IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NP BOULDER LLC,
Appellant,
vs.
ELDON DOTY,
Respondent.

No. 83467-COA

FILED

SEP 22 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

NP Boulder LLC (Boulder) appeals from a judgment on a short trial verdict and from a post-judgment order denying a motion for a new trial. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Doty slipped and fell on an unknown substance in the salad bar area of the Broiler Steakhouse in Boulder Station Hotel & Casino, injuring his leg, knee, and lower back.[1] A Boulder security officer responded to the restaurant and took pictures of the salad bar area, with Doty still on the ground. Later, the security officer filled out a report, describing the floor around the salad bar as clean, except for salad and dressing, which he concluded Doty dropped when he fell.

Doty was transported to a hospital emergency room. While receiving emergency care—and later during outpatient treatment—Doty told his healthcare providers that he had been in a car accident two weeks prior to his slip-and-fall. Doty received treatment for his car accident and

[1]This appeal rises from a jury verdict in the short trial program. Neither party requested a transcript of the trial be made, so the facts recounted here are derived from the parties' briefs, trial exhibits, and filings below.

slip-and-fall injuries concurrently. The resulting medical bills do not always differentiate between which charge relates to which injury. Doty's medical bills totaled $22,081.21.

Doty filed an action against Boulder for negligence, and his case proceeded through Nevada's short trial program. Neither party requested that a transcript of the trial be made, so what arguments and evidence the jury considered is not entirely clear. At the close of trial, the jury was given standard negligence instructions by the court. The jury returned a verdict for Doty and awarded him $122,081.21, which included the total of his medical bills and an additional $100,000 for past pain and suffering. The district court entered judgment on the verdict in the reduced amount of $50,000 to conform with the maximum recovery allowed in the short trial program.[2] It appears that the court made no findings on the reduction of judgment, so it is not clear what amount it reduced from which category of damages—medical expenses, pain and suffering, or both.

Following the entry of judgment, Boulder filed a motion under NRCP 59, seeking to alter or amend the judgment, or in the alternative, a new trial. Boulder raised two primary issues in its motion. First, that Doty failed to prove that Boulder was negligent, which shows that the jury must have disregarded the court's instructions. Second, that it was improper for the jury to base its judgment on medical bills that contained charges for Doty's car-accident-related injuries. In its motion, Boulder did not address how the reduction of the amount awarded to Doty affects its argument. The district court denied Boulder's motion, finding that there was sufficient

[2]Nevada Short Trial Rule 26.

evidence to support each element of a negligence claim. The court did not make findings as to damages. This appeal followed.

Boulder raises the following issues on appeal: first, that the jury disregarded the evidence, and found for Doty under a theory of strict liability instead of negligence; second, that to render its verdict, the jury improperly considered medical bills that included treatment for an unrelated car accident. In light of these errors, Boulder contends that the district court abused its discretion when it the denied its NRCP 59 motion. We disagree and address each argument in turn.

To recover for negligence, a plaintiff must prove that the defendant owed him or her a duty, breached that duty, and that the defendant's breach was the cause of the plaintiff's injury and damages. *Joynt v. Cal. Hotel & Casino*, 108 Nev. 539, 542, 835 P.2d 799, 801 (1992). If a plaintiff fails to prove an element, the defendant is entitled to prevail as a matter of law. *See Price v. Sinnott*, 85 Nev. 600, 606, 460 P.2d 837, 841 (1969), *aff'd sub nom. Price v. First Nat'l Bank of Nev.*, 90 Nev. 5, 517 P.2d 1006 (1974). NRCP 59(a) allows for a party to seek a new trial for an error of law, so long as they objected to the error during trial. The rule also permits a new trial if a party can show the jury manifestly disregarded the instructions of the court.[3] NRCP 59(e) allows for a motion to alter or amend a judgment.

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[3]Absent a transcript of the trial, meaningful review of what evidence the jury considered is precluded. *Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011). Also, NRCP 59 includes other grounds for a new trial, but Boulder did not raise these grounds in its motion to the district court or on appeal. We do not supply an argument on a party's behalf but review only the issues presented to us. *See Senjab v. Alhulaibi*, 137 Nev., Adv. Op. 64, 497 P.3d 618, 619 (2021).

An order denying a motion for a new trial under NRCP 59(a) is reviewed for an abuse of discretion. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1504, 970 P.2d 98, 122 (1998), *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001). Likewise, an order denying an NRCP 59(e) motion to alter or amend a judgment is reviewable for abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). The appellant is responsible for making an adequate appellate record. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). When an "appellant fails to include necessary documentation in the record, [this court] necessarily presume[s] that the missing portion supports the district court's decision." *Id.* Further, if the appellant fails to provide a record or an explanation of the reasons or bases for a district court's decision, meaningful appellate review is similarly hampered because we are left to mere speculation. *Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011).

Boulder has not shown that the district court abused its discretion when it denied the motion for a new trial

Boulder claims Doty presented no evidence establishing either Boulder's standard of care[4] or breach of duty, which shows the jury must have found for Doty under a theory of strict liability instead of negligence

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[4]Boulder argues, seemingly for the first time on appeal, that the proper standard of care for its hotel-casino restaurant is outside the common knowledge of lay persons, and thus Doty was required to call an expert witness. We do not consider this argument because Boulder failed to include it in its NRCP 59 motion and issues that are not argued below are "deemed to have been waived and will not be considered on appeal." *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). *See also Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) ("The district court did not address this issue. Therefore, we need not reach the issue."); *Jitnan v. Oliver*, 127 Nev. at 433, 254 P.3d at 629; *Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

and it should have been granted a new trial.[5] However, Boulder waived the right to raise an error-of-law argument to challenge the legal sufficiency of Doty's evidence when it failed to make an objection or move for judgment as a matter of law during trial. *See* NRCP 59(a)(1)(G); NRCP 50. "It is solidly established that when there is no request for a directed verdict, the question of the sufficiency of the evidence to sustain the verdict is not reviewable. A party may not gamble on the jury's verdict and then later, when displeased with the verdict, challenge the sufficiency of the evidence to support it." *Price*, 85 Nev. at 607, 460 P.2d at 841 (citations omitted).

Moreover, we disagree that Doty presented no evidence of Boulder's negligence to the jury. From the limited record, it is clear the jury: saw photographs of the position and condition of Doty after he fell; saw photographs of the condition of Boulder's salad bar, floor, and the surrounding area; heard testimony from Boulder that it did not witness the incident, nor did it know the condition of the salad bar area before Doty slipped; heard testimony from Doty about his fall; and reviewed Boulder's cleaning procedures and policies. Additionally, because Boulder failed to provide a transcript of the trial, we necessarily presume all other arguments and evidence presented to the jury favored Doty. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Thus, Boulder's strict liability argument goes merely to the legal sufficiency of the evidence, which is an argument foreclosed to

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[5]Under Nevada law, there is no strict liability for a property owner for injuries to a person that occurred on his or her property. *Gunlock v. New Frontier Hotel*, 78 Nev. 182, 185, 370 P.2d 682, 684 (1962), *abrogated by Foster v. Costco Wholesale Corp.*, 128 Nev. 773, 291 P.3d 150 (2012) (holding the open and obvious nature of a dangerous conduct does not automatically relieve a property owner from the general duty of reasonable care). However, the jury was instructed on negligence and comparative negligence, not strict liability.

Boulder for failure to raise it at trial and because it is not supported by the record. Therefore, Boulder has not demonstrated that the district court abused its discretion when it denied its motion for a new trial.

Boulder does not establish that the district court abused its discretion when it denied the motion to alter or amend the judgment

Boulder argues the district court abused its discretion when it denied its motion to alter or amend the judgment. A motion to alter or amend a judgment is appropriate to correct "manifest errors of law or fact," or to "prevent manifest injustice." *Panorama Towers Condo. Unit Owners' Ass'n v. Hallier*, 137 Nev., Adv. Op. 67, 498 P.3d 222, 224 (2021) (quoting *AA Primo Builders*, 126 Nev. at 582, 245 P.3d at 1193). Boulder raises two arguments as to why Doty's judgment should be altered or amended. First, Doty failed to establish the medical expenses for his treatment were for a reasonable and customary amount. Second, to prove damages, Doty introduced medical bills that included charges related to his car accident injuries to the jury.

Boulder claims that for Doty to recover for his medical expenses, it is "well-settled" that he had to prove the charges were reasonable and customary in the community by competent testimony. Boulder cites *Moriscato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 158, 111 P.3d 1112, 1116 (2005), and *Stanley v. State*, 197 N.W.2d 599, 606 (Iowa 1972), for this proposition. Boulder's reliance on these cases is misplaced.[6] Boulder also argues that even though the Nevada Short Trial Rules do not

[6]*Moriscato* does not address the reasonableness of medical expenses. *Stanley* is not binding on this court nor applicable under the short trial rules.

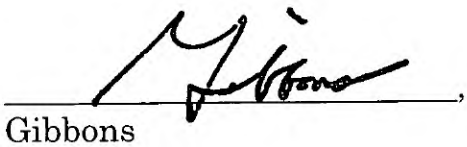
require the use of expert testimony,[7] the plaintiff must still show at least some information that the amount charged to the plaintiff was reasonable and customary. Boulder cites no relevant authority to support its argument under the short trial rules, so we need not consider its argument further. *See Edwards v. Emperor's Garden Rest*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Furthermore, the lack of a trial transcript impedes meaningful appellate review of the evidence presented to the jury on this issue. *See Jitnan*, 127 Nev. at 433, 254 P.3d at 629; *Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

As to the medical bills introduced at trial, Boulder is correct that the record shows the jury awarded some damages to Doty for medical expenses that included the treatment of his car accident injuries. However, Boulder did not provide the district court's findings, or explain the lack thereof, on the reduction of judgment from $122,081.21 to $50,000.00 in its appeal or address the omission of such findings in its motion. Thus, Boulder has failed to demonstrate that the court did not already account for Doty's alleged overcompensation for medical expenses and it cannot show there was a manifest error. Further, after reduction, Doty recovered only 41% of what the jury awarded, and Boulder has failed to argue how, with such a significant reduction, there is manifest injustice. *See cf.* NRCP 61 (providing that a court must disregard all errors that do not affect a party's substantial rights); *see also Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) (finding that "to be reversible, an error must be prejudicial and not harmless").

[7]*See* Nevada Short Trial Rule 19(a).

In sum, Boulder's appeal suffers from three fatal flaws: (1) the failure to make a record of the trial to demonstrate objections and errors by the court; (2) the failure to raise the legal insufficiency of Doty's case at trial; and (3) the failure to explain how the reduction in Doty's damages affected its claim that Doty was overcompensated. What has been included in the record shows that the jury was presented with documentary and oral evidence that supports the jury's verdict. Further, we assume that the materials missing from the record favor the findings of the district court. Thus, we conclude that the district court did not abuse its discretion by denying Boulder's motion to alter or amend the judgment, or in the alternative, grant a new trial.

Accordingly, we AFFIRM the judgment of the district court.



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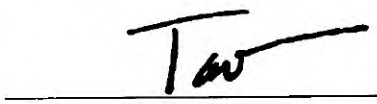

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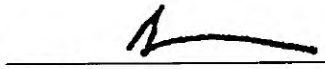

_____, J.
Bulla

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