

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLSTATE INSURANCE COMPANY,
Appellant,
vs.
RAMON LASAO,
Respondent.

No. 38638

FILED

DEC 08 2003

ORDER OF REVERSAL AND REMAND

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

This is an appeal from an order of the district court granting a motion for judgment notwithstanding the verdict (JNOV). Ramon Lasao was injured in an automobile accident and sought compensation from Allstate Insurance Company under his uninsured motorist policy.¹ In rendering its verdict, the jury found that Allstate did not breach the covenant of good faith and fair dealing and did not commit an unfair practice under NRS 686A.310. The district court subsequently granted Lasao's JNOV motion and granted judgment in his favor.

Allstate Insurance Company argues that the district court erred in granting Lasao's motion for JNOV. We agree.

A motion for JNOV is "a question of law to be determined by the court, and the power to grant such motions should be cautiously exercised."² "[A] motion for [JNOV] may be granted only when, without weighing the credibility of the evidence, there can be but one reasonable

¹Lisa Nussbaum collided into the rear of Lasao's vehicle. Lasao filed a claim under his uninsured motorist policy because Nussbaum's insurer, Coronet Insurance Company, was insolvent.

²Dudley v. Prima, 84 Nev. 549, 551, 445 P.2d 31, 32 (1968).

conclusion as to the proper judgment.”³ JNOV must not be granted when there is conflicting evidence.⁴ The evidence must be viewed “in the light most favorable to the party who secured the jury verdict.”⁵ A court may not “direct a verdict if there is substantial evidence for the party against whom the motion is made.”⁶ Substantial evidence is evidence that “a reasonable mind might accept as adequate to support a conclusion.”⁷

Here, following a four-day trial, the jury returned a verdict for Allstate. The special verdict form indicated that Allstate did not breach the covenant of good faith and fair dealing in handling Lasao’s claim, nor did it commit an unfair practice under NRS 686A.310. Lasao moved for JNOV, or in the alternative, a new trial. The district court granted Lasao’s motion for JNOV because the court concluded that Allstate

³Bates v. Chronister, 100 Nev. 675, 678, 691 P.2d 865, 868 (1984) (emphasis added in original (quoting 5A Moore’s Federal Practice § 50.07 [2] (1984))).

⁴Id. at 678-79, 691 P.2d at 868.

⁵Id. at 679, 691 P.2d at 868 (quoting 5A Moore’s Federal Practice § 50.079 [2]).

⁶Bliss v. DePrang, 81 Nev. 599, 602, 407 P.2d 726, 727 (1965); see Air Service Co. v. Sheehan, 95 Nev. 528, 530, 594 P.2d 1155, 1156 (noting that “[i]n reviewing a judgment n. o. v., the standard is the same for review of a motion for a directed verdict”).

⁷Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999).

compelled Lasao to file suit in violation of NRS 686A.310(1)(f).⁸ The district court reasoned that Allstate violated NRS 686A.310(1)(f) because Allstate offered only \$1,836 in general damages, which compelled Lasao to file suit to recover a reasonable amount. The district court also noted that Allstate had failed to tender the arbitration award of \$12,771 by the time Lasao filed suit, and that Lasao was able to obtain that amount only after filing a suit. The district court determined that “[e]ither the jury disregarded or misunderstood jury instructions related to the foregoing as the uncontroverted facts fall within the purview of NRS 686A.310.” The district court awarded Lasao \$5,000 in general damages, \$20,000 in attorney fees, and \$10,933.94 in costs.

When viewed in the light most favorable to Allstate, the district court erred by granting JNOV in Lasao’s favor. Allstate’s offer of \$1,836 was not so low as to violate NRS 686A.310 as a matter of law. Additionally, Allstate introduced substantial evidence at trial that it did not violate the covenant of good faith and fair dealing.

We therefore reverse the district court’s judgment and remand this matter to the district court. On remand, the district court shall enter judgment in accordance with the jury verdict.

⁸NRS 686A.310(1)(f) provides that it is an unfair practice in settling claims for an insurer to compel “insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.”

It is so ORDERED.

Becker, J.
Becker

Shearing, J.
Shearing

cc: Hon. Sally L. Loehrer, District Judge
Burton Bartlett & Glogovac
Cobeaga Tomlinson, LLP
Robert M. Ebinger
Clark County Clerk

GIBBONS, J., dissenting:

I would affirm the district court's order granting the motion for judgment notwithstanding the verdict (JNOV), pursuant to NRCPC 50(b). According to the district court's order, Allstate declined to accept the JNOV. Therefore, Lasao is entitled to a new trial on all issues.

The district court did not abuse its discretion in granting the motion for JNOV because it viewed the evidence most favorably to Allstate before granting the motion.¹ The trial court gave Allstate "the benefit of every reasonable inference from any substantial evidence supporting the verdict."²

In reviewing the order for JNOV, "the question we must ask and answer is whether the evidence of record "is such that reasonable men would have necessarily reached a different conclusion.""³ We have also held that "[i]t is not this court's prerogative to consider the weight of the evidence or the credibility of witnesses."⁴ The only reasonable conclusion in the instant case is to affirm the order granting the JNOV motion.


¹Smith's Food & Drug Cntrs. v. Bellegarde, 114 Nev. 602, 605, 958 P.2d 1208, 1211 (1998).

²Id. (quoting NEC Corp. v. Benbow, 105 Nev. 287, 290, 774 P.2d 1033, 1035 (1989)).

³University System v. Farmer, 113 Nev. 90, 95, 930 P.2d 730, 734 (1997) (quoting Air Service Co. v. Sheehan, 95 Nev. 528, 530, 594 P.2d 1155, 1156 (1979) (quoting Drummond v. Mid-West Growers, 91 Nev. 698, 704, 542 P.2d 198, 203 (1975))).

⁴Id.

Viewing the evidence in the light most favorable to Allstate, the trial court did not err by granting JNOV. On remand, the district court should instruct the jury on the findings of the arbitrator pursuant to NRS 38.259(2) and NAR 20(A), as recently revised by this court.


_____, J.
Gibbons