

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARREN ROY MACK,
Appellant,

vs.

RANDAL S. KUCKENMEISTER, AS
ADMINISTRATOR OF THE ESTATE OF
CHARLA MACK, AND MICHAEL E. FONDI,
AS GUARDIAN AD LITEM FOR ERIKA MACK,
Respondents.

No. 51536

FILED

FEB 25 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is a proper person appeal from a district court judgment on a jury verdict in a wrongful death action. Second Judicial District Court, Washoe County; Noel E. Manoukian, Senior Judge.

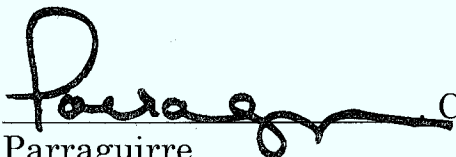
Having reviewed the briefs, appendix, and record on appeal, we affirm in part and reverse in part the judgment of the district court. In district court, appellant willingly decided not to participate at trial and informed the judge and parties of this decision. The trial was therefore conducted without appellant, and as a result, appellant did not raise any challenge to the proceedings in district court. Thus, we conclude that appellant is precluded from now raising the majority of his arguments on appeal. See Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (stating that an argument made for the first time on appeal is waived).

Although the majority of appellant's arguments are waived, one portion of the awarded damages must be reversed under a plain error review. See Torres v. Farmers Insurance Exchange, 106 Nev. 340, 345 n.2, 793 P.2d 839, 842 n.2 (1990); see also Lioce v. Cohen, 124 Nev. 1, ___, 174 P.3d 970, 981-82 (2008). The amount of punitive damages awarded to respondent Randal S. Kuckenmeister, as Administrator of the Estate of Charla Mack, exceeds the amount of punitive damages NRS


42.005(1)(b) allows. Under NRS 42.005(1)(b), the punitive damages awarded to Kuckenmeister is limited to \$300,000, based on the compensatory damages award of less than \$100,000. Therefore, we conclude that the punitive damage award to Kuckenmeister must be reduced to the statutorily required \$300,000. While we conclude that this specific award of damages must be reduced, we conclude that a new trial is unwarranted. See Sierra Foods v. Williams, 107 Nev. 574, 577, 816 P.2d 466, 467 (1991) (recognizing the power of this court to reduce a punitive damages award).

Having reviewed the remainder of appellant's arguments on appeal, we conclude that they either are waived or lack merit and therefore affirm all portions of the district court judgment other than the specific portion outlined above. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.


Parraguirre C.J.


Douglas, J.


Pickering, J.

cc: Chief Judge, Second Judicial District
Hon. Noel E. Manoukian, Senior Judge
Darren Roy Mack
Kreitlen & Walker
Robison Belaustegui Sharp & Low
Washoe District Court Clerk