

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGELA ZAPATA,
Appellant,

No. 41606

vs.

NEW CASTLE CORPORATION, A
NEVADA CORPORATION, D/B/A
EXCALIBUR HOTEL & CASINO,
Respondent.

FILED

JUL 19 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment on a jury verdict in a personal injury action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

This personal injury case arose out of injuries sustained by appellant Angela Zapata (Zapata), after falling down several steps in the Excalibur Hotel & Casino.¹ According to Zapata, she was descending a staircase in the Excalibur Hotel when her foot became entrapped by a bull-nosed cap which wrapped around the outer edge of the third step. She claims that the entrapment of her foot caused her to lose her balance and fall past the last two steps, landing at the bottom of the stairs and injuring her left foot. As a result of her fall, Zapata filed an action against respondent New Castle Corporation (Excalibur), alleging causes of action for negligence and negligence per se. After a nine-day trial, the jury found in favor of Excalibur. The district court entered judgment on the verdict. This appeal followed.

¹Because the parties are familiar with the facts we only recite those necessary to the disposition of this case.

On appeal, Zapata raises issues concerning the denial of her motions to amend her complaint,² exclusion of evidence,³ and errors concerning jury instructions,⁴ all of which we review for an abuse of discretion. As discussed below, we discern no abuse of discretion, and therefore affirm the district court's judgment.

Prior accidents

Zapata argues that the district court improperly excluded incident reports of prior accidents occurring on the same staircase. Upon our review of the record and consideration of the parties' arguments, we conclude the district court properly excluded these reports from evidence because Zapata failed to lay a proper foundation for their entry into evidence.

Fred Zapata's drawings and deposition

Although her husband, Fred Zapata (Fred), died before the trial began, Zapata contends that the court wrongfully excluded from evidence her husband's drawings of the accident scene, as well as portions of his deposition. We disagree. The record supports the district court's

²Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105, 507 P.2d 138, 139 (1973) (explaining that the grant or denial of an opportunity to amend is within the sound discretion of the district court).

³University & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 984-85, 103 P.3d 8, 16-17 (2004) (stating that the decision to admit or exclude relevant evidence is within the sound discretion of the district court, which will not be overturned absent an abuse of discretion).

⁴Bass-Davis v. Davis, 122 Nev. 442, 447, 134 P.3d 103, 106 (2006) ("The [trial] court has broad discretion to settle jury instructions, and its decision to give or decline a proposed jury instruction is reviewed for an abuse of that discretion.").

conclusion that the drawings were unreliable due to several inaccurate and misleading aspects of the drawings.⁵ Therefore, the district court did not abuse its discretion in excluding these drawings from evidence. Likewise, the deposition excerpts were properly excluded because they contained testimony concerning the conditions of the staircase a year after the accident, testimony concerning the drawings which the district court had already excluded as unreliable, inadmissible lay opinion, and inadmissible hearsay.

Expert testimony

Zapata challenges the district court's ruling excluding her expert witness, Tom Jennings, from testifying about his review of Fred's drawings of the accident scene and from testifying about causation. Because the district court found the drawings to be unreliable, the district court did not abuse its discretion in precluding Jennings from testifying about his review of them.

Likewise, to the extent that the district court precluded Jennings from testifying as to causation,⁶ we discern no abuse of

⁵Contrary to Zapata's assertion in her proper person appeal statement, the record indicates that Excalibur did not stipulate to the accuracy of the drawings, rather Excalibur only stipulated that Fred made the drawings.

⁶We note that Jennings did testify that (1) in his expert opinion, if a left-hand side handrail does not extend past the bottom step, it would be unsafe because a person who stumbles or loses her balance needs to hold the handrail "all the way to the floor," and the absence of a handrail provides nothing for stability or to arrest the momentum of a fall; (2) a half inch difference in elevation created by stepping on the surface of the stair would be consistent with the tug on the foot described by Zapata; and (3) the tug on the foot described by Zapata suggested a change of elevation
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discretion. During the trial, the district court indicated that whether it would permit Jennings to testify as to the issue of causation turned on the foundation laid for these opinions. Upon our review of the record, we conclude that Zapata failed to lay a proper foundation for Jennings to testify as to causation. As such, the district court did not abuse its discretion in precluding Jennings from testifying as to causation. Additionally, we perceive no abuse of discretion in the district court's conclusion that Jennings was an expert on code and safety standards, but not qualified to render opinions about human factors and ergonomics with reference to body mechanics.

Testimony and jury instructions concerning code and statutory provisions

Zapata argues that the district court abused its discretion by excluding evidence of alleged Americans with Disabilities Act (ADA) and the Uniform Building Code (UBC) violations, and also by failing to instruct on ADA and UBC requirements. Her argument is unpersuasive.

In his original deposition, Jennings conceded that he was "not an expert on the ADA . . . not that familiar with ADA requirements" and could not offer any opinion on whether the ADA was applicable to the staircase. After the close of discovery and after Excalibur filed a motion in limine seeking to exclude testimony concerning the ADA, Zapata filed a supplemental witness list indicting that Jennings would expand his opinions to include the ADA. Given Zapata's failure to disclose, before the

. . . continued

which could be caused in various ways such as the carpet pulling away from the bull-nosing, fraying of the carpet, or wear and tear of the carpet.

close of discovery, that Jennings would expand his opinions to include the ADA, we conclude that the district court did not abuse its discretion by entering a pretrial order excluding evidence of ADA violations and by precluding Zapata from eliciting testimony concerning ADA violations at trial.

Zapata also assigns error to the district court's ruling excluding Jennings from testifying regarding the 1997 version of UBC § 1003.3.6. The district court excluded references to this section for several reasons: (1) the allegations contained in the operative pleading identified the 1997 version of UBC § 1006.9, rather than UBC § 1003.3.6; (2) Zapata's proposed amended complaint failed to reference UBC § 1003.3.6; and (3) its pretrial order excluded references to the UBC during Zapata's case in chief. We discern no abuse of discretion in this ruling.⁷

Because we conclude that the district court did not abuse its discretion in excluding evidence of alleged ADA and UBC violations, we correspondingly conclude that the district court did not abuse its discretion in refusing to instruct the jury on ADA and UBC requirements.

Gross negligence and punitive damages

Finally, Zapata asserts that the district court abused its discretion by not allowing her to amend her complaint to add a cause of action for gross negligence and to add a request for punitive damages, and

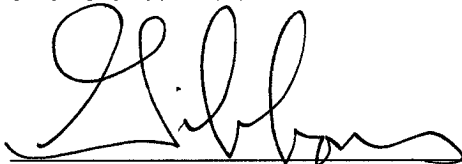
⁷We also note that the district court allowed Zapata to elicit testimony from Jennings at trial regarding section 3402 of the 1997 UBC. According to Jennings, 1997 UBC § 3402 was the only provision of the 1997 edition of the UBC that applied to the case at bar since Excalibur was constructed in 1988 and, as such, the 1988 edition of the code was otherwise applicable to Excalibur.

by not so instructing the jury. Given that Zapata brought her motions to amend her complaint on the eve of trial, we conclude that the district court did not abuse its discretion in denying the pre-trial motions.⁸

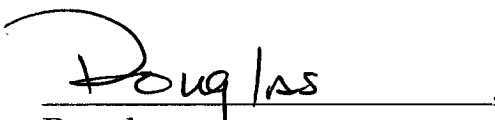
Following the close of evidence, Zapata made one final motion to amend her complaint and add a third cause of action for gross negligence. We agree with the district court that the evidence did not support these claims, and therefore conclude that the district court did not abuse its discretion in denying Zapata's final motion to amend her complaint.

Because the district court did not abuse its discretion in its various rulings we


ORDER the judgment of the district court AFFIRMED.⁹



Gibbons J.



Douglas J.



Cherry J.

⁸Undue delay is a sufficient reason to deny a motion to amend a complaint. See Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973).

⁹We have considered Zapata's other arguments on appeal and conclude that they lack merit.

cc: Hon. Mark R. Denton, District Judge
Victor Alan Perry, Settlement Judge
Angela Zapata
Greenberg Traurig, LLP
Quirk & Tratos
Eighth District Court Clerk