported by substantial evidence.[7] Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.[8] This court has stated that it "is not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party."[9] Moreover, a new trial may only be granted if there has been a manifest disregard by the jury of the instructions of the court.[10] In Jaramillo v. Blackstone, this court stated, "in 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."[11]

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[7]See Prahbu v. Levine, 112 Nev. 1538, 1543, 930 P.2d 103, 107 (1996) (citing Keystone Realty v. Osterhus, 107 Nev. 173, 807 P.2d 1385 (1991); see also Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998); NRCP 52(a).

[8]Prahbu, 112 Nev. at 1543, 930 P.2d at 107 (citing State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

[9]Yamaha, 114 Nev. at 238, 955 P.2d at 664 (citing Smith v. Timm, 96 Nev. 197, 202, 606 P.2d 530, 532 (1980)).

[10]See Jaramillo v. Blackstone, 101 Nev. 316, 704 P.2d 1084 (1985).

[11]Id. at 318, 704 P.2d 1085 (quoting Weaver Brothers, Ltd. v. Misskelley, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982)). See also Taylor v.

continued on next page . . .

In light of the conflicting testimony presented to the jury, substantial evidence supports that the jury acted calmly and reasonably in determining that no award for pain and suffering was appropriate. Damages for pain and suffering are not required simply because a jury awards medical expenses or lost wages.[12] Drawing all favorable inferences toward the prevailing party – with respect to pain and suffering damages, Bonneville Square, Amtech, and Maxton prevailed – the district court did not abuse its discretion in denying Moran's motion for a new trial. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

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Silva, 96 Nev. 738, 740, 615 P.2d 970, 971 (1980); Shere v. Davis, 95 Nev. 491, 492-93, 596 P.2d 499, 500-01 (1979).

[12]See, e.g., Davis v. Hinman, 605 P.2d 700 (Ore. 1980); Baxter v. Gannaway, 822 P.2d 1128 (N.M. 1991).

cc: Hon. Valorie Vega, District Judge
Kirk T. Kennedy
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