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Standards of Review in Civil Cases

United States Court of Appeals for the Eleventh Circuit

Federal appellate courts typically apply one of the following four standards of review:

1. De Novo. The court gives no deference to the lower court's decision and applies the same standard as the district court. Whatley v. CNA Ins. Co., 189 F.3d 1310, 1313 (11th Cir. 1999).
2. Clearly Erroneous. "Review under the clearly erroneous standard is significantly deferential." Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court's findings unless it's left with the "definite and firm conviction that a mistake has been committed." Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982).
3. Substantial Evidence. Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).
4. Abuse of Discretion. Under this standard, an appellate court will "uphold any district court determination that falls within a permissible range of permissible conclusions." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 400 (1990). Under this standard, the court of appeals must affirm unless it determines that "the district court has made a clear error of judgment, or has applied an incorrect legal standard." Alexander v. Fulton County, 207 F.3d 1303, 1326 (11th Cir. 2000).

Courts of appeal draw an important distinction between the review of factual issues and the review of legal issues. Conclusions of law receive de novo review. Horton v. Reliance Standard Life Ins. Co., 141 F.3d 1038, 1040 (11th Cir. 1998). Findings of fact are upheld unless clearly erroneous. Media Services Group v. Bay Cities Communications, Inc., 237 F.3d 1326, 1329 (11th Cir. 2001).

Pretrial Matters

Motion to dismiss complaint for failure to state a claim. Review is de novo. The court accepts all allegations of the complaint as true and construes the facts in the light most favorable to the plaintiff. Harry v. Marchant, 237 F.3d 1315, 1317 (11th Cir. 2001).

Subject matter jurisdiction. Questions of subject matter jurisdiction are reviewed de novo. Pillow v. Bechtel Const., Inc., 201 F.3d 1348, 1351 (11th Cir. 2000).

Transfer of venue under 28 U.S.C. Å§ 1404(a). Reviewed for abuse of discretion. Marbury-Pattillo Constr. Co., Inc. v. Bayside Warehouse Co., 490 F.2d 155, 158 (5th Cir. 1974).

DATE

08/15/01

AUTHOR

Edward H. Wasmuth, Jr.

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Dismissal based on forum non conveniens. Reviewed under abuse of discretion standard. The decision of the District Court is given "substantial deference." Republic of Panama v. BCCI Holdings (Luxembourg) S.A., 119 F.3d 935, 951 (11th Cir. 1997); Leon v. Million Air, Inc., 251 F.3d 1305, 1310 (11th Cir. 2001).

Dismissal of a complaint for lack of standing. Reviewed de novo. Smith v. Shook, 237 F.3d 1322, 1324 (11th Cir. 2001).

Denial of qualified or absolute immunity. Reviewed de novo. Jones v. Cannon, 174 F.3d 1271, 1281 (11th Cir. 1999).

Questions of sovereign immunity. Reviewed de novo. Tamiami Partners, Ltd. v. Miccosukee Tribe, 177 F.3d 1212, 1224 (11th Cir. 1999).

Determination that a case is not ripe. Reviewed de novo Portor v. Ogden, Newell & Welch, 241 F.3d 1334, 1338 (11th Cir. 2001).v

Determination of res judicata. Reviewed de novo. Jang v. United Tech. Corp., 206 F.3d 1147, 1149 (11th Cir. 2000).

Order compelling/refusing arbitration. Reviewed de novo. Paladino v. Avnet Computer Techs., Inc., 134 F.3d 1054, 1060 (11th Cir.1998).

Grant or denial of preliminary injunction. Reviewed under abuse of discretion standard. Siegel v. Lepore, 234 F.3d 1163 (11th Cir. 2000); Mitek Holdings, Inc. v. Arce Engag Co., Inc., 189 F.3d 840, 842 (11th Cir. 1999).

Pretrial motions. Pretrial motions on the conduct of the litigation (such as motions to sever or consolidate) are reviewed for abuse of discretion. Boucharde Transp. Co. v. Fla. Depa't of Env'tl. Protection, 91 F.3d 1445, 1448 (11th Cir. 1996).

Class action certification. Orders granting class certification are reviewed for abuse of discretion. Prado-Steiman v. Bush, 221 F.3d 1266, 1278 (11th Cir. 2000).

Motion to compel discovery. Reviewed for abuse of discretion. R.M.R. by P.A.L. v. Muscogee County Sch. Dist., 165 F.3d 812, 816 (11th Cir. 1998).

Motion under Rule 19(b) (to dismiss when an indispensable party cannot be joined). Reviewed under abuse of discretion standard. Pulitzer-Polster v. Pulitzer, 784 F.2d 1305, 1309 (5th Cir. 1986).

Motion for leave to amend complaint. Reviewed on abuse of discretion standard. Technical Resource Servs. v. Dornier Medical Sys., 134 F.3d 1458, 1464 (11th Cir. 2000).

Dismissal of pendent state law claims. Reviewed for abuse of discretion. Johnson v. Booker T. Washington Broad. Serv., 234 F.3d 501, 507 (11th Cir. 2000).

Voluntary dismissal pursuant to F.R.Civ.P. 41(a)(2): Reviewed for abuse of discretion. Pontenburg v. Boston Scientific Corp., 252 F.3d 1253, 1255 (11th Cir. 2001).

Motion to recuse judge. Reviewed under abuse of discretion standard. Murray v. Scott, 253 F.3d 1308, 1310 (11th Cir. 2001); McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990).

Summary Judgment

Standards of Review in Civil Cases

The grant or denial of summary judgment is reviewed de novo. B&G Enters., Ltd. v. United States, 220 F.3d 1318, 1322 (11th Cir. 2000); Thornton v. E.I. Du Pont de Numours & Co., 22 F.3d 284, 288 (11th Cir. 1994). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Whatley v. CNA Ins. Co., 189 F.3d 1310, 1313 (11th Cir. 1999). The court must view all evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party. St. Charles Foods, Inc. v. America's Favorite Chicken Co., 198 F.3d 815, 819 (11th Cir. 1999).

What does (and does not) create a fact issue:

The factual dispute must be genuine, "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury reasonably could find for the plaintiff." *Id.* at 252.

"When an expert opinion is not supported by sufficient evidence to validate it in the eyes of the law, or when indisputable record facts render the opinion unreasonable, it cannot support a jury verdict." Brook Group Ltd. v. Brown & Williamson Tobacco Corp., 113 S. Ct. 2578, 2598 (1993).

"Evidence manifestly at variance with the laws of nature and the physical facts is of no probative value and may not support a jury verdict." Ralston Purina Co. v. Hobson, 554 F.2d 725, 729 (5th Cir. 1977).

Rule 56(f) motion for continuance to obtain affidavits or discovery. Reviewed for abuse of discretion. Carmical v. Bell Helicopter Textron, Inc., 117 F.3d 490, 493 (11th Cir. 1997); Burks v. American Cast Iron Pipe Co., 212 F.3d 1333, 1336 (11th Cir. 2000).

Bankruptcy court's grant or denial of summary judgment. Reviewed de novo. *In re Walker*, 48 F.3d 1161, 1163 (11th Cir. 1995).

Trial Conduct and Substantive Issues

Statutory interpretation. Subject to plenary review. Bishop v. Reno, 210 F.3d 1295, 1298 (11th Cir. 2000).

Determination of the "constitutional facts" in First Amendment case. Reviewed de novo. Coalition for the Abolition of Marijuana v. City of Atlanta, 219 F.3d 1301, 1316 (11th Cir. 2000).

Choice of law issues. The court reviews de novo choice of law questions. Cortes v. American Airlines, Inc., 177 F.3d 1272, 1296 (11th Cir. 1999), cert. denied, 120 S. Ct. 980 (2000).

Resolution of a Batson challenge to exercise of peremptory jury strikes. Reviewed under clearly erroneous standard. Central Ala. Fair Hous. Ctr. v. Lowden Realty, 236 F.3d 629, 635 (11th Cir. 2000).

Erroneous admission/exclusion of evidence. Reviewed under abuse of discretion standard. Piamba Cortes v. American Airlines, Inc., 177 F.3d 1272, 1305-06 (11th Cir. 1999). The complaining party must establish that the error resulted in a "substantial prejudicial effect." *Id.*

Admissibility of expert testimony. Reviewed for abuse of discretion. Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1312 (11th Cir. 2000); Allison v. McGhan Med. Corp., 184 F.3d 1300, 1306 (11th Cir. 1999).

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Motion for mistrial. Reviewed for abuse of discretion. Frederick v. Kirby Tankships, Inc., 205 F.3d 1277, 1285 (11th Cir. 2000).

Erroneous jury instruction:

(1) If an objection is made, trial court's decision is reviewed for abuse of discretion. Maiz v. Virani, 253 F.3d 641, 657 (11th Cir. 2001). Reversal for a new trial is warranted only if the failure to give an instruction resulted in a prejudicial harm to the requesting party. Roberts & Schaefer Co. v. Hardaway Co. 152 F.3d 1283, 1295 (11th Cir. 1998).

(2) If no objection at trial, court applies the "plain error" standard. Plain error review is an extremely stringent form of review. "Only in rare cases will a trial court be reversed for plain error... ." Maiz v. Virani, 253 F.3d 641, 676-77 (11th Cir. 2001). "[R]eversal for plain error in the jury instructions or verdict form will occur only in exceptional cases where the error is so fundamental as to result in a miscarriage of justice." *Id.* "To meet this stringent standard, a party must prove that the challenged instruction was an incorrect statement of the law and [that] it was probably responsible for an incorrect verdict, leading to substantial injustice." Farley v. Nationwide Mutual Ins. Co., 197 F.3d 1322, 1329-30 (11th Cir. 1999). "This element is satisfied if a party proves that the instruction will mislead the jury or leave the jury to speculate as to an essential point of law. In other words, the error of law must be so prejudicial as to have affected the outcome of the proceedings." *Id.* "Federal courts generally will not find that a particular instruction constitutes plain error if the objecting party invited the alleged error by requesting the substance of the instruction given." Wood v. President & Trustees of Spring Hill College, 978 F.2d 1214, 1223 (11th Cir. 1992).

Farley v. Nationwide Mut. Ins. Co., 197 F.3d 1322, 1329-30 (11th Cir. 1999). To find reversible error, instruction must not accurately state the law and leave the court with a substantial and ineradicable doubt that the jury was properly guided in its deliberations. Ritch v. Robinson-Humphrey Co., Inc., 210 F.3d 1340, 1341 (11th Cir. 2000).

Phrasing of special jury interrogatories. Reviewed for abuse of discretion. Central Ala. Fair Hous. Ctr. v. Lowder Realty, 236 F.3d 629, 635 (11th Cir. 2000).

Damage awards. Reviewed under clearly erroneous standard. Bunge Corp. v. Freeport Marine Repair, Inc., 240 F.3d 919, 923 (11th Cir. 2001).

ERISA. If plan gives the administrator the discretion to determine eligibility for benefits, court determines whether administrator's decision was arbitrary and capricious. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989).

Interpretation of an insurance contract. Reviewed de novo. Galindo v. ARI Mut. Ins. Co., 203 F.3d 771, 774 (11th Cir. 2000)

Factual findings of commissioner of Social Security Administration. Factual findings of the commissioner of the Social Security Administration regarding whether someone has a disability are conclusive if supported by substantial evidence. Doughty v. Apfel, 245 F.3d 1274, 1278 (11th Cir. 2001).

Review of Board of Immigration Appeals' statutory interpretations. Reviewed de novo. Farquharson v. U.S. Attorney Gen., 246 F.3d 1317, 1320 (11th Cir. 2001).

Review of Board of Immigration Appeals' factual determinations. Reviewed under substantial evidence standard. Farquharson v. U.S.

Post Trial Matters

Motion for JMOL. Reviewed de novo. Abel v. Dubberly, 210 F.3d 1334, 1337 (11th Cir. 2000). The evidence is examined in the light most favorable to the non-moving party. The non-movant must put forth more than a scintilla of evidence suggesting that reasonable minds could reach differing verdicts. A substantial conflict in the evidence is required before a matter will be submitted to the jury. *Id.*

Motion for new trial.

(1) Denial of a motion for new trial is reviewed for "a clear abuse of discretion." Wolff v. Allstate Life Ins. Co., 985 F.2d 1524, 1528 (11th Cir. 1993). Deference to the district court "is particularly appropriate where a new trial is denied and the jury's verdict is left undisturbed." Rosenfield v. Wellington Leisure Prods., Inc., 827 F.2d 1493, 1498 (11th Cir. 1987).

(2) If the verdict is a general verdict and the plaintiff asserted multiple theories of recovery, the burden needed to obtain a new trial is somewhat lower than the burden to obtain JMOL. It effects the need to discredit one as opposed to all of the plaintiff's claims. If the jury returns a general verdict on multiple causes of action, to be entitled to JMOL, Appellant must show that the plaintiff failed to make out a case under both causes of action. Thus, with regard to the JMOL motion, the "two-issue" rule applies. However, the "two-issue" rule is inapplicable to a motion for a new trial. Appellant, with respect to each cause of action, need only show that the evidence is insufficient to support one cause of action to prevail on its motion for a new trial. Royal Typewriter Co. v. Xerographic Supplies Corp., 719 F.2d 1092, 1099 (11th Cir. 1983) ("[U]nless [plaintiff] can support submission of each theory of liability submitted to the jury, we must remand for a new trial."). Where two or more claims are submitted to the jury in a single interrogatory, a new trial may be required if either of the claims was erroneously submitted, as there is no way to be sure that the jury's verdict was not predicated solely on the invalid claim. Richards v. Michelin Tire Corp., 21 F.3d 1048, 1054-55 (11th Cir. 1994).

Motion for a new trial or a remittitur on grounds that the damages awarded were excessive. Reviewed for a clear abuse of discretion. Agro Air Assocs., Inc. v. Houston Cas. Co., 128 F.3d 1452, 1455 n.5 (11th Cir. 1997).

Investigation of alleged juror misconduct. Reviewed for abuse of discretion. United States v. Proserpi, 201 F.3d 1335, 1340 (11th Cir. 2000).

Rule 60(b) motion. Reviewed for abuse of discretion. American Bankers Ins. Co. v. Northwestern Nat'l Ins. Co., 198 F.3d 1332, 1338 (11th Cir. 1999); Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316 (11th Cir. 2000). However, motion under Rule 60(b)(4), on grounds that judgment is void, reviewed de novo. Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001).

Award/ denial of costs under Rule 54(d). Reviewed for abuse of discretion. EEOC v. W, Inc., 213 F.3d 600, 619 (11th Cir. 2000).

Grant or denial of attorneys' fees under Equal Access to Justice Act. Reviewed for abuse of discretion. Maritime Management, Inc. v. United States, 242 F.3d 1326, 1331 (11th Cir. 2001).

Rule 11 motion for sanctions. Reviewed for abuse of discretion. Cooter &

Standards of Review in Civil Cases

Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990).

Award of sanctions under 28 U.S.C. Å§ 1927. Reviewed for abuse of discretion. Peterson v. BMI Refractories, 124 F.3d 1386, 1390 (11th Cir. 1997).

Enforcement of a settlement agreement. Reviewed for abuse of discretion. Resnick v. Uccello Immobilien GMBH, Inc., 227 F.3d 1347, 1350 (11th Cir. 2000).

Grant of extension of time to file notice of appeal under FRAP 4(a)(5). Reviewed for abuse of discretion. Cannabis Action Network v. City of Gainesville, 231 F.3d 761, 766 (11th Cir. 2000).

Georgia Appellate Courts

Georgia courts apply the “de novo” and “abuse at discretion” standards. They also apply an “any evidence” standard that is intended to be a higher standard than the federal court’s “substantial evidence” standard. The Georgia Court of Appeals discussed this standard in Leverett v. Jasper County Board of Assessors, 233 Ga. App. 470, 471 n.1 (504 S.E.2d 559) (1998):

“[T]he any evidence rule[]” ... provides that when a non-jury single-judge judgment is reviewed in the Georgia appellate courts neither the Supreme Court nor the Court of Appeals will interfere with a finding by the trial tribunal “where there is any evidence to support it.” That phrase, including the italicization of the word “any,” comes from Balkcom v. Vickers, 220 Ga. 345, 348 (138 S.E.2d 868) [(1964)]. There Justice (now [former] Chief Justice) Grice pointed out that this rule stems historically from the long struggle in our state for the establishment of a Supreme Court, “one of the charges of the opposition being that this court would re-try factual issues.” Thus, our appellate courts are limited to “correction of errors of law” as stated in the Georgia Constitution. Justice Grice also noted our “any evidence” requirement differs from the standards used by other judicial systems including the federal reviewing courts where their inquiry is “whether the evidence is “substantial” or whether the finding is “clearly erroneous,” or “manifestly wrong.”” Kingston Dev. Co. v. Kenerly, 132 Ga. App. 346, 348-349 (208 S.E.2d 118) (1974).

Pretrial Matters

Sufficiency of service of process. Reviewed for abuse of discretion. Franchell v. Clark, 241 Ga. App. 128, 131(3) (524 S.E.2d 512) (1999)

Diligence in perfecting service of process. Reviewed for abuse of discretion. Tate v. Coastal Utilities, Inc., 247 Ga. App. 738, 739(1) (545 S.E.2d 124) (2001)

Motion to add new party pursuant to O.C.G.A. Å§ 9-11-21. Reviewed for abuse of discretion. Shiver v. Norfolk-Southern Railway Co., 220 Ga. App. 483, 484 (469 S.E.2d 769) (1996).

Amendment of a pleading after entry of pretrial order. Reviewed for abuse of discretion. Ford&€™s & Gantt Co., Inc. v. Wallace, 249 Ga. App. 273, 276(1) (___ S.E.2d ___) (2001).

Discovery rulings. Reviewed for “clear abuse of discretion.” Time Warner Entertainment Co., LP v. Six Flags Over Georgia LLC, 245 Ga. App. 334, 350 (537 S.E.2d 397) (2000); West v. Equifax Credit Information Services, Inc., 230 Ga. App. 41, 42 (495 S.E.2d 300) (1997).

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Motion to extend discovery period (Uniform Superior/State Court Rule 5). Reviewed for abuse of discretion. Magliaro v. Lewis, 203 Ga. App. 632, 635 (417 S.E.2d 395) (1992).

Class action certification. Reviewed for abuse of discretion. Hooters of Augusta, Inc. v. Nicholson, 245 Ga. App. 363, 367 (537 S.E.2d 468) (2001).

Motion to open default. Reviewed for abuse of discretion. K-Mart Corp. v. Hackett, 237 Ga. App. 127, 128 (514 S.E.2d 884) (1999). Alternatively stated, the trial court ruling stands unless there is no evidence to support it. Lawson v. Habersham Bank, 233 Ga. App. 88, 89 (503 S.E.2d 341) (1998).

Grant or denial of interlocutory injunction. Reviewed for abuse of discretion. Besser v. Rule, 270 Ga. 473, 474-75 (510 S.E.2d 530) (1999).

Change of venue pursuant to O.C.G.A. Â§ 9-10-50 (inability to obtain impartial jury). Reviewed for abuse of discretion. Holt v. Scott, 226 Ga. App. 812 (487 S.E.2d 657) (1997); Thompson v. Sawnee Elec. Membership Corp., 157 Ga. App. 561, 563 (278 S.E.2d 143) (1981).

Summary Judgment

From the grant or denial of summary judgment, the appellate court conducts a de novo review of the law and the evidence. Keller v. Henderson, 248 Ga. App. 526, 527(1) (545 S.E.2d 705) (2001). The court must decide whether the evidence and all inferences and conclusions therefrom, viewed in the light most favorable to the nonmoving party, shows a genuine issue of material fact. *Id.*; Kellog v. Food Service Supplies, Inc., 246 Ga. App. 695, 696 (541 S.E.2d 683) (2000).

What does (and does not) create a fact issue:

The evidence submitted is subject to the same standards of admissibility as evidence at trial. Sharfuddin v. Drug Emporium, Inc., 230 Ga. App. 679, 681 (498 S.E.2d 748) (1998).

The assertion of a bare legal conclusion does not create an issue of fact. Dews v. Ratterree, 246 Ga. App. 324, 326 (540 S.E.2d 250) (2000).

Vague and equivocal testimony is insufficient to create a triable issue of fact. Sharfuddin v. Drug Emporium, Inc., 230 Ga. App. 679, 684 (498 S.E.2d 748) (1998).

A self-serving, conclusory affidavit that is not supported by fact or circumstances is insufficient to raise a genuine issue of material fact, precluding summary judgment. Speir v. Krieger, 235 Ga. App. 392 (509 S.E.2d 684) (1998).

Generalized arguments amounting to mere conclusions have no probative value to pierce facts presented by movant for summary judgment. Jay Gleason Adver. Serv., Inc. v. Gleason, 193 Ga. App. 445 (388 S.E.2d 43) (1989).

"Guesses or speculation which raise merely a conjecture or possibility are not sufficient to create even an inference of fact for consideration on summary judgment." Brown v. Amerson, 220 Ga. App. 318, 320 (469 S.E.2d 723) (1996).

Circumstantial evidence has no probative value in establishing a fact when such evidence is inconsistent with direct and unimpeached evidence showing the non-existence of such a fact. Whalen v. Isaacs, 233 Ga. App. 367, 368 (504 S.E.2d 214) (1998).

Standards of Review in Civil Cases

If testimony of an affidavit is inconsistent with the earlier-given deposition testimony of the witness, the inconsistency is construed against the witness unless the inconsistency is explained. Prophecy Corp. v. Charles Rossignol, Inc., 256 Ga. 27, 28(1) (343 S.E.2d 680) (1986).

Motion under Section 56(f) for continuance to obtain affidavits or discovery. Reviewed for abuse of discretion. Gray v. Gober, 185 Ga. App. 624, 627-28 (365 S.E.2d 279) (1988).

Trial Conduct and Substantive Issues

Motion for continuance. Reviewed for abuse of discretion. General Motors Corp. v. Blake, 237 Ga. App. 427, 427 (515 S.E.2d 166) (1999).

Bifurcation of trial. Reviewed for manifest and clear abuse of discretion. Whitley v. Gwinnett County, 221 Ga. App. 18, 19(2) (470 S.E.2d 724) (1996); Lansky v. Goldstein, 141 Ga. App. 345(1) (233 S.E.2d 437) (1977).

Selection of jurors. Trial court's discretion in qualifying jurors will not be disturbed in the absence of manifest abuse. Stewart v. Stewart, 240 Ga. App. 573 (524 S.E.2d 267) (1999).

Resolution of a Batson challenge to use of peremptory jury strikes. In reviewing each step of a Batson challenge determination, the findings of the trial court should not be disturbed unless clearly erroneous. Russell v. Parkford Management Co., Inc., 235 Ga. App. 81 (508 S.E.2d 454) (1998).

Admission/exclusion of evidence. Reviewed for abuse of discretion. Bowen v. Hunter, Maclean Exley & Dunn, 241 Ga. App. 204, 208 (525 S.E.2d 744) (1999).

Scope of cross-examination. Scope of cross-examination is within the discretion of the trial court and will not be disturbed on appeal unless there is evidence of manifest abuse. Waszczak v. City of Warner Robbins, 221 Ga. App. 528 (471 S.E.2d 572) (1996).

Leading questions. Trial courts exercise wide discretion in whether to allow leading questions and reversible error only occurs when trial courts abuse that discretion to the extent that there is prejudice and injury. Hicks v. Doe, 206 Ga. App. 596 (426 S.E.2d 174) (1992).

Admission/exclusion of expert witness. Reviewed for abuse of discretion. Time Warner Entertainment Co., LP v. Six Flags Over Georgia LLC, 245 Ga. App. 334, 350 (537 S.E.2d 397) (2000). Qualification of an expert witness will not be disturbed absent manifest abuse of discretion. Williamson v. Harvey Smith, Inc., 246 Ga. App. 745, 748 (542 S.E.2d 151) (2000).

Motion for mistrial. Reviewed for abuse of discretion. Whitley v. Gwinnett County, 221 Ga. App. 18 (470 S.E.2d 724) (1996).

Submission of special verdict form to jury. Reviewed for abuse of discretion. Southern Water Tech., Inc. v. Kile, 224 Ga. App. 717 (481 S.E.2d 826) (1997).

Failure to give requested jury instruction.

(1) If a proper objection was made, the court examines the record to see if evidence was presented which created a substantial, material, and controlling issue in the case. The test for whether such an issue was created is whether the evidence, if believed by a jury in accordance with the disputed jury instruction, would have affected the outcome. It is also necessary to decide whether the law given in the disputed charge

Standards of Review in Civil Cases

was adequately explained by other portions of the trial court's instruction. Golden Peanut Co. v. Bass, 249 Ga. App. 224, 227 (___ S.E.2d ___) (2001)

(2) If a proper objection was not made, the alleged error must be a "substantial error" that resulted in a "gross injustice, such as to raise a question of whether [that party] has been deprived of a fair trial." O.C.G.A. Å§ 5-5-24(c); Hamrick v. Wood, 175 Ga. App. 67, 68(1) (332 S.E.2d 367) (1985)

Damage awards. A reviewing court will not interfere with a jury's award of damages unless it is so small or excessive that it justifies an inference of gross mistake or undue bias. Green v. Proffitt, 248 Ga. App. 477, 478 (545 S.E.2d 623) (2001).

Non-jury trials. The trial court's findings are not set aside unless clearly erroneous. A finding is not clearly erroneous if supported by "any evidence." Little Tree, Inc. v. Fields, 240 Ga. App. 12, 14 (522 S.E.2d 509) (1999).

Entry of judgment. The court reviews the entry of judgment on the verdict under the "any evidence" standard. Williamscraft Development, Inc. v. Vulcan Materials Co., 196 Ga. App. 703, 704 (397 S.E.2d 122) (1990).

Contract construction issues. Reviewed de novo. Buckmon v. Futch, 237 Ga. App. 67 (514 S.E.2d 863) (1999).

Piercing the corporate veil. Trial court's decision to pierce the corporate veil will not be reversed absent clear and manifest abuse. Bibb Distrib. Co. v. Stewart, 238 Ga. App. 650 (519 S.E.2d 455) (1999).

Post -Trial Matters

Motion for JNOV or directed verdict. Reviewed de novo. Withington v. Valuation Group, Inc., 249 Ga. App. 8, 11 (___ S.E.2d ___) (2001). The court applies the "any evidence" test. A directed verdict is proper only if there is no conflict in the evidence as to any material issue and the evidence introduced, and all reasonable deductions therefrom, shall demand a particular verdict. The court must construe the evidence most favorably to the non-moving party. Kueffer Crane & Hoist Service, Inc. v. Passarella, 247 Ga. App. 327, 328-29 (543 S.E.2d 327) (2000); Time Warner Entertainment Co., LP v. Six Flags Over Georgia LLC, 245 Ga. App. 334, 341(1) (537 S.E.2d 397) (2000). "A judgment n.o.v. is properly granted only when there can be only one reasonable conclusion as to the proper judgment; if there is any evidentiary basis for the jury's verdict, viewing the evidence most favorably to the party who secured the verdict, it is not error to deny the motion." Pulte Home Corp. v. Woodland Nursery, 230 Ga. App. 455, 456(2) (496 S.E.2d 546) (1998).

Motion for new trial. A first grant of a new trial will not be reversed unless the verdict set aside by the trial court was absolutely demanded. Gibson v. Carter, 248 Ga. App. 280, 280(1) (545 S.E.2d 698) (2001); Thomas v. Wiley, 240 Ga. App. 135, 137(3) (522 S.E.2d 714) (1999). The grant or denial of a motion for new trial is within the discretion of the trial court and will not be disturbed if there is "any evidence" to authorize it. Professional Consulting Services of Georgia v. Ibrahim, 206 Ga. App. 663, 665 (426 S.E.2d 376) (1992). The court will not re-weigh the evidence and give a de novo opinion as to where the greater weight of the evidence lies but merely to determine if there is sufficient evidence to authorize the trial court's judgment. Milam v. Attaway, 195 Ga. App. 496, 497-98 (393 S.E.2d 753) (1990). An appellate court must construe the evidence with every inference and presumption in favor of upholding the verdict. Ike v. Kroger Co. 248 Ga. App. 531, 532 (___ S.E.2d ___) (2001)

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Motion for new trial based on newly-discovered evidence. Reviewed for "manifest abuse of discretion." Cantrell v. Red Wing Rollerway, Inc., 184 Ga. App. 506, 507(1) (362 S.E.2d 720) (1987).

Motion for judgment notwithstanding a mistrial. Apply the same standard as on review of a motion for JNOV. Luck v. Regions Bank, 248 Ga. App. 290, 290 (___ S.E.2d ___) (2001)

Award of attorneys fees.

(1) Under O.C.G.A. Â§ 13-6-11. Reviewed under "any evidence" standard. City of Warner Robins v. Holt, 220 Ga. App. 794, 796 (470 S.E.2d 238) (1996).

(2) Under O.C.G.A. Â§ 9-15-14(a). Reviewed under "any evidence" standard. Haggard v. Board of Regents, 257 Ga. 524, 527 (360 S.E.2d 566) (1987).

(3) Under O.C.G.A. Â§ 9-15-14(b). Reviewed for abuse of discretion. Bankhead v. Moss, 210 Ga. App. 508, 509 (436 S.E.2d 723) (1993).

Motion to set aside judgment

(1) Under O.C.G.A. Â§ 9-11-60(c) (extraordinary motion for new trial). Reviewed for manifest abuse of discretion. Windsor Forest, Inc. v. Rocker, 121 Ga. App. 773, 774(3) (175 S.E.2d 65) (1970).

(2) Under O.C.G.A. Â§ 9-11-60(d)(2) (fraud, mistake or accident of other party). Reviewed for abuse of discretion. Sriver v. Lister, 235 Ga. App. 487, 488-89 (510 S.E.2d 59) (1998).

Trial court dismissal of appeal for unreasonable delay in filing transcript. Reviewed for abuse of discretion. Cody v. Coldwell Banker Real Estate Services, Inc., 248 Ga. App. 180 (546 S.E.2d 180) (2001).

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