IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN WANLEY AND JEREMY WANLEY, AS CO-SPECIAL ADMINISTRATORS OF THE ESTATE OF JAMES PARKER, JR., DECEASED,
Appellants,
vs.
JOHN LEE WELTY,
Respondent.

No. 42867

FILED

FEB 15 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment entered on a jury verdict in favor of the defendant in a personal injury action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Susan and Jeremy Wanley (the Wanleys) appeal a judgment entered on a jury verdict in favor of John Lee Welty (Welty). The parties are familiar with the facts, and we do not recount them in the order except as necessary for our disposition.

As a preliminary matter, we conclude that Welty's claim that the district court improperly granted the Wanleys' motion for reconsideration is not properly before this court. NRAP 3A(a) allows an appeal only by a party who is aggrieved by a judgment.[1] Welty sought to argue that the district court should have dismissed the Wanley's claims. In a previous order, we noted that Welty could advance his argument during the regular course of the appeal, so long as the argument was made

[1]See generally Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

in support of the judgment below.[2] We hold that Welty's argument for dismissal was not made in support of the judgment, and therefore we decline to address this argument because it is not properly before this court.[3]

As to the merits of the Wanleys' appeal, the errors claimed were either harmless or meritless. While the district court should not have allowed the traffic officer to testify as to who he believed caused the accident, this error was harmless in light of other corroborating and substantial evidence supporting the judgment.[4] A lay witness may not give expert opinion testimony.[5] The district court refused to certify the traffic officer as an expert, but still allowed the officer to testify as to who he believed caused the accident. Such opinion testimony normally falls within the realm of an accident reconstruction expert, and the traffic officer admitted that he was not such an expert.[6] Nonetheless, Welty's accident reconstruction expert provided testimony corroborating the officer's testimony and tending to show that James Parker, Jr. (Mr. Parker) caused the accident, including evidence that Welty was not

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[2]See Ford v. Showboat Operating Co., 110 Nev. 752, 755-56, 877 P.2d 546, 548-49 (1994).

[3]Id. at 756, 877 P.2d at 549.

[4]See Bellon v. State, 121 Nev. ____, ___, 117 P.3d 176, 181 (2005) (the erroneous admission of evidence is subject to harmless error analysis).

[5]Mulder v. State, 116 Nev. 1, 14, 992 P.2d 845, 852 (2000). See NRS 50.275.

[6]We have reviewed the cases cited by the Wanleys, but such cases are either distinguishable from the facts at bar or involved jury verdicts that were not substantially supported by the evidence.

speeding, and could not otherwise avoid Mr. Parker when Mr. Parker made a left turn in front of him.[7] Therefore, we conclude that admission of the traffic officer's opinion testimony was harmless error.

Finally, the district court did not err in allowing evidence of Mr. Parker's prior drug and alcohol abuse and medical history. This evidence went to causation and damages. The Wanleys bore the burden to prove by a preponderance of the evidence that Welty caused the accident and that the accident injuries caused Mr. Parker's death.[8] The district court had broad discretion to admit or exclude evidence that tended to help the jury decide whether the Wanleys met this burden, especially when questions arose regarding Mr. Parker's health condition prior to the accident.[9] Thus, we reiterate that "the district court is in a better position than this court to determine the helpfulness of proposed testimony in light of the material facts in issue."[10] Therefore, we hold the district court did not abuse its discretion in admitting evidence relating to the Wanleys' negligence claims.

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[7]We are well aware that Welty was legally intoxicated at the time the accident occurred. However, the jury was also well aware of this fact. We will not substitute our judgment for that of the fact finder.

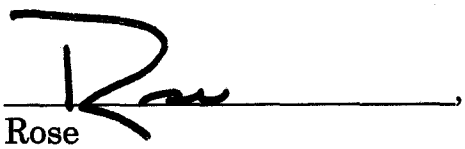
[8]See generally Perez v. Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589, 590-91 (1991).

[9]See generally Williams v. State, 118 Nev. 536, 551, 50 P.3d 1116, 1126 (2002).

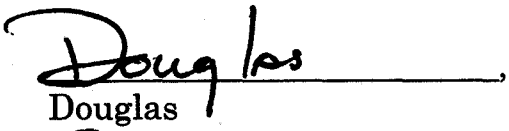
[10]See Krause Inc. v. Little, 117 Nev. 929, 934, 34 P.3d 566, 569 (2001).

We conclude that the Wanleys' assignments of error lack merit, and any error was harmless in light of the substantial evidence supporting the judgment. Accordingly, we

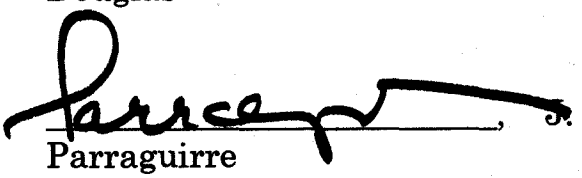
ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Rose



_____, J.
Douglas



_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Stephen H. Osborne
Law Offices of Robert F. Enzenberger
Robert C. Maddox & Associates
Washoe District Court Clerk