IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMPARTS, INC., D/B/A LUXOR HOTEL,
Appellant,
vs.
GLORIA S. MCCLURE,
Respondent.

No. 38326

FILED

APR 0 8 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a final judgment pursuant to a jury verdict in a personal injury action.

Respondent Gloria McClure stayed in a Jacuzzi suite at the Luxor Hotel. To exit the Jacuzzi, the guest would step onto an intermediate platform and then onto a tile floor. A fifteen-inch step connected the intermediate platform to the tile floor. While exiting the Jacuzzi, McClure slipped and fell.

McClure was initially treated for an ankle injury. Although the ankle injury resolved shortly after the incident, McClure began experiencing knee pain. McClure eventually underwent knee surgery.

After a three-day trial, the jury found for McClure and against Luxor. After hearing motions regarding costs and pre-judgment interest, the district court entered a final judgment.

Luxor first argues the district court erred in permitting McClure to introduce two types of evidence: (1) seven prior incident reports and (2) expert opinion based on improper foundation. The determination of whether to admit evidence is within the sound discretion

of the district court, and that determination will not be disturbed unless manifestly wrong.[1]

As to the incident reports, Luxor contends they involved accidents dissimilar to the McClure fall and were therefore inadmissible. McClure argues the prior incidents were admitted to prove that Luxor had notice of a hazardous condition. At trial, Luxor offered to stipulate that it had notice of Jacuzzi users slipping and falling on wet tile. It did not offer, however, to stipulate that Jacuzzi configuration, the tile, or both constituted a hazardous condition.

Luxor further contends that, even if the reports involve similar accidents, the prior incident reports were not admitted to prove notice, but to prove the existence of a hazardous condition. Luxor asserts that its offer to stipulate as to notice eliminated the need for the admission of the reports on that ground. Therefore, the reports constituted inadmissible hearsay.

In this case, McClure's foot was wet when she slipped on the tile floor exiting the Jacuzzi. Each admitted prior incident report involved a barefoot guest slipping on the Jacuzzi area tile when either the guest's foot was wet from the Jacuzzi or the tile floor itself was wet. The district court also declined to admit other incident reports because they did not involve the wet tile scenario. We conclude the record reflects substantial evidence to support the district courts' finding that the incident reports met the standard for similarity. Moreover, the district court permitted the reports to be used for purposes of notice of a potential problem with

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[1]See Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1506, 970 P.2d 98, 123 (1998).

exiting the Jacuzzi and a wet tile floor. We therefore decline to address Luxor's hearsay arguments. We conclude the district court did not abuse its discretion in admitting the incident reports.

Turning to the issue of the expert opinion, Luxor argues the district court erred in allowing Mr. Gary Presswood to testify, based upon a book written by Robert Kohr, that the fifteen-inch step was a hazardous condition and that Luxor should have provided intermediate steps and/or grab bars, which would have been a simple and inexpensive way to make the area safer. Luxor argues the testimony was irrelevant because Kohr's book does not reflect governmental (building code) or industry standards, and an opinion based upon Kohr's theories would improperly heighten Luxor's standard of care.

NRS 48.015 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."

In this case, Mr. Presswood's testimony tends to show that a fifteen-inch step without handrails or a grab bar is potentially hazardous in the entry and exit of a Jacuzzi and, thus, we conclude the evidence was relevant. Moreover, the district court concluded that Kohr's book was a learned treatise, relied upon by experts in the hotel industry when designing safe premises for patrons. The district court concluded that Luxor's arguments went to the weight to be given to Presswood's testimony, not its admissibility. Based upon the record, we conclude the district court did not abuse its discretion in allowing Mr. Presswood's testimony.

Finally, Luxor contends insufficient evidence was adduced for the jury to conclude McClure's knee injury was caused by her fall at the Luxor because McClure's expert, Dr. Gary Hess, testified that he did not know to a reasonable degree of medical probability whether the knee injury was caused by the fall, but only that he assumed it was.

This court will not overturn a jury verdict if it is supported by substantial evidence, unless, from all the evidence presented, the verdict was clearly wrong.[2] "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'"[3]

Although Dr. Hess did make the statement referenced by the Luxor, his deposition, taken as a whole, indicates his opinion that McClure's knee injury was caused by a fall, and based upon her history, it would be the fall at the Luxor. Dr. Hess also testified that the opinions given in his video deposition were to a reasonable medical probability. One of those opinions indicated that his findings during surgery were consistent with the Luxor fall that McClure described.

We conclude the jury, acting reasonably and rationally, could have accepted Dr. Hess' final opinion on causation. Thus, we conclude substantial evidence supports a causal connection between McClure's fall at the Luxor and her knee injury.

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[2]Bally's Employees' Credit Union v. Wallen, 105 Nev. 553, 555-56, 779 P.2d 956, 957 (1989).

[3]Id. at 556 n.1, 779 P.2d at 957 n.1 (quoting State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

Having considered Luxor's arguments,[4] we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Eighth Judicial District Court Department 12, District Judge
Rumph & Peyton
Piazza & Associates
Clark County Clerk

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[4]Luxor also contends that McClure's reference to an inadmissible incident report warrants reversal. We have considered Luxor's arguments and find them to be without merit.