

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEANNA WATERS-MARIA,  
INDIVIDUALLY,  
Appellant,  
vs.  
VALLEY HEALTH SYSTEMS, LLC, A  
NEVADA DOMESTIC CORPORATION,  
D/B/A CENTENNIAL HILLS  
HOSPITAL,  
Respondent.

No. 69455

FILED

OCT 31 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Deanna Waters-Maria appeals from a final judgment on a jury verdict in favor of respondent in a tort action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellant Waters-Maria filed a complaint against respondent Valley Health Systems, LLC, d/b/a Centennial Hills Hospital, as well as its facility cleaning contractor Sodexo America LLC,<sup>1</sup> for negligence, premises liability, and vicarious liability after slipping on a wet floor and injuring her back in a Centennial Hills Hospital restroom.<sup>2</sup>

During discovery, Waters-Maria learned that Sodexo did not retain cleaning assignment documents, and that Valley Health delayed disclosing an incident report containing a witness' statement and contact information. Although Waters-Maria later identified and attempted to contact the witness a year prior to trial, she was unable to locate and call the witness at the time of trial. Also prior to trial, Waters-Maria moved to

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<sup>1</sup>Sodexo is not a party to this appeal, as the district court granted summary judgment in favor of Sodexo prior to trial.

<sup>2</sup>We do not recount the facts except as necessary to our disposition.

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strike Valley Health's answer for this delayed disclosure. The district court judge denied Waters-Maria's motion, but sanctioned Valley Health's counsel \$1,500.

At the close of trial during the settling of jury instructions, Waters-Maria requested an adverse inference instruction for the discarded cleaning assignment documents. In addition, Waters-Maria proposed both a rebuttable presumption or, in the alternative, an adverse inference jury instruction for the unavailable witness. The district court declined to give the jury Waters-Maria's proposed instructions. Thereafter, the jury returned a verdict in favor of Valley Health.

Waters-Maria appeals, contending the district court erred by declining to give the jury her proposed instructions. Waters-Maria further argues the district court's refusal to give the jury her proposed instructions resulted in prejudicial error requiring a new trial. We disagree.

NRS 47.250(3) creates a rebuttable presumption that evidence intentionally destroyed to harm another party would be adverse if produced. *Bass-Davis v. Davis*, 122 Nev. 442, 448, 134 P.3d 103, 106-07 (2006). However, if "evidence is negligently lost or destroyed, without the intent to harm another party[,] [i]nstead, an inference should be permitted." *Id.* at 448-49, 134 P.3d at 107. We review a district court's decision to give or decline a proposed jury instruction for an abuse of discretion, and will affirm if the district court examined the relevant facts and reached a reasonable conclusion based upon a proper standard of law. *Id.* at 447, 134 P.3d at 106.

Having reviewed the record on appeal, we conclude the district court did not abuse its discretion. Sodexo was, at the outset, a party to this case, and Waters-Maria failed to move to compel Sodexo to produce the documents she sought. Furthermore, Valley Health did not control the


cleaning assignment documents and, thus, had no duty to preserve them. *See id.* at 450, 134 P.3d at 108 (holding that a party must show that the party controlling the evidence had a duty to preserve the evidence in order to warrant an adverse inference instruction).

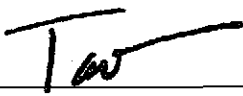
Waters-Maria's arguments regarding the incident report are likewise unavailing as the report was not lost or destroyed, but was produced during discovery a year prior to trial. The district court did not abuse its discretion by denying Waters-Maria's proposed jury instruction because the report was produced in sufficient time to allow Waters-Maria to attempt to locate the witness prior to trial. *Cf. Thomas v. Hardwick*, 126 Nev. 142, 153-54, 231 P.3d 1111, 1118-19 (2010) (affirming the district court's denial of adverse inference jury instructions where the party had access to the relevant information and delayed raising any issue regarding the evidence until just before trial).

Waters-Maria's contention that she suffered prejudice warranting reversal in this case is unavailing because Waters-Maria failed to show that a different result might have been reached but for Valley Health's discovery violations, or from Sodexo's failure to retain the cleaning assignment documents. Accordingly, because our review of the record shows that the district court considered the relevant facts and

reached a reasonable conclusion based upon the proper standard of law, we affirm.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Ronald J. Israel, District Judge  
Eva Garcia-Mendoza, Settlement Judge  
The Law Offices of Curtiss S. Chamberlain  
Hall Prangle & Schoonveld, LLC/Las Vegas  
Eighth District Court Clerk