

SUPREME COURT OF NEVADA

Fox v. Cusick, 91 Nev. 218

533 P.2d 466 (1975) · No. No. 7274 · Decided March 28, 1975

SUMMARY

The Nevada Supreme Court reviews an order granting a new trial after a jury verdict for the defendant in an automobile-accident personal-injury action. The court holds that the trial court could not substitute its view of the evidence for the jury's where the verdict was not legally impossible and no plain error or manifest injustice was shown. The order granting a new trial is reversed, and the jury verdict is reinstated.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Thompson, Justice; Gunderson, Chief Justice; Batjer, Justice; Zenoff, Justice; Mowbray, Justice
JURISDICTION	Nevada
DECIDED	March 28, 1975
DOCKET	No. 7274
DISPOSITION	reversed
PROCEDURAL POSTURE	After a jury returned a verdict for Fox in the Cusicks' personal-injury action, the district court denied the Cusicks' motion for judgment notwithstanding the verdict but granted a new trial on the ground that the verdict was against the weight of the evidence. Fox appealed the new-trial order.
STANDARD OF REVIEW	The trial court's order granting a new trial based on the weight of the evidence is reviewed with great caution. Under Nevada Rule of Civil Procedure 59 as amended, a trial court may not substitute its view of the evidence for the jury's where the losing party is not entitled to judgment as a matter of law; an appellate court may sustain a new-trial order upon a showing of plain error or manifest injustice.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion
PARTIES	Gary Michel Fox v. Edward J. Cusick, Phenamaye Cusick

TOPICS

motion for new trial

personal injury

proximate cause

negligence

appellate procedure

PRACTICE AREAS

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civil procedure

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personal injury

QUESTIONS PRESENTED

1. Whether the district court properly granted a new trial because the jury's verdict for Fox was against the weight of the evidence.
2. Whether the evidence compelled a finding that Fox proximately caused compensable personal injuries to the Cusicks.

HOLDINGS

1. Under Nevada Rule of Civil Procedure 59 as amended, a trial court may not order a new trial solely because it views the evidence differently from the jury when the losing party is not entitled to judgment as a matter of law. A new trial may nevertheless be sustained upon a showing of plain error or manifest injustice.
2. The evidence did not compel a finding for the Cusicks on proximate cause or compensable injury. Proximate cause, including the cause of claimed damages, was for the jury, and the jury could determine that an accident occurred without causing compensable injury.

KEY QUOTATIONS

“The aim of the amendment is to preclude a trial court from substituting its view of the evidence for that of a jury in a case where the losing party is not entitled to judgment as a matter of law.” (at 467)

“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.” (at 468)

FACTUAL BACKGROUND

The Cusicks' automobile was struck from behind by a car driven by Fox on Desert Inn Road in Las Vegas. Cusick had slowed and stopped while preparing to turn and motioning a bicycling child across his path; Fox's attention was momentarily diverted, and he was unable to stop before colliding with the Cusick vehicle. The Cusicks claimed neck and back injuries, but the evidence concerning causation and damages was disputed, including evidence that Mr. Cusick had a longstanding back condition and later reinjured his back.

PROCEDURAL HISTORY

The Cusicks sued Fox for personal injuries arising from a rear-end automobile collision. The jury found for Fox. The district court denied judgment notwithstanding the verdict but ordered a new trial because it believed the verdict was against the weight of the evidence. The Nevada Supreme Court reversed the new-trial order and reinstated the jury verdict.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting a new trial was reversed, and the jury verdict for Fox was reinstated.

CASES CITED

- Sierra Pacific Power Co. v. Day, 80 Nev. 224, 229, 391 P.2d 501, 503 (1964)
- Price v. Sinnott, 85 Nev. 600, 607, 460 P.2d 837 (1969)
- Amundsen v. Ohio Brass Co., 89 Nev. 378, 381, 513 P.2d 1234 (1973)
- Barreth v. Reno Bus Lines, 77 Nev. 196, 360 P.2d 1037 (1961)

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