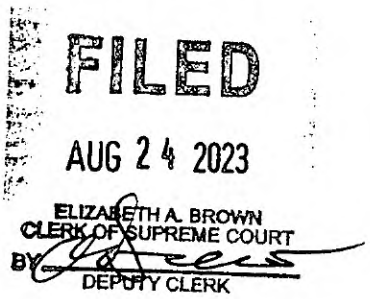
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK LIVINGSTON, INDIVIDUALLY,
Appellant,
vs.
EDMUNDO VELOZ, INDIVIDUALLY;
AND NYE COUNTY,
Respondents.

No. 83466-COA



ORDER OF AFFIRMANCE

Mark Livingston appeals from a district court order denying a motion for a new trial. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Following a motor vehicle accident wherein respondent Nye County's water tanker truck driven by its employee respondent Edmundo Veloz (collectively Veloz), reversed into Livingston's vehicle while at a stop sign. Livingston filed a complaint against Veloz and Nye County alleging various causes of action for negligence. Among other things, Livingston requested damages in the amount of $109,708 for medical expenses, and an additional $5,000 a year for ten years for pain and suffering.

During the three-day jury trial in this case, both parties presented expert testimony regarding the extent and proximate cause of Livingston's alleged damages. Livingston's treating physician, Dr. Yee, testified that Livingston's shoulder was damaged during the crash, requiring surgery to restore function in his arm. Dr. Yee also indicated that Livingston sustained some back injuries, although he did not receive surgery for those injuries. Dr. Graboff, Veloz's expert witness, testified that, upon reviewing the police report and medical records in this case, he could

find no objective evidence of any injury, and generally testified that it was his belief that the treatments Livingston received following the crash were not medically necessary. Nonetheless, Dr. Graboff noted that, if Livingston did indeed sustain injuries during the crash, those injuries were minor and should only have been treated during the month directly following the crash.

As relevant here, during closing argument, Veloz's counsel argued that, if the jury were to consider damages at all, it should only award $6,145—the amount that would reimburse Livingston for the treatment he received during the month following the crash. After deliberation, the jury returned a defense verdict, awarding no damages to Livingston. Thereafter, Livingston filed a motion for a new trial under NRCP 59(a)(1)(e), alleging that the jury manifestly disregarded the jury instructions when it failed to award damages. Following full briefing, the district court entered an order denying Livingston's motion, and Livingston now appeals.

On appeal, Livingston contends that the district court abused its discretion when it denied his motion for a new trial. Specifically, Livingston argues that the jury in this matter expressly disregarded the purportedly uncontested evidence that Livingston required medical treatment during the first month following the crash, requiring reversal for a new trial. Veloz, on the other hand, argues that the jury was well within its ability to consider the evidence presented during the trial to reach its verdict, especially when—as contended by Veloz—any arguments suggesting that the jury should award plaintiff a minimum of $6,145 were argued in the alternative to the defense's theory that Livingston's medical claims were unrelated to the instant crash.

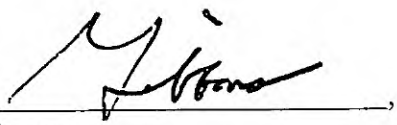
"The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and this court will not disturb that decision absent palpable abuse." *Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996). A district court may "grant a new trial on all or some of the issues" where there has been a "manifest disregard by the jury of the instructions of the court." NRCP 59(a)(1)(E). On appeal, this court considers whether, "had the jurors properly applied the instructions of the court, it would have been impossible for them to reach the verdict which they reached." *Weaver Bros., Ltd. v. Misskelley*, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982).

After our review of the record in this matter, including the trial transcript, we conclude that the district court did not abuse its discretion when denying Livingston's motion for a new trial. Specifically, although Dr. Graboff acknowledged that Livingston may have suffered sprain and strain injuries following the crash, this testimony must be considered in the context of the remainder of Dr. Graboff's testimony, which suggested, among other things, that Livingston's medical claims were excessive, and that he believed, based on the records of the accident, that the accident was not the proximate cause of Livingston's injuries.[1] And even though Veloz's counsel noted during closing argument that the jury could award Livingston $6,145, that statement was made as an alternative argument in the event that the jury decided that the accident was the proximate cause of Livingston's injuries. Accordingly, we conclude that it would not have been

[1]In light of this testimony, we reject Livingston's contention that the holding in *Rees v. Roderiques* is applicable here. *See* 101 Nev. 302, 305, 701 P.2d 1017, 1019 (1985) (concluding that a new trial is appropriate when the jury disregards uncontroverted expert testimony establishing fault).

impossible for the jury to render a defense verdict in this case, *Misskelley*, 98 Nev. at 234, 645 P.2d at 439, and we therefore

ORDER the judgment of the district court AFFIRMED.[2]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Kimberly A. Wanker, District Judge
Kristine M. Kuzemka, Settlement Judge
Benson Allred
Marquis Aurbach Chtd.
Nye County Clerk

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[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.