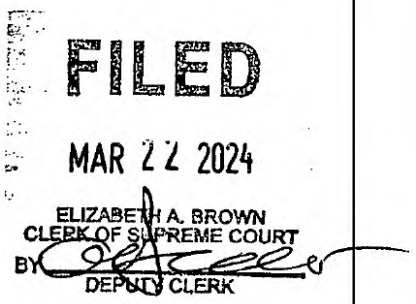
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TODD HUSSEY, INDIVIDUALLY; AND ARTHUR HUSSEY, INDIVIDUALLY,
Appellants,
vs.
YOSHIFUMI TAHIRA, INDIVIDUALLY; AND NEVADA KANKO SERVICE, A NEVADA CORPORATION,
Respondents.

No. 86223-COA



ORDER OF AFFIRMANCE

Todd Hussey appeals from a final judgment, pursuant to a jury verdict, in a tort action. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Hussey was involved in a car accident with respondent Yoshifumi Tahira in January 2017.[1] Both parties were driving southbound on US-95 in Las Vegas when Tahira, while driving a passenger van owned by his employer, Nevada Kanko Service (Kanko), scraped the side of Hussey's RV while changing lanes.[2] A Nevada Highway Patrol trooper responded to the accident and both Tahira and Hussey refused medical treatment. Hussey later alleged that the accident injured his neck, back, and knee, causing him constant pain and requiring on-going medical treatment and procedures. Hussey filed suit against Tahira and Kanko (respondents) alleging that he sustained damages caused by their

[1]Although he is listed in the caption, Arthur Hussey dismissed his claims against respondents in August 2022 and therefore those claims are not before us in this appeal.

[2]We recount the facts only as necessary for this disposition.

negligence and Kanko's negligent hiring, training, and/or supervision of Tahira (hereinafter referred to as a "negligent hiring" claim).

In May 2021, respondents stipulated that Tahira caused the accident while he was in the course and scope of his employment, and that Kanko was vicariously liable for Tahira's negligence via respondeat superior. Consequently, as to Hussey's negligence claim, Kanko disputed only causation—whether the accident caused Hussey's alleged injuries. Respondents continued to dispute any liability arising from Hussey's negligent hiring claim.

Hussey filed a pretrial motion in limine to preclude respondents from presenting the opinion of their biomechanical engineering expert, Dr. Joseph Peles. The district court refused to grant Hussey's motion in limine but permitted Hussey to voir dire Dr. Peles outside the presence of the jury at the time of trial.

Four days before trial began in January 2023, respondents filed a trial brief seeking to exclude any testimony regarding Hussey's negligent hiring claim, asserting that the claim and any related evidence were irrelevant due to the stipulations regarding liability and respondeat superior. Respondents argued that, because Kanko had admitted vicarious liability, Hussey's negligent hiring claim would impose no additional liability on Kanko; thus, any evidence in support of a negligent hiring claim would be irrelevant and superfluous. Respondents further argued that, because the jury could not award additional damages for the negligent hiring claim, any evidence related to it was outside the scope of any determination that the jury would make during trial and therefore the claim would only cause confusion and prejudice against Kanko.

Hussey filed a response brief two days later arguing that respondents' trial brief was an untimely partial motion for summary judgment disguised as a trial brief. Further, he argued that negligence and negligent hiring are two separate causes of actions which he was allowed to simultaneously maintain and bring to trial—regardless of Kanko's admission to vicarious liability.

The district court heard argument on this issue at three different points in the beginning of trial. After the first hearing, the district court informed counsel that further argument would occur in the following morning and specifically requested Hussey to provide a cogent argument on why his negligent hiring claim was not duplicative of respondeat superior.

In the morning, Hussey argued that his evidence in support of his negligent hiring claim was relevant to a claim for punitive damages. The district court noted that while his purported evidence for punitive damages seemed insufficient, it would hold another hearing later to permit Hussey to describe the evidence in more detail and allow the court to determine whether the evidence merited a claim for punitive damages. Later that day, the court evaluated Hussey's evidence in support of a punitive damages claim and determined that Hussey's evidence of respondents' alleged conduct did not warrant punitive damages as a matter of law. While the court expressed frustration with respondents' failure to move to dismiss the negligent hiring claim before trial, it ultimately agreed with them that Hussey's negligent hiring claim against Kanko became superfluous when Kanko admitted vicarious liability. Accordingly, the district court prevented Hussey's presentation of any evidence in support of his negligent hiring claim.

At trial, the district court allowed Hussey to voir dire respondents' biomechanics expert and permitted him to testify as to the forces of the crash and their impact on Hussey. The court also held a *Hallmark* hearing regarding the opinions of respondents' medical expert and barred him from testifying that Hussey's smoking caused his injuries.[3] However, the district court allowed him to testify that smoking could have contributed to Hussey's cervical spine's failure to fuse after he underwent a spinal fusion.

After a seven-day trial, the jury unanimously found that respondents' negligence was not the legal cause of Hussey's alleged injuries. Hussey appeals from the district court's entry of judgment pursuant to this verdict.

The district court did not abuse its discretion by excluding evidence in support of Hussey's negligent hiring claim because Kanko admitted to vicarious liability and the negligent hiring claim created no additional liability

Hussey argues that the district court abused its discretion by effectively dismissing his negligent hiring claim on the eve of trial based on a trial brief and without affording him an opportunity to be meaningfully heard. Respondents argue that Hussey's evidence in support of Kanko's negligent hiring could not have affected the jury verdict that the accident did not cause Hussey's alleged injuries and therefore, even if the district court erred in precluding evidence of negligent hiring, training, or supervision of Tahira, it amounted to harmless error. Respondents further argue this evidence would be offered only for the purpose of establishing duty and breach and would have been irrelevant to the jury's consideration of whether Hussey met his burden of proving that the accident caused the

[3]*Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008).

claimed injuries as it would not have affected the verdict. Respondents also argue that Hussey received adequate notice and received three opportunities to be heard on the negligent hiring issue. They contend that Hussey had no other reason to keep his negligent hiring claim other than to confuse the issues and introduce irrelevant prejudicial evidence.

Regardless of any procedural errors in respondents raising this issue in a trial brief and the district court's decision to resolve it during trial, any error would be harmless because the evidence Hussey sought to present was not relevant in light of the parties' previous stipulations.[4] Hussey's evidence in support of his negligence claim would be offered only for the purpose of establishing duty and breach, and these elements had not been in dispute for nearly two years before trial began. *See* NRCP 56(a) (stating that a district court "shall grant summary judgment if . . . there is no genuine dispute as to any material fact"); *see also* NRCP 56(f) (stating that a district court may grant summary judgment sua sponte after giving notice and a reasonable time to respond to the losing party).[5] Indeed, Hussey asserted in his trial brief that evidence of negligent hiring was relevant because, "[a] jury could reasonably find that this crash occurred because

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[4]As discussed later, while Hussey's evidence related to negligent hiring was possibly relevant to a claim for punitive damages, Hussey failed to present sufficient evidence to warrant such claim as a matter of law.

[5]While we sympathize with the extra burden placed on Hussey right before trial by respondents' trial brief seeking substantive relief on a newly identified issue, and caution respondents always to proceed in a timely fashion on substantive motions, we still conclude that Hussey's argument is unpersuasive as to notice and opportunity to defend. Hussey filed a trial brief responding to respondents' request and the district court heard argument on the issue three times.

Defendant Yoshifumi Tahira was negligent." But respondents had already stipulated to that fact. Hussy also argued that, "[alternatively,] the jury could find that Defendant Kanko was negligent in their training of the Defendant, and therefore they are also responsible for a percentage of negligence." But Kanko had also already stipulated that it was vicariously liable for Tahari's negligence and, even if the jury were to find Kanko liable for negligent supervision, there would be no new damages arising from the negligent hiring claim. *See State, Dep't of Human Res., Div. of Mental Hygiene & Mental Retardation v. Jimenez*, 113 Nev. 356, 373, 935 P.2d 274, 284-85 (1997), *opinion withdrawn, reh'g dismissed*, 113 Nev. 735, 941 P.2d 969 (1997) (concluding that, even though the defendant was "liable on the theory of negligent supervision[,] . . . the district court erroneously awarded damages on that claim when [the plaintiff] was fully compensated on the theory of respondeat superior").

Accordingly, Hussey has not shown that the jury verdict would have been different in the absence of the district court's purported error.[6] *See McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495-96 (2016) (providing that reversal is warranted only where an error affects a party's substantial rights such that "a different result might reasonably have been reached" but for the error); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached.").

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[6]We also note that NRCP 12(f) explicitly permits district courts to sua sponte "strike from a pleading any redundant, immaterial, impertinent, or scandalous matter."

The district court did not abuse its discretion in concluding that Hussey had insufficient evidence to support a claim for punitive damages as a matter of law

Hussey argues that the district court improperly made factual determinations reserved for the jury by failing to meaningfully review evidence in support of his request for punitive damages. Respondents argue that Hussey failed to seek punitive damages until day one of trial and failed to provide adequate notice he would be seeking punitive damages.[7] They further argue that the district court acted within its discretion in not allowing the issue of punitive damages to go to the jury. We agree with respondents.

A district court's determination that there was insufficient evidence to support claims for punitive damages is reviewed for an abuse of discretion. *Smith's Food & Drug Ctrs., Inc. v. Bellegarde*, 114 Nev. 602, 606, 958 P.2d 1208, 1211 (1998), *overruled on other grounds by Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 745-46, 192 P.3d 243, 257 (2008). "A plaintiff is not automatically entitled to punitive damages." *Bongiovi v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 450 (2006). "Punitive damages are designed to punish and deter a defendant's culpable conduct and act as a means for the community to express outrage and distaste for such conduct." *Thitchener*, 124 Nev. at 739, 192 P.3d at 252. Before punitive damages may be recovered, NRS 42.005(1) requires clear and convincing evidence of oppression, fraud, or malice. *See also Thitchener*,

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[7]Hussey did not explicitly plead or seek punitive damages in his complaint. However, we need not resolve this issue in light of our disposition. *See Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 315 n.1, 774 P.2d 1047, 1048 n.1 (1989) (declining to resolve an issue in light of the court's disposition).

124 Nev. at 740, 192 P.3d at 252. A district court can resolve punitive damages as a matter of law where it concludes that a party failed to present enough evidence in support of such damages for the issue to reach the jury. *Bongiovi*, 122 Nev. at 581, 138 P.3d at 451 (explaining that the district court "has discretion to determine whether the defendant's conduct merits punitive damages as a matter of law."); *Thitchener*, 124 Nev. at 740, 192 P.3d at 252-53 ("[T]he district court makes a threshold determination that a defendant's conduct is subject to this form of civil punishment. . . .") (citing *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 612, 5 P.3d 1043, 1052 (2000)).

NRS 42.001(2) provides that "fraud" is "an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his or her rights or property or to otherwise injure another person." NRS 42.001(3) defines "malice" as "conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others." NRS 42.001(1) provides that "[c]onscious disregard" means the knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences.

Hussey relied on the following evidence: (1) Kanko hired Tahira as a driver when he did not have a valid Nevada driver's license in 2011; (2) after Tahira obtained a Nevada driver's license in 2012, Kanko added the Nevada driver's license information to his employment eligibility form, which had been signed in 2011 under penalty of perjury—Hussey characterized this as fraudulently backdating employment records; (3) Kanko failed to document the subject incident in Tahira's employment file; (4) Kanko entrusted Tahira with a large passenger van without sufficient

experience and after a prior crash in California in 2009; and (5) Tahira had a California citation of which Kanko was unaware.[8]

The evidence presented to the district court failed to demonstrate that respondents had a conscious disregard for Hussey's rights or that their actions equated to fraud, malice, or oppression. Hussey was provided an opportunity to brief the issue with the related claim of negligent hiring, which he did not do. Hussey had three opportunities to present evidence in support of alleged punitive damage claims but failed to provide a sufficient basis to permit that evidence to be heard by the jury. Accordingly, Hussey was afforded due process but was unable to meet the "threshold" burden as required by *Evans*, 116 Nev. at 612, 5 P.3d at 1052. Therefore, the district court did not abuse its discretion in determining that, as a matter of law, Hussey had insufficient evidence to support a claim for punitive damages.

The district court did not abuse its discretion in permitting respondents' biomechanics expert to testify

Hussey argues that the district court abused its discretion by allowing respondents' biomechanics engineering expert, Dr. Joseph Peles, to testify. Specifically, Hussey contends that Dr. Peles's opinions relied upon speculative determinations about the forces of the crash based on a computer download for only one vehicle (Kanko's van), vehicle damage photos, speculative vehicle weights and angle of impact, and unknown impact speeds and duration of impact. Respondents argue that Hussey's

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[8]We note that Tahira had a valid California driver's license when he was hired by Kanko in 2011.

As the district court noted, counsel did not explain what type of citation Tahira received in California.

criticisms of Dr. Peles's opinion go to the weight of his testimony, not its admissibility.

"We review a district court's decision to admit expert testimony for an abuse of discretion." *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). "An abuse of discretion occurs when no reasonable judge could reach a similar conclusion under the same circumstances." *Id.*

To testify as an expert witness, the witness must be qualified in an area of specialized knowledge, the testimony must assist the trier of fact, and the testimony must be limited to the scope of the expert's knowledge. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008). A witness' testimony will assist the trier of fact "only when it is relevant and the product of reliable methodology." *Id.* at 500, 189 P.3d at 651. "Biomechanical experts are not precluded from testifying altogether, and weaknesses in a purported expert's testimony . . . go[ ] to the weight, not the admissibility, of the evidence. *Mathews v. State*, 134 Nev. 512, 516, 424 P.3d 634, 639 (2018) (internal quotation marks omitted). Indeed, "it is a well settled rule in this state that whenever conflicting [expert] testimony is presented, it is for the jury to determine what weight and credibility to give to that testimony." *Ford Motor Co. v. Trejo*, 133 Nev. 520, 531, 402 P.3d 649, 657 (2017) (quoting *Allen v. State*, 99 Nev. 485, 487, 665 P.2d 238, 240 (1983)); *see also Houston Expl. Inc. v. Meredith*, 102 Nev. 510, 513, 728 P.2d 437, 439 (1986) (noting that the jury, not the court, must determine the weight given to conflicting expert testimony).

In this case, Hussey fails to demonstrate that the district court clearly abused its discretion by permitting Dr. Peles to testify. Hussey criticizes Dr. Peles by either emphasizing that he lacked the information necessary to form reliable opinions or by contradicting Dr. Peles's opinions

by citing his own expert's opinions. However, these grounds, and the other arguments Hussey makes, are not dispositive under the deferential standard of review. Moreover, Hussey used these criticisms and conflicting expert opinions against Dr. Peles on cross examination and during closing arguments.

As to Hussey's *Hallmark* challenge of Dr. Peles's methodology and assumptions he made, the district court considered this argument before trial on a motion in limine, and during trial, after Hussey voir dired Dr. Peles—and rejected it. The court found that Dr. Peles's qualifications and methodology were sufficient to meet the *Hallmark* threshold. The district court also recognized that while Dr. Peles had to make assumptions, such as the weight of Hussey's RV, his assumptions were conservative and to Hussey's benefit. While Hussey presented conflicting expert testimony in arguing that Dr. Peles' methodology was unreliable, it was for the jury to assess each testimony and weigh them against the other.

We conclude that the district court did not abuse its discretion by admitting Dr. Peles as an expert and permitting him to testify, because Hussey's arguments do not conclusively assail *the admissibility* of Dr. Peles's testimony under *Hallmark*'s assistance requirement, but rather the weight the jury should have given his testimony. *See Leavitt*, 130 Nev. at 510, 330 P.3d at 6 (concluding that in the context of a challenge to expert testimony as speculative, "even if portions of [an expert's] testimony [are] speculative, it [i]s for the jury to assess the weight to be assigned to [the] testimony").

Dr. Bassewitz's testimony regarding Hussey's smoking was not unfairly prejudicial to Hussey

Hussey argues that respondents' independent medical expert, Dr. Hugh Bassewitz provided undisclosed causation opinions about

Hussey's smoking and injuries. Specifically, Hussey contends that Dr. Bassewitz's expert report did not mention anything about Hussey's smoking being the cause of a delay or nonunion of his cervical spine after he underwent a spinal fusion, and that he impermissibly included that opinion during his testimony. Hussey argues that he was not provided notice of this testimony and that it unfairly prejudiced him. Respondents argue Dr. Bassewitz personally placed Hussey on notice of his opinion regarding Hussey's smoking and how it impacted the fusion of his cervical spine post-surgery at his deposition in April 2021. Respondents further argue that this issue is irrelevant and moot because Dr. Bassewitz testified that Hussey's smoking was not related to Hussey's degenerative condition, which predated the subject accident, and the jury determined that the subject accident did not cause the complained injuries. Therefore, even if the district court abused its discretion in allowing Dr. Bassewitz to testify regarding Hussey's smoking, respondents argue that the error was harmless because it did not prejudice Hussey.

NRCP 16.1(a)(2) requires written disclosures of each party's experts, as well as the experts' opinions "well in advance of trial." *Sanders v. Sears-Page*, 131 Nev. 500, 212, 354 P.3d 201, 212 (Ct. App. 2015). In relevant part, NRCP 16.1(a)(2)(B)(i) provides an expert report shall contain "a complete statement of all opinions" to be expressed and the basis and reasons therefor. Retained medical experts are subject to the requirements of this provision. *See FCH1, LLC v. Rodriguez*, 130 Nev. 425, 435, 335 P.3d 183, 190 (2014) (concluding that the district court abused its discretion in allowing medical testimony without a proper NRCP 16.1(a)(2)(B) disclosure). The policy underlying NRCP 16.1 "serves to place all parties on

an even playing field and to prevent trial by ambush or unfair surprise." *Sanders*, 131 Nev. at 517, 354 P.3d at 212.

Here, after Hussey conducted voir dire of Dr. Bassewitz outside the presence of the jury, Hussey objected to Dr. Bassewitz's testimony as his opinion in his report did not cover his testimony concerning causation between Hussey's smoking and the failure or delay of Hussey's neck to fuse post-surgery. Hussey argued below, and now on appeal, that he was not provided notice of this testimony and that the testimony was unfairly prejudicial.

The district court ruled that Dr. Bassewitz personally put Hussey on notice of this issue when he conveyed to Hussey that he "intended to say, within a reasonable degree of medical probability, that the smoking, if there was a failure to fuse, was the likely reason for the failure, and that was within a reasonable degree of medical probability." Accordingly, the district court allowed him to testify as to that.

During his testimony, when asked whether he had any opinion as to whether Hussey's "use of nicotine was the cause of that delayed union or nonunion," Dr. Bassewitz stated that if Hussey had a delayed union, he thought "the cause for that is most likely the use of nicotine." Hussey moved to strike this answer, but the district court overruled the objection and denied Hussey's request to strike.

Hussey argues that smoking is a "habit which risks improper jury inferences and biases based on public perceptions of smokers" and is "loaded with negative connotations and negative public perceptions." However, Hussey's own treatment providers and experts testified during trial that smoking is a risk factor in a failure to fuse and that Hussey's neck failed to fuse post-surgery. Indeed, his medical expert and two of his

surgeons all testified that smoking would impact the success of a neck fusion surgery.

Based on Hussey's own witnesses' testimony regarding smoking, Bassewitz' brief discussion of Hussey's smoking did not unfairly prejudice Hussey, even if it was improper, such that reversal is not warranted. *See McClendon*, 132 Nev. at 333, 372 P.3d at 495-96 (providing that reversal is warranted only where an error affects a party's substantial rights such that "a different result might reasonably have been reached" but for the error); *see also Wyeth*, 126 Nev. at 465, 244 P.3d at 778. We note that even if Dr. Bassewitz had been precluded from providing this same testimony, the jury would have heard this evidence from three other witnesses, which would have produced the same "improper jury inferences" Hussey argues warrants reversal.

The jury verdict was supported by substantial evidence and Hussey is not entitled to additur on appeal

Hussey argues that had the jury followed the district court's instructions, its verdict was impossible, because respondents failed to produce any expert testimony or other evidence refuting Hussey injured his knee in the crash and required medical treatment.[9] Accordingly, Hussey requests a new trial or additur. Respondents rebut, asserting that there

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[9]Dr. Cash testified that the car accident and Hussey's "sprained or strained" knee "clinically correlate." Respondents did not cross examine Dr. Cash as to the alleged knee injuries. Dr. Peles only provided testimony as to how the forces of the crash might have impacted Hussey's shoulder, torso, and neck—not his knee. However, we note that respondents' expert witness, Dr. Peles, wrote in his report that, "the vehicle-to-vehicle interaction would be brief and cause minimal loading to the knee" and that "[i]maging records of the knee reported degenerative changes of the knee with mild arthritis."

was substantial evidence to support the jury's determination that the subject accident did not cause an injury to Hussey's knee, and that this is an issue of credibility and weighing of conflicting evidence left to the province of the jury.

A jury verdict will not be reversed unless it is unsupported by substantial evidence or clearly erroneous. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009). Substantial evidence is that which a reasonable person might accept as adequate to support a conclusion. *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557 n.4, 188 P.3d 1084, 1087 n.4 (2008). A new trial may be granted for "[m]anifest disregard by the jury of the instructions of the court." NRCP 59(a)(5). However, even if a NRCP 59(a) ground for new trial has been established, a new trial is not warranted unless it can be shown that the substantial rights of the moving party have been materially affected. *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 263-64, 396 P.3d 783, 786 (2017). A defendant may not rely on layperson testimony to rebut expert opinion establishing causation for an injury and damages. *See, e.g., Lord v. State*, 107 Nev. 28, 33-34, 806 P.2d 548, 551 (1991) (noting that when "the cause of injuries is not immediately apparent, the opinion as to the cause should be given by one qualified as a medical expert" because "layperson opinion pursuant to NRS 50.265 is not an appropriate vehicle to illuminate the cause of . . . injuries").

"Additur is a just, speedy, efficient, and inexpensive vehicle to correct an inadequate jury verdict." *Winchell v. Schiff*, 124 Nev. 938, 949, 193 P.3d 946, 953 (2008). The right to additur may be waived if the plaintiff fails to move for additur before the district court. *Lee v. Ball*, 121 Nev. 391, 394, 116 P.3d 64, 66 (2005) ("The district court has broad discretion in determining motions for additur, and we will not disturb the court's

determination unless that discretion has been abused."); *Drummond v. Mid-W. Growers Co-op. Corp.*, 91 Nev. 698, 712, 542 P.2d 198, 208 (1975) (explaining that the explaining that the "[district] court *upon appropriate motion* should first determine whether the damages are clearly inadequate and, if so, whether the case would be a proper one for granting a motion for a new trial limited to damages" before granting a motion for a new trial limited to damages (emphasis added)). However, "if damages are clearly inadequate or shocking to the court's conscience, additur is a proper form of appellate relief." *Donaldson v. Anderson*, 109 Nev. 1039, 1042, 862 P.2d 1204, 1206 (1993) (internal quotation marks omitted) (citing *Arnold v. Mt. Wheeler Power*, 101 Nev. 612, 614, 707 P.2d 1137, 1139 (1985)).

Here, after the jury returned a verdict in favor of respondents and awarded no damages, Hussey did not request additur or a new trial if additur was not granted. As such, Hussey waived this argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal"). Additionally, a plaintiff cannot obtain additur on appeal if the jury has determined that the defendant's negligence did not *cause damages* and therefore, awarded no damages. *See Eikelberger v. Tolotti*, 94 Nev. 58, 60-61, 574 P.2d 277, 279 (1978) (explaining that the first consideration of whether additur is appropriate is whether "the *damages awarded by a jury* are clearly inadequate" (emphasis added) (internal quotation marks omitted)). In this case, because the jury did not find respondents' negligence caused Hussey's injuries, it never proceeded to consider an award of damages. Accordingly, additur is not appropriate.

Nevertheless, we conclude that the record indicates that there was conflicting evidence regarding Hussey's injuries. In light of the conflicting evidence, the jury verdict is not unsupported. *See, e.g.*, *McKenna v. Ingersoll*, 76 Nev. 169, 174-75, 350 P.2d 725, 728 (1960) ("[T]he jury must be viewed as having considered all of such medical testimony and evidence along with the evidence relating to the force of the impact . . . . Likewise, we must assume that the jury understood the instructions and correctly applied them to the evidence."). Because this court does not reweigh evidence, *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000), we conclude that there was substantial evidence for the jury to reject Hussey's claim that his knee was injured during the crash, *see Fox v. Cusick*, 91 Nev. 218, 221, 533 P.2d 466, 468 (1975) ("It was for the jury to weigh[ ] the evidence and assess the credibility to be accorded the several witnesses. . . . With regard to the matter of injury and damage, it was within the province of the jury to decide that an accident occurred without compensable injury."). Therefore, the jury's verdict, while arguably could have been different, is neither clearly inadequate nor does it shock the conscience of the court. *See Donaldson*, 109 Nev. at 1042, 862 P.2d at 1206.

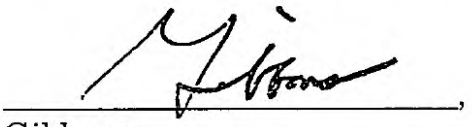
Attorney fees and costs

Hussey challenges the district court's postjudgment orders awarding respondents attorney fees and costs. Orders granting attorney fees and costs are independently appealable as a special order after final judgment. *See* NRAP 3A(b)(8) (providing for appeals from special orders entered after a final judgment); *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995). The record indicates that the court's orders concerning attorney fees and costs were entered after Hussey initiated this appeal. Thus, Hussey's challenge to the district court's

postjudgment attorney fees and costs orders are not properly before this court as part of this appeal, and we do not consider them in resolving this matter.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[10]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Thomas J. Tanksley, Settlement Judge
Christian Morris Trial Attorneys
Ahlander Injury Law
Winner Booze & Zarcone
Eighth District Court Clerk

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