

IN THE SUPREME COURT OF THE STATE OF NEVADA

FARID HASSANIEH, AN INDIVIDUAL,
Appellant,

vs.

DISCOUNT DUMPSTERS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND ALEXANDER JONES,
AN INDIVIDUAL,

Respondents.

DISCOUNT DUMPSTERS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND ALEXANDER JONES,
AN INDIVIDUAL,

Appellants,


vs.

FARID HASSANIEH, AN INDIVIDUAL,
Respondent.

No. 85368

FILED

JAN 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 85895

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

These are consolidated appeals from a district court judgment and postjudgment order denying a motion for a new trial and postjudgment orders regarding motions to retax costs in a tort action. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

We reverse the district court's denial of additur and/or a new trial on damages. We also reverse the award of costs and prejudgment interest and remand for the district court to reconsider both after the addition of additur. However, we affirm the denial of a new trial on the basis of attorney misconduct and the denial of Discount Dumpsters' attorney fees.

Appellant/cross-respondent Farid Hassanieh was in an automobile accident with respondent/cross-appellant Alexander Jones.

Jones was driving a semi-truck on behalf of respondent/cross-appellant Discount Dumpsters LLC at the time of the accident. After the incident, Hassanieh underwent two surgical procedures on his spine. The second surgery became necessary when one of the screws placed in Hassanieh's neck during the first surgery came loose. Hassanieh filed a complaint against Discount Dumpsters and Jones, and after a jury trial the latter were found liable for Hassanieh's injuries. The jury awarded Hassanieh \$305,000 in damages, plus \$79,370.36 for costs and \$74,096.43 in prejudgment interest.¹ Hassanieh moved for additur or a new trial, which the district court denied, and Hassanieh appealed that order. Discount Dumpsters filed a cross-appeal to contest which party prevailed in the offer of judgment, the district court's order granting Hassanieh all of his prejudgment interest and costs, the order denying Discount Dumpsters' motion to retax Hassanieh's costs, and the order denying Discount Dumpsters its own attorney fees award.

We reverse and remand the district court's denial of additur

Hassanieh argues that the district court abused its discretion by denying Hassanieh's request for additur or a new trial. Discount Dumpsters argues that the district court did not abuse its discretion by denying Hassanieh's request because there was conflicting evidence as to whether the accident caused all of Hassanieh's injuries.

The district court's decision regarding a motion for additur is reviewed for an abuse of discretion. *Donaldson v. Anderson*, 109 Nev. 1039, 1041, 862 P.2d 1204, 1206 (1993). "Nevada courts have the power to

¹The district court also found that the verdict would continue to earn interest at a rate of \$19,902.56 per annum and \$54.53 per diem, until paid.

condition an order for a new trial on acceptance of an additur.” *Lee v. Ball*, 121 Nev. 391, 393, 116 P.3d 64, 66 (2005). If damages are “clearly inadequate or ‘shocking’ to the court’s conscience, additur is a proper form of appellate relief.” *See Donaldson v. Anderson*, 109 Nev. 1039, 1042, 862 P.2d 1204, 1206 (1993). Additionally, it must be appropriate to grant a new trial as to damages only. *Id.* Although *Drummond* articulates two threshold determinants before additur is available (clearly inadequate and ripe for new trial), in practical application there is only one primary consideration.” *Donaldson v. Anderson*, 109 Nev. 1039, 1042, 862 P.2d 1204, 1206 (1993). A jury award shocks the conscience when it fails to allocate monetary damages for an uncontroverted injury. *Id.* at 1042-43, 862 P.2d at 1207. “If both prongs are met, then the district court has discretion to grant a new trial, unless the defendant consents to the court’s additur.” *Lee*, 121 Nev. at 394, 116 P.3d at 66. “Additur may not stand alone as a discrete remedy; rather, it is only appropriate when presented to the defendant as an alternative to a new trial on damages.” *Id.* at 394-95, 116 P.3d at 66-67.

In his motion for additur, Hassanieh requested \$348,907.02 in past medical special damages, \$136,550 in future medical damages, \$621,907.02 in past pain and suffering, and \$136,550 in future pain and suffering for a total of \$1,548,914. The district court denied the motion for additur without an explanation.

In this case, the jury awarded Hassanieh damages for the first surgery, regardless of any conflicting medical evidence that the surgery treated a preexisting condition and not just injuries resulting from the instant accident. Both sides’ expert witnesses agreed that Hassanieh’s post-accident MRI showed degenerative changes in his cervical spine that

predated the accident, but they disagree on whether the accident led to his pain and necessitated surgery. We conclude that the jury's award of damages was clearly inadequate because the damages did not account for the second surgery, so additur is the proper form of relief. Even though the evidence presented at trial suggested conflicting evidence on whether the first surgery was causally connected to the accident, the jury still awarded Hassanieh past medical damages for that surgery. The record demonstrates that the second surgery was only necessary because a screw placed during the first surgery came loose.² The second surgery is therefore as related to the accident as the first surgery. Because the jury found Discount Dumpsters liable and awarded damages relating to the first surgery, we conclude that Discount Dumpsters' liability extended to the second surgery as well, as the two are causally related. Accordingly, we conclude that the jury should have awarded damages for the second surgery.

Because the past medical damages were clearly inadequate, we reverse the order denying Hassanieh's motion for additur, and we remand with instructions to grant Hassanieh a new trial limited to damages unless Discount Dumpsters agrees to an additur of \$348,907.02.³

²There is nothing in the record to suggest that the screw coming loose was due to medical negligence, however, even if there were medical negligence, the second surgery still had to take place to correct it. The fact remains that "but for" the first surgery, the second surgery would not have been necessary.

³Hassanieh also requested damages for past and future pain and suffering and future medical damages. We decline to award past or future damages for pain and suffering because the award of past medical damages and past pain and suffering is sufficiently supported by the record. Further, we decline to award damages for future medical damages because the jury

We affirm the district court's denial of a new trial based on alleged attorney misconduct

Hassanieh argues that the district court abused its discretion by declining to grant a new trial because pervasive misconduct by Discount Dumpsters' counsel may have influenced the jury.

To warrant reversal on grounds of attorney misconduct, the "flavor of misconduct must sufficiently permeate an entire proceeding to provide conviction that the jury was influenced by passion and prejudice in reaching its verdict." *Ringle v. Bruton*, 120 Nev. 82, 94, 86 P.3d 1032, 1040 (2004) (internal quotation marks omitted). In evaluating whether a violation of a pretrial order constitutes "attorney misconduct requiring a new trial, the order must be specific, the violation must be clear, and unfair prejudice must be shown." *Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 126, 252 P.3d 649, 652 (2011). "To claim misconduct associated with an asserted violation of an order in limine requires a contemporaneous objection, even when the order is clear." *Id.* at 135, 252 P.3d at 658. "When a party successfully objects to the misconduct, the district court may grant a subsequent motion for a new trial if the moving party demonstrates that the misconduct's harmful effect could not be removed through any sustained objection and admonishment." *Lioce v. Cohen*, 124 Nev. 1, 6-7, 174 P.3d 970, 973-74 (2008).

First, Hassanieh asserts that Discount Dumpsters twice violated a pretrial order that limited Discount Dumpsters' experts to their "respective area of expertise." Specifically, Hassanieh points to Discount Dumpster's counsel's opening statement wherein he stated that

appears to have rejected the need to compensate Hassanieh in this regard, and there is sufficient support in the record for the jury's decision.

Hassanieh's claims that the accident caused his injuries were not supported by the "mechanism of injury evidence" and suggested that expert witness Brian Jones would present that evidence. Hassanieh contemporaneously objected, and the court held that it violated the order. Because these statements were made by Discount Dumpsters' counsel, and the expert did not testify as counsel stated he would, Discount Dumpster's expert did not make a statement outside of his area of expertise. Accordingly, Hassanieh has not shown attorney misconduct in this regard.

The second alleged violation of the pretrial order highlights Discount Dumpsters' statement in closing argument that "Plaintiff's injuries are not supported by the mechanism of injury evidence. We talked to—Brian Jones . . ." First, Hassanieh failed to contemporaneously object, so he waived this issue on appeal unless there was plain error. This statement, however, did not violate the order because it was made by counsel and not Discount Dumpsters' expert.

Hassanieh next asserts that Discount Dumpsters, during its opening statement, violated a pretrial order that precluded arguing that the "case is 'Attorney Driven' or 'Medical Build Up'" unless Discount Dumpsters established a factual basis for such an argument. The district court considered the issue and ruled that Discount Dumpsters violated the order when it suggested to the jury that the case was attorney driven. The court then attempted to remedy the violation by instructing the jury to "disregard the last slide" that they were shown. Because the judge gave the jury an

admonition to disregard that last slide, we conclude the district court cured any alleged violation.⁴

We reverse the award of costs and prejudgment interest, and we instruct the court to recalculate these costs and reconsider them after the addition of additur

In its cross-appeal, Discount Dumpsters argues that the court erred in including “add-ons” such as costs, interest, and attorney fees to the offer of judgment for purposes of comparing the offer to the judgment received under NRCP 68. Because we reverse on the issue of additur with the possibility of a new trial on damages, we instruct the district court to recalculate and reconsider attorneys’ fees, costs and interest once the issue of damages has been fully resolved.⁵

⁴Hassanieh also argues that Discount Dumpsters inappropriately imitated Hassanieh’s accent during closing arguments by emphasizing the word “rim” in a Lebanese accent. While we conclude that this was not reversible misconduct, we do strongly caution counsel that any alleged mocking of a plaintiff is disfavored and contrary to the civil behavior we expect a member of the Nevada State Bar to demonstrate. We note that RPC 8.4 provides that it is misconduct to “[e]ngage in conduct that is prejudicial to the administration of justice.”

⁵We decline to reach the issue of whether the district court erred in denying Discount Dumpsters’ motion to retax Hassanieh’s costs and awarding Hassanieh costs and prejudgment interest. We direct the district court to reconsider costs consistent with the verdict of additur. However, we affirm the denial of Discount Dumpsters’ attorney fees in light of this order.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



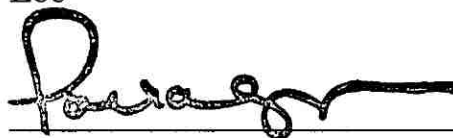
Herndon

J.



Lee

J.



Parraguirre

J.

cc: Hon. Mary Kay Holthus, District Judge
Patrick N. Chapin, Settlement Judge
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