

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRITZNER MICHEL, INDIVIDUALLY;
MARIE MICHEL, INDIVIDUALLY AND
AS SPECIAL ADMINISTRATIX OF THE
ESTATE OF REGINALD FRISNER
MICHEL; AND JERI GRANGER, AS
SPECIAL ADMINISTRATRIX OF THE
ESTATE OF REGINALD FRISNER
MICHEL,
Appellants,
vs.
DANUTA LASKOWSKI,
Respondents.

No. 74244-COA

FILED

MAY 28 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Fritzner Michel, Marie Michel, and Jeri Granger appeal a district court judgment, pursuant to a jury verdict, and a district court order denying their motion for new trial. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge; J. Charles Thompson, Senior Judge.¹

After Reginald Frisner Michel (the decedent) died in an apartment building fire, appellants sued respondent Danuta Laskowski, the subject property's owner, and Georgette Matealona,² the subject property's manager, for negligence, negligence per se, and destruction of evidence.

¹District Judge Kerry Louise Earley presided at the pretrial motions hearing, at trial, and at the motion for new trial hearing, and signed the order denying the motion for new trial; Senior Judge J. Charles Thompson signed the judgment upon verdict.

²The supreme court dismissed this appeal as to Matealona. *Michel v. Laskowski*, Docket No. 74244 (Order Denying Motion and Imposing Sanctions, October 5, 2018).

Sione Fameitau (the tenant) had invited the decedent to sleep in his apartment. The tenant left a burning candle on a paint can while they slept, and awoke to find the apartment aflame. He testified that his dog woke him, and that the smoke detectors may have sounded but that he could not recall. He escaped, but an investigator later found the decedent's remains in the living room.

In their complaint, appellants alleged that the smoke detectors on the subject property were not in proper working condition, and that Laskowski's and Matealona's negligent purchase, maintenance, and supervision of the smoke detectors caused the decedent's death. Before trial, appellants filed motions in limine seeking to exclude evidence of, among other things, the decedent's homelessness, trespassing on the property, bad acts, and drug use. In a minute order, the district court denied all of the relevant motions without prejudice except to exclude evidence of the decedent's criminal acts. This ruling was never reduced to a written order before, during, or after trial, and appellants provide no supporting transcripts in the record.

At trial, appellants objected to Laskowski's counsel's opening statement and questions to witnesses as if the court had granted all of their motions in limine to exclude such evidence. In the trial transcripts, the court's rulings on objections are often unclear or unknown because the court held unrecorded sidebar discussions that appellants did not preserve in the record.

The district court refused appellants' proposed negligence per se jury instruction, finding that appellants never presented evidence of a specific statute or code that Laskowski and Matealona allegedly violated. The court also refused to take judicial notice of the claimed violations.

Appellants requested judicial notice during the settling of jury instructions but did not cite a specific code or statute at that time or even in their proposed jury instruction.

The jury found in favor of Laskowski and Matealona on all claims. Appellants moved for a new trial and sanctions against Laskowski's counsel, arguing that she committed misconduct in numerous instances and that the district court erred by refusing the negligence per se instruction. The court denied the motion, finding that appellants waived the misconduct issue by failing to object to the alleged misconduct at trial, that the verdict would not have been different but for the alleged misconduct, and that appellants did not establish the facts necessary for a negligence per se instruction.

On appeal, appellants argue that the district court erred by denying their motion for new trial and refusing their negligence per se instruction. We disagree, and conclude that their appeal is largely defective due to an insufficient appellate record.

Unfiled transcripts

We note that appellants include in their appendix and frequently cite rough draft transcripts that lack the district court clerk's file-stamp. Under NRAP 30(c)(1), all documents included in an appendix must bear the district court clerk's file-stamp, "clearly showing the date the document was filed in the proceedings below." We therefore decline to consider the arguments for which appellants cite unfiled transcripts.³ See *Carson Ready Mix v. First Nat'l Bank*, 97 Nev. 474, 476, 635 P.2d 276, 277

³Those arguments include various allegations of misconduct throughout the trial.

(1981) (noting that this court cannot consider matters not properly appearing in the record on appeal).

The district court's minute order

Appellants also rely on the district court's rulings on their motions in limine to support their misconduct allegations, but those rulings appear only in a pretrial minute order. Because a minute order is ineffective for any purpose, *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987), we decline to address those arguments.⁴

Further, appellants claim that the court granted their motions in limine when, in nearly every case, it denied them without prejudice. We therefore caution appellants' counsel that such misrepresentations may constitute a breach of their duty of candor to this court under NRPC 3.3(a)(1) (providing that "[a] lawyer shall not knowingly [m]ake a false statement of fact or law to a tribunal").

The district court did not abuse its discretion by refusing appellants' negligence per se jury instruction

We thus elect to consider only whether the district court abused its discretion by refusing appellants' negligence per se jury instruction. Appellants argue that witness testimony sufficiently established

⁴Even were we to consider appellants' misconduct allegations, we would conclude that appellants waived those issues. The record shows that appellants failed to object to any alleged misconduct; instead, they objected to, for instance, hearsay or irrelevance, or else objected off the record in sidebar discussions that appellants failed to preserve for our review. The district court, too, noted in its order denying appellants' motion for new trial that appellants never objected to any misconduct. On appeal, they fail to prove that the court plainly erred by not correcting the alleged misconduct to which they failed to object, and thus waived those issues. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 75, 319 P.3d 606, 612 (2014).

Laskowski's violation of a Las Vegas building code for the district court to accept the instruction. We disagree.

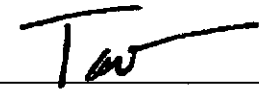
We review a district court's decision whether to give a jury instruction for abuse of discretion. *Frazier v. Drake*, 131 Nev. 632, 637, 357 P.3d 365, 369 (Ct. App. 2015). "A party is entitled to have the jury instructed on all of his theories of the case that are supported by the evidence." *Beattie v. Thomas*, 99 Nev. 579, 583, 668 P.2d 268, 271 (1983).

At trial, the district court explained that it refused to give the negligence per se instruction because appellants never produced evidence of, or even so much as identified, a particular building code that Laskowski may have violated. One of appellants' witnesses, a general contractor, testified that smoke detectors like those on Laskowski's property "would never pass the inspection," but never identified or even alluded to any particular code that Laskowski may have violated. Another of appellants' witnesses, a former Las Vegas "code enforcement officer," testified that he explained to Laskowski's husband in 2003 that the property needed more smoke detectors, but never referred or even alluded to any particular code that Laskowski may have violated, whether in 2003 or at the time of the fire.

We conclude that appellants failed to produce the foundational evidence for their negligence per se claim—namely the very existence of a particular building code provision that Laskowski allegedly violated, and that was intended to protect a class of persons that included the decedent—and thus that the district court did not abuse its discretion by refusing to give the negligence per se instruction. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. J. Charles Thompson, Senior Judge
Hon. Kerry Louise Earley, District Judge
Paternoster Law Group
Tyson & Mendes LLP
Hall Jaffe & Clayton, LLP
The Medrala Law Firm, Prof. LLC
Law Offices of Eric R. Larsen
Eighth District Court Clerk

⁵We decline to consider appellants' argument that the district court erred by prohibiting questions about Mike Davis because appellants cite no supporting authority. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (explaining that this court need not consider an appellant's argument that lacks the support of relevant authority).