

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARATI DUNBAR, M.D.,
Appellant,
vs.
PARK PLACE ENTERTAINMENT
CORPORATION, A DELAWARE
CORPORATION; AND PARBALL
CORPORATION, A NEVADA
CORPORATION,
Respondents.

No. 42606

FILED

MAR 22 2006

MANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment entered on a jury verdict, an order denying a motion for new trial, and a post-judgment order granting attorney fees and costs in a tort action. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant Dr. Arati Dunbar ascribes five errors to the district court regarding (1) expert testimony, (2) jury instructions, (3) reversal of orders rendered by a previous judge, (4) attorney misconduct, and (5) costs. We conclude that each of Dr. Dunbar's arguments is unpersuasive, and we affirm the district court's judgment and post-judgment order of costs¹ to respondents Parball.² The parties are familiar with the facts, and we do not recount them in this order except as necessary for our disposition.

¹The district court ordered post-judgment attorney fees and costs. However, Dr. Dunbar only challenges the costs aspect of the award.

²Park Place Entertainment Corporation and Parball Corporation.

DISCUSSION

Expert testimony

Dr. Dunbar argues that the district court abused its discretion by allowing Parball's expert, Norman Bates, to testify that it was within Parball's legal right for its security officers to handcuff Dr. Dunbar. Specifically, she asserts that Bates was unqualified to opine on Parball's legal rights. Dr. Dunbar further claims that the district court improperly enhanced Bates's credibility in the jury's eyes by noting that Bates was a lawyer.

We conclude that the district court did not abuse its discretion by permitting Bates to opine on Parball's right to handcuff Dr. Dunbar. "The district court is better suited to rule on the qualifications of persons presented as expert witnesses and we will not substitute our evaluation of a witness's credentials for that of the district court absent a showing of clear error."³ The record indicates that Bates was adequately qualified to render the opinion he gave. Therefore, the district court did not err. We further conclude that the district court's comment that Bates was a lawyer did not enhance Bates' credibility to Dr. Dunbar's detriment. Although a district court should refrain from making comments that would demean or enhance the credibility of a witness,⁴ the record does not suggest that the jury gave undue weight to the trial judge's comment or that the comment otherwise prejudiced Dr. Dunbar.

³Mulder v. State, 116 Nev. 1, 13, 992 P.2d 845, 852 (2000) (quoting Hanneman v. Downer, 110 Nev. 167, 179, 871 P.2d 279, 287 (1994)).

⁴See id. (citing Wickliffe v. Sunrise Hospital, 104 Nev. 777, 780, 766 P.2d 1322, 1324 (1988)).

Jury instructions

Next, Dr. Dunbar contends that jury instruction No. 34 misstated Nevada law and that Parball failed to present evidence to support jury instructions Nos. 29 and 36. A district court has broad discretion to settle jury instructions, and we review the district court's decision for an abuse of discretion.⁵ The district court here did not abuse its discretion regarding the jury instructions.

With respect to jury instruction No. 34, Dr. Dunbar takes issue with the language, "detain for the purpose of evicting from their premises." She argues that a hotel's right to evict someone does not include a right to detain someone. We disagree. NRS 651.020, which permits hotel owners to evict from their premises anyone who acts in a disorderly manner, contemplates a reasonable form of detention for eviction purposes.⁶

We further conclude that the record shows evidence to support jury instructions Nos. 29 and 36. The record further shows that Mr. Dunbar, as a third party, could have been the cause of Dr. Dunbar's claimed injuries. Therefore, the evidence warranted jury instruction No. 29. The record indicates that Officer May handcuffed Dr. Dunbar in defense of Sergeant Bersano, thus necessitating Jury Instruction No. 36.

Reversal of orders rendered by a previous judge

Dr. Dunbar claims that the district court erred by reconsidering and reversing a motion in limine that a previous judge had

⁵Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

⁶See Billingsley v. Stockmen's Hotel, 111 Nev. 1033, 1038, 901 P.2d 141, 145 (1995) (stating that a hotel proprietor may use reasonable force to evict a trespasser under NRS 651.020).

ordered in Dr. Dunbar's favor. She asserts that Parball's motion for reconsideration was procedurally improper and that the district court erred substantively by admitting the reconsidered evidence. We conclude that no error occurred.

Under EDCR 2.24(b), a district court may reconsider a previous ruling of the court.⁷ Parball's motion was procedurally proper because it involved newly discovered facts regarding Mr. Dunbar and because Parball did not cause the case to be reassigned to a different judge.⁸ Further, the district court did not abuse its discretion by admitting the evidence previously precluded by the earlier motion in limine. The record supports the district court's conclusion that the probative value of the evidence was not substantially outweighed by its prejudicial effect and that the evidence was not inadmissible character evidence.

Attorney misconduct

Dr. Dunbar argues that the district court should have granted her motion for a new trial because Parball's attorney committed misconduct throughout the entire proceeding. Attorney misconduct warrants a new trial when it so permeates the proceedings that the jury was influenced by passion or prejudice in reaching its verdict.⁹ We conclude that the record indicates that Parball's counsel did not engage in

⁷See also NRCP 54(6).

⁸See Moore v. City of Las Vegas, 92 Nev. 402, 404-05, 551 P.2d 244, 246 (1976).

⁹See Barrett v. Baird, 111 Nev. 1496, 1515, 908 P.2d 689, 702 (1995) (citing Kehr v. Smith Barney, Harris Upham & Co., Inc., 736 F.2d 1283, 1286 (9th Cir. 1984)).

any misconduct that influenced the jury by passion or prejudice when it reached its verdict. Therefore, the district court did not err by permitting the actions about which Dr. Dunbar complains.

Costs

Finally, Dr. Dunbar claims that the district court abused its discretion by awarding costs to Parball because Parball's costs were unreasonable and lacked sufficient supporting documentation. The determination of allowable costs is within the district court's discretion.¹⁰ The record supports the district court's conclusion that Parball's costs were both reasonable and adequately documented. Therefore, the district court did not abuse its discretion by awarding costs to Parball.


CONCLUSION

We conclude that Dr. Dunbar's claims of error lack merit. Therefore, we

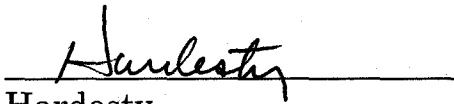
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

¹⁰Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998).

cc: Hon. Stewart L. Bell, District Judge
Gage & Gage, LLP
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk