

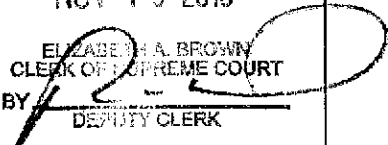
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSICA ARNOLD, AN INDIVIDUAL,
Appellant,
vs.
JACOB DREY, AN INDIVIDUAL,
Respondent.

No. 75056-COA

FILED

NOV 19 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jessica Arnold appeals a district court order granting judgment as a matter of law in a tort action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.¹

In the proceedings below, Arnold filed a complaint against respondent Jacob Drey alleging that Drey caused a rear-end collision, whereby Arnold suffered damages. The case proceeded to court-annexed arbitration, where Drey was found liable and Arnold was awarded \$17,867.00. Arnold filed a request for trial de novo and the matter then proceeded through the short trial program. According to the order entered by the short trial judge, Arnold called herself and Drey as witnesses, but failed to call any other witnesses and failed to offer any exhibits into evidence. After Arnold rested her case-in-chief, the short trial judge granted Drey's motion for judgment as a matter of law, concluding that Arnold failed to present any evidence of causation or damages. After the district court reviewed and approved the short trial order, this appeal followed.

¹Andrew S. Wentworth, Pro Tempore Judge, served as the short trial judge in this case.

18-904678

A NRCP 50(a) motion for judgment as a matter of law may be granted if, viewing the evidence and all inferences in favor of the non-moving party, that “party has failed to prove a sufficient issue for the jury, so that his claim cannot be maintained under the controlling law.” *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420, 424 (2007) (internal quotations omitted). To defeat a NRCP 50(a) motion, the non-moving party must present sufficient evidence such that a jury could grant that party relief. *Id.* at 222-23, 163 P.3d at 424. This court reviews an order granting judgment as a matter of law pursuant to NRCP 50(a) de novo and, thus, applies the same standard as the district court. *Id.*

On appeal, Arnold asserts that she had medical records and bills, supporting her claim of causation and damages. While the records to which Arnold refers appear in the record as exhibits to various filings, nothing in the records suggests that these documents were admitted as evidence at trial. Indeed, the short trial judge found that, upon the court’s inquiry as to whether Arnold had any exhibits, medical records, or billing statements that she wished to submit into evidence, Arnold did not. Because these records were not admitted as evidence, they could not be considered by the court in determining whether to grant judgment as a matter of law. *See id.* (explaining that to defeat a motion for judgment as a matter of law, the non-moving party must present evidence and that the court must consider the evidence in determining whether there remains an issue for the jury); *cf. Krause Inc. v. Little*, 117 Nev. 929, 936, 34 P.3d 566, 570 (2001) (“The jury’s function is to be the final arbiter of truth based upon the evidence submitted.”).

Additionally, the record does not contain a transcript from the trial, nor a statement of the evidence pursuant to NRAP 9(d). Thus, because

it does not appear that Arnold admitted any evidence of causation or damages at trial, we cannot conclude that the court erred in granting Drey's motion for judgment as a matter of law.² See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (providing that the appellant is responsible for making an adequate appellate record, and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³



Silver

C.J.



Tao

J.



Gibbons

J.

²We note that Arnold contends that the short trial jury entered a verdict in her favor, but nothing in the record supports this assertion and we find no merit to this argument.

³To the extent Arnold challenges the district court's grant of attorney fees to Drey, Arnold has not appealed that order and it is, therefore, not properly before this court. See NRAP 3A(b)(8); *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995).

We have considered Arnold's remaining arguments and conclude that they do not warrant relief.

cc: Hon. Rob Bare, District Judge
Jessica Arnold
Lincoln, Gustafson & Cercos
Eighth District Court Clerk