

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JENNIFER O'NEAL,
Appellant,
vs.
SHARNA HUDSON, INDIVIDUALLY;
AND GERALD LYLES,
INDIVIDUALLY,
Respondents.

No. 70446

FILED

MAY 18 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jennifer O'Neal appeals from a judgment on a short trial jury verdict in a tort action. Eighth Judicial District Court, Clark County; James Crockett, Judge.¹

O'Neal alleged that she received multiple injuries when respondent Gerald Lyles, who was driving respondent Sharna Hudson's car, rear-ended her vehicle.² O'Neal delayed seeking medical treatment for her alleged injuries until nearly four months after the accident. O'Neal sued Hudson and Lyles (collectively "Hudson") for negligence. Following arbitration, Hudson requested, and was granted, a trial de novo. A short trial jury returned a verdict for Hudson, after which O'Neal filed a motion for judgment notwithstanding the verdict, or in the alternative, a motion for a new trial. The short trial judge denied the motion. On appeal, O'Neal argues that the short trial judge erred in denying her post-trial motion for judgment notwithstanding the verdict or, in the alternative, motion for new

¹Robert A. Goldstein, Pro Tempore Judge, served as the short trial judge in this case.

²We do not recount the facts except as necessary to our disposition.

trial because the jury's verdict was not supported by substantial evidence. We disagree.

As a preliminary matter, we consider whether O'Neal's motion was procedurally proper. A party can move the court for judgment as a matter of law at the close of evidence or at the close of the case. NRCP 50(a)(2). If the court denies this motion, the moving party may renew it after an entry of judgment under NRCP 50(b). But "a 'renewed' motion filed under subdivision (b) [for "judgment notwithstanding the verdict,"] must have been preceded by a motion filed at the time permitted by subdivision (a)(2)." NRCP 50 drafter's notes to 2004 amendment; *see also Lehtola v. Brown Nev. Corp.*, 82 Nev. 132, 136, 412 P.2d 972, 975 (1966) ("A NRCP 50(a) motion must be made at the close of all the evidence if the movant wishes later to make a postverdict motion under that rule.").

Moreover, caselaw and advisory notes concerning FRCP 50(b), NRCP 50(b)'s federal analogue, concur. *See* FRCP 50(b) advisory committee note to 1963 amendment ("A motion for judgment notwithstanding the verdict will not lie unless it was preceded by a motion for directed verdict made at the close of all the evidence."); FRCP 50(b) advisory committee note to 1991 amendment ("A post-trial motion for judgment can be granted only on grounds advanced in the pre-verdict motion."); *Tortu v. Las Vegas Metro. Police Dep't*, 556 F.3d 1075, 1083 (9th Cir. 2009) ("Failing to make a Rule 50(a) motion before the case is submitted to the jury forecloses the possibility of considering a Rule 50(b) motion."); *EEOC v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009) (reasoning that "[a] Rule 50(b) motion for judgment as a matter of law is not a freestanding motion. . . it is a renewed Rule 50(a) motion. . . " and that "a party cannot properly raise arguments in its post-trial motion for judgment as a matter of law

under Rule 50(b) that it did not raise in its preverdict Rule 50(a) motion.” (internal quotation marks omitted)).

But a court may grant a post-trial motion absent a preceding NRCP 50(a) motion where there is plain error or “a showing of manifest injustice.” *Avery v. Gilliam*, 97 Nev. 181, 183, 625 P.2d 1166, 1168 (1981) (internal quotation marks omitted) (applying the exception when the verdict was “manifestly and palpably contrary to the evidence”). Because O’Neal did not move for judgment as a matter of law under NRCP 50(a) before the close of the case, she failed to preserve the ability to renew a motion for judgment notwithstanding the verdict under NRCP 50(b). Therefore, to determine if the district court erred in denying O’Neal’s motion, we consider whether there was plain error or manifest injustice.

First, we consider whether the short trial judge erred in denying O’Neal’s motion for judgment as a matter of law. This court reviews orders denying motions for judgment as a matter of law de novo. See *Reyburn Lawn v. Plaster Dev. Co.*, 127 Nev. 331, 341, 255 P.3d 268, 275 (2011). We will reverse a denial of judgment notwithstanding the verdict if the final judgment is unwarranted as a matter of law. *Univ. & Cmty. Coll. Sys. of Nev. v. Farmer*, 113 Nev. 90, 95, 930 P.2d 730, 734 (1997). But the court will affirm the denial of judgment notwithstanding the verdict if there is substantial evidence to support the verdict. *Dudley v. Prima*, 84 Nev. 549, 551, 445 P.2d 31, 32 (1968). This court reviews the evidence in a light most favorable to the nonmoving party. *Id.*

Moreover, the court does not consider the credibility of witnesses or the weight of the evidence, but reviews whether the evidence would have necessitated a reasonable person to reach a different conclusion. *Farmer*, 113 Nev. at 95, 930 P.2d at 734. The trier of fact determines factual

issues regarding negligence and proximate cause. *Frances v. Plaza Pac. Equities, Inc.*, 109 Nev. 91, 94, 847 P.2d 722, 724 (1993). And this court will not overturn a jury verdict supported by substantial evidence unless it is clearly erroneous in light of the evidence presented. *Id.*

O'Neal argues she is entitled to judgment notwithstanding the verdict because Hudson did not contest the cause of the accident. However, while Hudson conceded that Lyles caused the accident, she presented evidence disputing the extent, validity, and cause of O'Neal's injuries. Specifically, in addition to evidence of O'Neal's delay in seeking medical treatment, Hudson presented O'Neal's medical record, which showed unhealed injuries that O'Neal had suffered in an earlier motor vehicle accident, as well as other medical conditions arguably inconsistent with having been caused by the accident. Viewing this evidence in a light most favorable to Hudson, we conclude that a reasonable jury could have determined that O'Neal had pre-existing injuries and questioned her credibility as a witness. Thus, we conclude there was no plain error or manifest injustice in the district court's denial of O'Neal's motion for judgment notwithstanding the verdict.

We next consider whether the short-trial judge erred in denying O'Neal's motion for a new trial. This court reviews orders denying a motion for a new trial for an abuse of discretion. *Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008). While we presume that jurors follow the court's instructions, *Krause Inc. v. Little*, 117 Nev. 929, 937, 34 P.3d 566, 571 (2001), a new trial may be granted where the jury manifestly disregards those instructions. NRCP 59(a)(5). Manifest disregard occurs where, had the jurors properly applied the court's instructions, the jury could not have

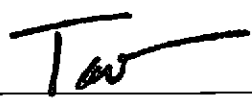
reached the verdict it did. *Weaver Bros., Ltd. v. Misskelley*, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982).


The record reflects no manifest disregard of the instructions by the jury. The judge instructed the jury as to its duty to determine the credibility of witnesses on the stand. Further, the judge instructed the jury to consider only the evidence presented in the case and reasonable inferences therefrom. In addition, the jury was instructed that O'Neal had the burden of proving that she sustained damage and that the accident was the proximate cause of that damage. Given these instructions and the evidence presented at trial, a reasonable jury could have concluded that O'Neal did not meet her burden.

In conclusion, O'Neal's motion for judgment notwithstanding the verdict was procedurally improper because it was not a renewal of a pre-verdict judgment as a matter of law; there was no plain error or manifest injustice to warrant granting the motion because the record reflects that sufficient evidence supported the jury's verdict; and there was no evidence of manifest disregard of the instructions by the jury to justify granting a new trial. Therefore, the district court did not err in denying O'Neal's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Hon. James Crockett, District Judge
William C. Turner, Settlement Judge
Kirk T. Kennedy
The Howard Law Firm
Eighth District Court Clerk