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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2284**

William H. Thomas,
Appellant,

vs.

Ross A. Olson,
Respondent.

**Filed September 4, 2012
Affirmed
Wright, Judge**

Anoka County District Court
File No. 02-CV-08-5236

William H. Thomas, Minneapolis, Minnesota (pro se appellant)

Mark L. Seeger, Votel, McEachron & Godfrey, St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this action arising from an automobile collision, the jury awarded appellant \$37,863.64 in damages. Appellant challenges the district court's denial of his motion for a new trial or additur. Because appellant's arguments that the trial was unfair and the jury's damages award is insufficient are without merit, we affirm.

FACTS

In February 2004, appellant William H. Thomas was involved in a three-vehicle collision with respondent Ross A. Olson and a third party. Thomas initiated an action against Olson in July 2008. Because Olson's liability was not in dispute, the case proceeded to trial on the issue of damages. In addition to the parties' testimony, each party presented expert medical testimony via videotape deposition. The jury returned a special verdict, finding that (1) Thomas did not sustain a permanent injury as a result of the collision; (2) Thomas did not sustain a disability for 60 days or more as a result of the collision; (3) \$27,863.64 will fairly and adequately compensate Thomas for past medical expenses resulting from the collision and \$10,000 will fairly and adequately compensate him for past pain, disability, and emotional distress resulting from the collision; and (4) no amount of money is necessary to fairly and adequately compensate Thomas for future damages resulting from the collision.

Proceeding pro se, Thomas filed a motion for a new trial or additur, which the district court denied after a hearing. This appeal followed.

DECISION

Thomas raises a multitude of issues on appeal that are beyond the scope of the district court's final decision. Consistent with this court's special term ruling, we limit our review to the denial of Thomas's motion for a new trial or additur.

I.

The decision to grant or deny a new trial ordinarily rests within the district court's discretion, and we will not disturb the decision absent a clear abuse of that discretion.

Halla Nursery, Inc. v. Baumann-Furrie & Co., 454 N.W.2d 905, 910 (Minn. 1990). But when the district court’s decision is based on an error of law, we review the decision de novo. *Dostal v. Curran*, 679 N.W.2d 192, 194 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

In Minnesota, a party may receive a new trial based on certain errors that affect the fairness of the proceedings. Minn. R. Civ. P. 59.01. In an appeal from the denial of a motion for a new trial, we review only those matters specifically alleged in the motion to constitute error. *Waldner v. Peterson*, 447 N.W.2d 217, 219 (Minn. App. 1989). We will affirm the district court’s denial of a motion for a new trial when a party merely asserts a basis for granting the motion without adequately identifying the alleged errors. *Id.*

Thomas’s motion alleged four bases for granting a new trial. Because our review is limited to those matters specifically alleged in the motion, we review these four bases in turn. *See id.*

A.

Thomas first relies on Minn. R. Civ. P. 59.01(a), under which a moving party may receive a new trial because of an irregularity in the proceedings. Such an irregularity is one that demonstrates a “failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law.” *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. June 14, 1995). When a motion for a new trial is founded on this basis, the movant must establish that the irregularity resulted in an unfair trial. *Id.* Thomas argues that the district court abused its

discretion by failing to recognize “irregularity” in the actions of his counsel and opposing counsel.

1.

Thomas asserts that his counsel’s unsatisfactory representation constitutes an irregularity that entitles him to a new trial. In his motion for a new trial, Thomas alleged that his counsel provided “inadequate representation” by failing to raise certain issues, present “vital medical evidence,” make “important objections,” and generally “accede to [Thomas’s] wishes in the presentation of his case.” Our review of the record establishes that the district court correctly concluded that Thomas’s generalized complaints about his counsel’s performance do not constitute an irregularity that would entitle Thomas to relief under Minn. R. Civ. P. 59.01(a).

2.

Thomas next argues that opposing counsel’s use of “deceit” and the “adversarial process” constitute an irregularity that entitles him to a new trial. Thomas alleged in his motion that opposing counsel “mischaracterized” Thomas’s expert medical testimony and offered “false or misleading” expert medical testimony.

Our legal system is an adversarial system. *See Bohach v. Thompson*, 307 Minn. 332, 336, 239 N.W.2d 764, 767 (1976). Employment of the “adversarial process” in a civil trial is not an irregularity. Thomas’s allegations of improper conduct or “deceit” are unfounded. The district court correctly concluded that these broad allegations about opposing counsel’s trial methods do not constitute an irregularity entitling Thomas to relief.

B.

Thomas next contests the denial of relief under Minn. R. Civ. P. 59.01(f) for alleged errors of law that occurred at trial, about which he objects for the first time on appeal. Thomas argues that he is entitled to a new trial because the district court failed to give (1) a curative instruction and (2) an instruction on liability.

1.

Thomas argues that the district court failed to correct opposing counsel's mischaracterization of Thomas's expert medical testimony with a curative instruction. A motion for a curative instruction at trial is "a prerequisite" to obtaining a new trial on appeal. *Bisbee v. Ruppert*, 306 Minn. 39, 48, 235 N.W.2d 364, 370 (1975). But Thomas failed to move for a curative instruction. Thus, even *if* opposing counsel mischaracterized Thomas's expert medical testimony, the district court correctly concluded that it did not commit an error of law entitling Thomas to relief under rule 59.01(f) by not instructing the jury sua sponte.

2.

Relying on *Line v. Nourie*, 298 Minn. 269, 215 N.W.2d 52 (1974), and *Butler v. Engel*, 243 Minn. 317, 68 N.W.2d 226 (1954), Thomas argues that he is entitled to a new trial because the district court failed to instruct the jury on the misdemeanor of careless driving. *See* Minn. Stat. § 169.13, subd. 2 (2012). We disagree. In both *Line* and *Butler*, the jury was charged with determining the parties' comparative negligence. *Line*, 298 Minn. at 273, 215 N.W.2d at 54-55; *Butler*, 243 Minn. at 320, 68 N.W.2d at 229. Here, Olson's liability was not in dispute. Because the only issue at trial was the amount of

damages, the district court correctly concluded that a jury instruction on careless driving was unwarranted. Therefore, Thomas is not entitled to relief under rule 59.01(f) on this ground.

C.

Thomas next argues that he was erroneously denied relief under Minn. R. Civ. P. 59.01(g) because the verdict is not justified by the evidence. The denial of a new trial on this ground is reversible error “only if there is no evidence reasonably tending to sustain the verdict or if it is manifestly and palpably against the weight of the evidence.” *Austin v. Rosecke*, 240 Minn. 321, 324, 61 N.W.2d 240, 243 (1953).

From our careful review of the record, we conclude that more than ample evidence supports the jury’s verdict. Thus, the district court correctly denied Thomas relief under rule 59.01(g).

D.

Finally, Thomas argues that the district court erred by declining to grant a new trial because the jury’s findings as to damages resulted from passion or prejudice. *See* Minn. R. Civ. P. 59.01(e). When reviewing a challenge to damages under Minn. R. Civ. P. 59.01(e), we consider all of the evidence as well as the circumstances of the trial. *Johnson v. Wash. Cnty.*, 518 N.W.2d 594, 602 (Minn. 1994). Unless the amount of damages “shocks the conscience,” a new trial is not warranted on this ground. *Id.* (quotation omitted). A party’s speculation as to the influence of passion or prejudice provides insufficient grounds to grant a new trial. *Vadnais v. Am. Family Mut. Ins. Co.*, 309 Minn. 97, 104, 243 N.W.2d 45, 49 (1976).

Because the jury awarded him “inadequate compensation” for his injuries, Thomas argues, the district court erred when it declined to grant a new trial under rule 59.01(e). But Thomas failed to allege the influence of any passion or prejudice. And there is no evidence indicating such influence. Notably, the jury awarded Thomas approximately \$26,000 more in damages than was advocated by his opposing counsel. Because Thomas has not demonstrated on appeal that the district court erred by rejecting his contention that the damages awarded resulted from passion or prejudice, he is not entitled to the relief he seeks.

II.

Thomas challenges the district court’s denial of his motion for additur. Additur is “the practice of the [district] court to condition a denial of a new trial on the defendant’s consent to an increase in the verdict.” *Seydel v. Reuber*, 254 Minn. 168, 171, 94 N.W.2d 265, 268 (1959). The district court may grant additur only if grounds for a new trial on damages exist. *Pulkrabek v. Johnson*, 418 N.W.2d 514, 516 (Minn. App. 1988), *review denied* (Minn. May 4, 1988). If such grounds exist, the decision to grant additur rests almost entirely within the district court’s discretion. *Id.* Because we have concluded that Thomas is not entitled to a new trial on damages, *supra* section I.D., we also conclude that the district court properly denied Thomas’s motion for additur.

Affirmed.