

IN THE SUPREME COURT OF THE STATE OF NEVADA

LANCE UENO,
Appellant,
vs.
RICHARD E. ORTIZ; K-T CONTRACT
SERVICES, INC.; AND COACH USA,
INC.,
Respondents.

No. 42581

FILED

FEB 13 2006

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

ORDER OF AFFIRMANCE

Appellant Lance Ueno appeals from an order entering judgment upon a jury verdict in his favor in a personal injury action. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. In this order, we consider two issues: (1) whether the \$70,000 judgment in Ueno's favor warrants additur, and (2) whether the district court properly permitted the jury to videotaped testimony by Ueno's ex-wife describing Ueno's drug abuse. Because Ueno failed to preserve both issues for appeal, we do not reach their merits and therefore affirm the judgment of the district court.

Additur

Ueno claims that the jury's verdict warrants additur. However, we conclude that he failed to preserve the argument for appeal. "It is well established that arguments raised for the first time on appeal need not be considered by this court."¹ Ueno limited his NRCP 59(e) motion to alter or amend the judgment solely to a demand for a reimbursement for costs. Because the issue of additur was not part of the

¹Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997).

motion before the district court, the district court did not have the opportunity to rule on this issue. We see no policy reason to depart from our prior opinions addressing additur where the appeal was taken from an order granting or denying a timely NRCP 59 motion for a new trial or motion for additur.

Deposition


We need not consider Ueno's contention that the district court erred in admitting Marie Faulkner's videotaped deposition testimony. "Appellant has the ultimate responsibility to provide this court with 'portions of the record essential to determination of issues raised in appellant's appeal.'"² In deciding cases, "[t]his court can only consider the record as it was made and considered by the court below."³ "Without the trial transcript, this court has no basis for disturbing the findings of the trial court."⁴ Ueno's counsel filed multiple appendices, but did not include the videotape of Faulkner's deposition or a transcript of the deposition as part of the record on appeal.

²Thomas v. State, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004) (quoting NRAP 30(b)(3)).


³Lindauer v. Allen, 85 Nev. 430, 433, 456 P.2d 851, 852 (1969).

⁴Toigo v. Toigo, 109 Nev. 350, 350, 849 P.2d 259, 259 (1993).

Because we cannot evaluate Faulkner's deposition testimony, we cannot determine if there is error. Therefore, we ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Kathy A. Hardcastle, District Judge
Longabaugh Law Offices
DeLanoy, Schuetze, McGaha & Provost, P.C.
Clark County Clerk