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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0890**

Michael Esaw,
Appellant,

vs.

Douglas Eugene Salo, et al.,
Respondents.

**Filed February 3, 2020
Affirmed
Florey, Judge**

Scott County District Court
File No. 70-CV-17-17504

Michael Esaw, Maple Grove, Minnesota (pro se appellant)

Brian A. Wood, William L. Davidson, Michael T. Burke, Lind, Jensen, Sullivan &
Peterson, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Florey, Presiding Judge; Johnson, Judge; and Segal,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant Michael Esaw challenges the district court's denial of his motions for judgment as a matter of law and a new trial following a jury verdict on his personal-injury claims. We affirm.

FACTS

In 2017, respondent Douglas Salo was operating a 40-foot commercial bus, transporting Mystic Lake Casino employees on behalf of respondent-defendant Schmitt & Sons Transit, Inc (Schmitt & Sons). Salo was driving on a county road in Prior Lake. There were construction cones and barriers, which caused the road to narrow from two lanes into one lane. Salo illuminated his right-turn indicator at a distance of three bus lengths from an intersection and veered slightly into the left lane in order to complete a wide right turn. Appellant-plaintiff Michael Esaw was driving the same direction on the same county road, following behind the bus. Salo noticed Esaw trying to pass him on the right and stopped the bus, but the two vehicles collided.

Esaw sued Salo and Schmitt & Sons (together, respondents) for negligence, alleging that Salo failed to yield the right of way, failed to maintain control of the bus, that the right-hand turn was improper, and that Salo had engaged in illegal lane usage. Respondents denied liability.

In 2019, the district court held a four-day jury trial. The jury returned a special verdict finding that Salo was not negligent, but that Esaw was negligent and that his negligence was a direct cause of the crash. Esaw filed a post-trial motion pro se (despite being represented by counsel) requesting judgment as a matter of law and a new trial. After a hearing, the district court denied the motion. Esaw appeals.

DECISION

On appeal, “[w]e review de novo a district court’s decision to deny a motion for judgment as a matter of law, applying the same standard used by the district court and

viewing the evidence in the light most favorable to [the non-moving party].” *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 n. 5 (Minn. 2018) (quotation omitted). We affirm the denial of a motion for judgment as a matter of law “if there is any competent evidence reasonably tending to sustain the verdict.” *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 475 (Minn. App. 2006) (quotation omitted).

Esaw does not identify or explain why judgment as a matter of law is warranted beyond merely asserting that there is no evidence to support a verdict for respondents. But over the course of four days, the jury heard testimony from both Esaw and Salo, watched a video of the crash and heard testimony from each side’s experts. As the district court noted, there was evidence presented that supported both sides of the case. When viewed in the light most favorable to the verdict, a reasonable jury could have found that Salo’s right turn was safe and appropriate under the circumstances, and that Salo properly used his turn signal. Similarly, based on Salo’s testimony and the video of the crash, a reasonable jury could have found that Esaw was negligent when he collided with a forty-foot bus making a signaled right turn directly ahead of him. The record contains competent evidence that reasonably tends to sustain the jury’s verdict. *See id.* Accordingly, we affirm the district court’s denial of Esaw’s motion for judgment as a matter of law.

Esaw also challenges the district court’s denial of his motion for a new trial pursuant to Minn. R. Civ. P. 59.01. “We review a district court’s decision to grant or deny a new trial for an abuse of discretion.” *Christie*, 911 N.W.2d at 838 (citing *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010)). This court “will not set aside a jury verdict on an appeal from a district court’s denial of a motion for a new trial unless it is

manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict.” *Navarre v. S. Wash. Cty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted).

Minn. R. Civ. P. 59.01 states that, in relevant part, a new trial may be granted due to “[i]rregularity in the proceedings of the court, referee, jury . . . or any order or abuse of discretion, whereby the moving party was deprived of a fair trial; . . . misconduct of the jury . . .;” and “errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion.”

Esaw makes numerous assignments of error that he contends warrant a new trial, including jury bias, the use of peremptory strikes in a racially biased manner, and a violation of the Civil Rights Amendment and Esaw’s civil rights. However, Esaw does not present any evidence or examples to bolster his mere assertions of bias. Neither Esaw nor his attorney raised any concerns related to bias, jury prejudice, or the discriminatory use of peremptory strikes at any time during the trial. The record does not reflect that anything unusual or concerning took place during jury selection or the trial itself. Thus, Esaw’s arguments have been forfeited. *See State v. Anderson*, 871 N.W.2d 910, 915 (Minn. 2015) (applying the principle that an assignment of error in a brief based on “mere assertion” and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection).

Esaw also asserts that the district court erred by not allowing the deposition of a police officer to be admitted as evidence and contends that a new trial is warranted because

neither party called the officer as a witness. The district court clearly expressed its rationale for excluding portions of the officer's testimony, which involved the officer watching the video of the accident and relaying his opinions about what happened. The district court noted that the officer was not a trained accident reconstructionist and that the jury needed to make its own findings about what the video footage showed. The district court would have allowed the officer to testify as to what he observed when he arrived on the scene of the accident, but neither party decided to call him as a witness. We conclude that the district court did not abuse its discretion by limiting the officer's testimony to his own observations.

Esaw also argues that the admission of a photograph of him was erroneous, but he did not object to its admission at the time of trial. More importantly, as the district court noted, the photograph was relevant to the issue of damages, but ultimately did not impact the case because the jury did not determine that Esaw was entitled to damages. The district court did not abuse its discretion by allowing the photograph to be admitted.

When viewed in the light most favorable to the verdict, the district court's denial of Esaw's motion for a new trial is not "manifestly and palpably contrary to the evidence." *Navarre*, 652 N.W.2d at 21. Based on our review of the record, the district court did not abuse its discretion by denying Esaw's motion for a new trial.

Finally, Esaw attempts to raise numerous other issues that were not asserted at trial or in his post-trial motion. To the extent that these assertions are distinct from those

addressed above, they are deemed waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.