

SUPREME COURT OF NEVADA

Canterino v. The Mirage Casino-Hotel, 117 Nev. 19

16 P.3d 415 (2001) · No. No. 30659 · Decided January 29, 2001

SUMMARY

The Supreme Court of Nevada held that the district court abused its discretion by ordering a new trial on liability based on the alleged excessiveness of the jury's damages award and counsel's arguments. However, the court affirmed a new trial on damages because the district court improperly instructed two jurors who disagreed on liability not to participate in deliberating damages. The case was remanded for a new trial limited to damages.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Shearing, J.; Becker, J.; Maupin, C.J.; Agosti, J.; Rose, J.; Young, J.
JURISDICTION	Nevada
DECIDED	January 29, 2001
DOCKET	No. 30659
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting a new trial after the plaintiff rejected a conditional remittitur of a jury damages award.
STANDARD OF REVIEW	An order granting a new trial conditional on the plaintiff's refusal to accept remittitur is reviewed for abuse of discretion. The court defers to the trial judge when there is a material conflict in the evidence concerning damages, but an order of remittitur is suspect absent conflicting evidence unless the verdict is so excessive as to suggest passion and prejudice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joseph D. Canterino v. The Mirage Casino-Hotel

TOPICS

- premises liability
- damages
- motion for new trial
- appellate procedure
- personal injury

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by ordering a new trial based on the alleged excessiveness of the jury's damages award and Canterino's refusal to accept the conditional remittitur.
2. Whether jurors who disagreed with the liability determination were required to participate in deliberations concerning damages.
3. Whether the district court's failure to notify counsel before answering the jury's question constituted harmless error.

HOLDINGS

1. The district court abused its discretion in ordering a new trial based on the alleged excessiveness of the damages award and Canterino's refusal to accept the remittitur. The uncontradicted evidence supported the jury's award, and the absence of an outwardly visible injury was not a proper basis for reducing damages.
2. All empaneled jurors must participate in deliberations on every issue submitted to them, including damages, even when one or more jurors disagree with the liability determination. A verdict based on deliberations by fewer than all empaneled jurors is invalid as to the affected issue.
3. Although the district court ordinarily must answer a jury question in the presence of or after notice to the parties or counsel, the failure to provide notice was not harmless because the court's answer incorrectly excluded two jurors from deliberating on damages.

KEY QUOTATIONS

"We will not uphold a jury verdict that does not represent the deliberations of all jurors. Not all of the jurors need agree. A verdict may be rendered by three-fourths of the jurors. Nev. Const. art. 1, § 3. However, all the jurors must participate in the deliberations." (16 P.3d at 419-420)

"We may not invade the province of the fact-finder by arbitrarily substituting a monetary judgment in a specific sum felt to be more suitable." (16 P.3d at 418)

FACTUAL BACKGROUND

Canterino was beaten with a baseball bat and robbed by two unidentified assailants in a hallway of the Mirage Casino-Hotel while he was staying there to gamble. He presented extensive medical evidence of permanent neurological and psychological injuries, including hearing and balance impairment, panic disorder, agoraphobia, and post-traumatic stress disorder. The jury awarded \$5,760,291.35 for pain and suffering, impairment, lost earning capacity, and medical expenses, while the Mirage primarily disputed liability and did not present conflicting medical evidence concerning the nature or extent of his injuries.

PROCEDURAL HISTORY

After a nine-day trial, the jury found for Canterino and awarded \$5,760,291.35 in damages. The district court conditionally reduced the award to \$1,500,000 based on excessiveness and alleged passion and prejudice; when Canterino rejected the remittitur, the court ordered a new trial. The Nevada Supreme Court reversed the new-trial order as to liability, affirmed it as to damages, and remanded for a new trial limited to damages.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order granting a new trial as to liability, affirm the order as to damages, and remand for a new trial limited to the issue of damages.

CASES CITED

- Harris v. Zee, 87 Nev. 309, 486 P.2d 490 (1971)
- Stackiewicz v. Nissan Motor Corp., 100 Nev. 443, 686 P.2d 925 (1984)
- Beccard v. Nevada National Bank, 99 Nev. 63, 657 P.2d 1154 (1983)
- Barrett v. Baird, 111 Nev. 1496, 908 P.2d 689 (1995)
- DeJesus v. Flick, 116 Nev. 812, 7 P.3d 459 (2000)
- Cavanaugh v. State, 102 Nev. 478, 729 P.2d 481 (1986)
- Perkins v. Komarnyckyj, 172 Ariz. 115, 834 P.2d 1260 (1992)
- Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 632 P.2d 1155 (1981)
- Hoffman v. Brandt, 65 Cal. 2d 549, 421 P.2d 425 (1966)
- Wright & Ford Millworks, Inc. v. Long, 412 So. 2d 892 (Fla. Dist. Ct. App. 1982)
- Las Palmas Assocs. v. Las Palmas Ctr., 235 Cal. App. 3d 1220, 1 Cal. Rptr. 2d 301 (1991)
- Thomas v. Dalpos, 26 Ill. App. 3d 877, 326 N.E.2d 42 (1975)
- Board of County Road Commissioners of the County of Wayne v. GLS LeasCo, Inc., 394 Mich. 126, 229 N.W.2d 797 (1975)
- Tucker v. Kansas City Southern Railway, 765 S.W.2d 308 (Mo. Ct. App. 1988)
- Betts v. Manville Personal Injury Settlement Trust, 225 Ill. App. 3d 882, 588 N.E.2d 1193 (1992)
- Horn v. Atchison, Topeka & Santa Fe Railway Co., 61 Cal. 2d 602, 394 P.2d 561 (1964)
- Kehr v. Smith Barney, Harris Upham & Co., Inc., 736 F.2d 1283 (9th Cir. 1984)
- Standard Oil of California v. Perkins, 347 F.2d 379 (9th Cir. 1965)