

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ROGERS, M.D., LTD.,
D/B/A ROGERS DIAGNOSTIC
RADIOLOGY CENTER, AND
RAYMOND W. YIN, M.D.,
Appellants,

vs.

PATRICIA WATTS, AN INDIVIDUAL,
AND AS GUARDIAN AD LITEM OF
HOWARD GABRIEL WALTON, A/K/A
HOWARD GABRIEL WATTS, A MINOR;
RELIABLE MEDICAL CENTER, INC,
D/B/A ST. ANA MEDICAL CENTER,
A/K/A ST. ANA BIRTHING CENTER,
A/K/A ST. ANN'S MEDICAL CLINIC;
SHELLY FRITZ HOOPER, R.N., A.P.N.;
AND ADAM LEVY, M.D.,
Respondents.

No. 38607

FILED

JUN 03 2003

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

ORDER OF REVERSAL AND REMAND

This is an appeal from an order granting a new trial. This appeal arises from a negligence suit brought by Patricia Watts and her son Howard Watts against several defendants for injuries Howard suffered during his birth. Among other allegations, the Watts asserted the appellants were negligent in performing an ultrasound on Patricia. During the ensuing three-week trial, the district court, over objection, allowed appellants to demonstrate an ultrasound in court. The jury determined that all defendants, except for appellants, were at fault for Howard's injuries. Consequently, one of the defendants filed a motion for a new trial, claiming it was prejudicial error for the district court to allow the ultrasound demonstration. The district court granted the motion and appellants appealed.

The district court granted a new trial because it stated that by allowing the demonstration, it made a prejudicial ruling “having the effect of allowing [appellants] to totally escape liability.” “The decision to grant or deny a motion for new trial rests within the sound discretion of the trial court.”¹ A district court cannot grant a new trial based on an error in the proceeding unless that error affected the substantial rights of the parties.²

Admissibility of a demonstration “depends upon a foundational showing of substantial similarity between the demonstration conducted and the actual conditions.”³ Appellants listed an “exemplar OB ultrasonography machine” as an exhibit in the joint pre-trial memorandum. Jennifer Bunker, the ultrasound technician who conducted the demonstration, testified that the ultrasound machine used in the demonstration was the actual ultrasound machine used on Patricia. Bunker was also the technician who performed the ultrasound on Patricia. Additionally, the district court noted that parties opposing the demonstration would have the opportunity to point out differences between the demonstration and the ultrasound conducted on Patricia. Thus, we hold the district court did not err by allowing the ultrasound demonstration.

Patricia’s counsel was allowed to conduct voir dire during the demonstration and all parties had opportunity to cross-examine Bunker. The demonstration itself lasted approximately fifteen minutes, a short

¹Southern Pac. Transp. Co. v. Fitzgerald, 94 Nev. 241, 244, 577 P.2d 1234, 1236 (1978).

²NRCP 59(a); NRCP 61.

³Way v. Hayes, 89 Nev. 375, 377, 513 P.2d 1222, 1223 (1973).

time in a three-week trial. Bunker only demonstrated an ultrasound and was prohibited from testifying as to matters not within her expertise. During the demonstration, Bunker noted differences between it and Patricia's ultrasound. Notably, none of the attorneys questioned Bunker about the weight differences between the baby used in the demonstration and Howard, a contested point by parties opposing the demonstration. Out of five closing arguments, the only mention of the demonstration was when appellants' attorney briefly stated that he brought in the ultrasound so that the jury could understand how it works.

Moreover, the district court does not point to any evidence, nor is there any in the record, establishing that the jury weighed the demonstration heavily or even relied on it in making their decision. Thus, the record does not reveal any particular prejudice other than an adverse verdict for respondents Reliable Medical Center, Shelly Fritz Hooper, and Dr. Adam Levy. An adverse verdict alone does not prove a party's substantial rights were affected by an error.⁴ The record fails to establish that the demonstration "so substantially affected [respondents'] rights that it could be reasonably assumed that if it were not for the [demonstration], a different result might reasonably have been expected."⁵ This is particularly true in light of the ample evidence supporting the jury's verdict that the appellants were not at fault for Howard's injuries.⁶

⁴Beattie v. Thomas, 99 Nev. 579, 586, 668 P.2d 268, 273 (1983).


⁵El Cortez Hotel v. Coburn, 87 Nev. 209, 213, 484 P.2d 1089, 1091 (1971).

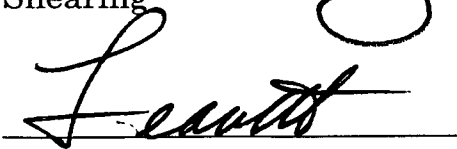
⁶See Ponderosa Timber & Clearing v. Emrich, 86 Nev. 625, 628, 472 P.2d 358, 360 (1970) (holding district court did not err by refusing to grant a new trial, especially because ample evidence supported the jury verdict).

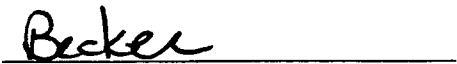
Thus, we hold it was not prejudicial error for the district court to allow the demonstration and a new trial is not warranted.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court with instructions to reinstate the judgment it entered on the jury's verdict.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Mark R. Denton, District Judge
Schuering Zimmerman & Scully
Skinner Sutton Watson & Rounds/Las Vegas
Bourgault & Harding
E. M. Gunderson
Hilton English & Associates
Beckley Singleton, Chtd./Las Vegas
Clark County Clerk