

SUPREME COURT OF NEVADA

Wagon Wheel Saloon & Gambling Hall, Inc. v. Mavrogan, 78 Nev.
126

369 P.2d 688 (1962) · No. No. 4463 · Decided March 16, 1962

SUMMARY

An invited guest sued a Nevada saloon and gambling hall for injuries sustained when he fell on debris while descending a stairway. The Supreme Court of Nevada held that evidence supported the jury's findings regarding proximate cause and contributory negligence, and that evidence of debris created by an employee could support imputed notice to the premises owner. The court also held that an objection to testimony about a security guard's statement was untimely because the same evidence had previously been admitted without objection, and it affirmed the judgment.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Thompson, Justice; Badt, C.J.; McNamee, J.; Thompson, J.
JURISDICTION	Nevada
DECIDED	March 16, 1962
DOCKET	No. 4463
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff obtained a jury verdict and judgment for personal-injury damages in a negligence action. The defendant appealed, challenging the sufficiency of the evidence, contributory negligence, notice of the dangerous condition, and admission of testimony.
STANDARD OF REVIEW	The court reviewed whether the record contained evidence supporting proximate cause and notice, whether contributory negligence was established as a matter of law, and whether evidentiary error was preserved. Contributory negligence is a question of law only when the evidence supports no other legitimate inference; otherwise, it is for the jury.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Wagon Wheel Saloon and Gambling Hall, Inc. v. George Mavrogan

TOPICS

premises liability

contributory negligence

evidence

preservation of error

appellate procedure

PRACTICE AREAS

premises liability

negligence

personal injury

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence sufficiently established the proximate cause of Mavrogan's fall.
2. Whether Mavrogan was contributorily negligent as a matter of law.
3. Whether Mavrogan was required to prove that Wagon Wheel had actual or constructive notice of the debris on the stairway.
4. Whether the trial court erred in admitting testimony about statements made by Wagon Wheel's security guard when the objection was untimely.

HOLDINGS

1. The evidence was sufficient for the jury to find that Mavrogan slipped on nails or pieces of wood on the stairway and that the debris caused his fall.
2. Mavrogan's contributory negligence was not established as a matter of law; the issue was properly left to the jury.
3. An invitee need not prove the owner's actual or constructive notice of an unsafe condition when the condition was created by the owner or by an employee acting within the scope of employment; the employee's knowledge is imputed to the owner.
4. The evidentiary challenge did not warrant relief because the same evidence had previously been admitted without objection, making the later objection untimely.

KEY QUOTATIONS

"Usually, the issue is one of fact; it becomes a question of law only when the evidence is of such a character as to support no other legitimate inference." (369 P.2d at 690)

"When an unsafe condition exists which has been created by the owner of the property himself, or by an employee of that owner within the scope of his employment, an invitee need not prove the owner's notice or knowledge of the dangerous condition. Such knowledge is imputed to the owner." (369 P.2d at 690)

*"Don't worry. We take care of you. Don't worry, we take care of you. Don't worry. You going to doctors in San Francisco. * * * We take care of your case. * * * We stay behind you."* (369 P.2d at 690)

FACTUAL BACKGROUND

Mavrogan, an invited guest, fell while descending a stairway leading to an entrance of Wagon Wheel Saloon and Gambling Hall. He testified that he slipped on nails or pieces of wood on a step, while his attention was directed toward other people descending the stairs and a bus intended for the return trip to San Francisco. Evidence

permitted an inference that a Wagon Wheel carpenter employee created the debris, and a Wagon Wheel security guard made statements offering to take care of Mavrogan's medical care and claim.

PROCEDURAL HISTORY

Mavrogan sued Wagon Wheel after falling on debris while descending a stairway to the saloon entrance. A jury returned a verdict for Mavrogan in the amount of \$6,803.35, and judgment was entered on the verdict. Wagon Wheel appealed, and the Supreme Court of Nevada affirmed.

DISPOSITION

affirmed

CASES CITED

- Rickard v. City of Reno, 71 Nev. 266, 288 P.2d 209
- Carter v. City of Fallon, 54 Nev. 195, 201, 11 P.2d 817, 819, 16 P.2d 655
- Gordon v. Cal-Neva Lodge, Inc., 71 Nev. 336, 291 P.2d 1054
- City of San Diego v. Perry, 124 F.2d 629 (9th Cir.)
- Merchants' Ice & Cold Storage Co. v. Bargholt, 129 Ky. 60, 110 S.W. 364
- Hatfield v. Levy Bros., 18 Cal. 2d 798, 117 P.2d 841
- Sanders v. MacFarlane's Candies, 119 Cal. App. 2d 497, 259 P.2d 1010
- Lathrop v. Smith, 71 Nev. 274, 288 P.2d 212
- Barra v. Dumais, 76 Nev. 409, 414, 356 P.2d 124, 126

OPINION

THOMPSON, J.

369 P.2d 688 (1962) 78 Nev. 126 WAGON WHEEL SALOON AND GAMBLING HALL, INC., a Nevada Corporation, Appellant, v. George MAVROGAN, Respondent. No. 4463. Supreme Court of Nevada. March 16, 1962. *689 Vargas, Dillon & Bartlett and Alex. A. Garroway, of Reno, for appellant. William J. Crowell, of Carson City, Stanley P. Makay, San Francisco, Cal., for respondent.

THOMPSON, Justice. Mavrogan, an invited guest, fell while descending a stairway to an entrance of the Wagon Wheel Saloon and Gambling Hall, Inc., herein referred to as Wagon Wheel. Thereafter he commenced suit against the Wagon Wheel to recover damages for personal injuries sustained, claiming negligence. By answer, the Wagon Wheel denied any negligence, and affirmatively averred Mavrogan's contributory negligence as a separate defense.

A jury returned a verdict for Mavrogan, assessing damages in the sum of \$6,803.35. Judgment was entered thereon. The Wagon Wheel appeals. The following assignments of error are made: First,

that the record does not contain evidence proving, or tending to prove, the proximate cause of Mavrogan's fall; second, that Mavrogan was guilty of contributory negligence as a matter of law; third, that the record does not contain evidence proving, or tending to prove, that the Wagon Wheel had notice or knowledge, actual or constructive, of the existence of debris on the stairway; and, fourth, that prejudicial error occurred when the trial court permitted Mavrogan to testify to a statement by the security guard of the Wagon Wheel, which statement could be construed by the jury as an implied admission of fault.

We turn to discuss these claims of error. 1. Proof of Proximate Cause: Mavrogan was asked: "Q. Now did you notice what was on the step on which you slipped? You said you slipped on the third step; is that right? A. Yes, sir. Q. What was it there that you slipped on? A. Well, there was some kind of nails, some kind of pieces of wood, something. I feel I step on it."

It is true that other testimony given by him regarding the cause of his fall was confused and obscure. However, the quoted testimony is not. The jury was free to accept it. In *Rickard v. City of Reno*, 71 Nev. 266, 288 P.2d 209, upon which the Wagon Wheel primarily relies, there was no evidence as to the cause of claimant's fall; she did not know what had happened.

Rickard v. City of Reno, supra, does not support appellant's contention. We find no merit in this claim of error. 2. Regarding Contributory Negligence: The Wagon Wheel urges that the record discloses Mavrogan's contributory negligence as a matter of law. Usually, the issue is one of fact; it becomes a question of law only when the evidence is of *690 such a character as to support no other legitimate inference.

Carter v. City of Fallon, 54 Nev. 195, 201, 11 P.2d 817, 819, 16 P.2d 655; *Gordon v. Cal-Neva Lodge, Inc.*, 71 Nev. 336, 291 P.2d 1054. The evidence before us is not of such character. While descending the stairway, Mavrogan did not particularly notice the nails and wood on the step where he slipped and fell a moment later. He had no prior knowledge of their existence at that place.

He was looking at others who were also walking down the stairway, and at the bus which he and others intended to board for their return trip to San Francisco. His attention was momentarily attracted in another direction.

Under such circumstances it was for the jury to determine whether he exercised ordinary care for his own safety. Cf. *City of San Diego v. Perry*, 9 Cir., 124 F.2d 629; *Merchants' Ice & Cold Storage Co. v. Bargholt*, 129 Ky. 60, 110 S.W. 364.

Accordingly, this claim of error is without validity. 3. Regarding Actual or Constructive Notice to the Wagon Wheel of the Existence of Debris on the Stairway: The trial court gave the following instruction: "When an unsafe condition exists which has been created by the owner of the property

himself, or by an employee of that owner within the scope of his employment, an invitee need not prove the owner's notice or knowledge of the dangerous condition.

Such knowledge is imputed to the owner." The record contains some evidence from which the jury could reasonably infer that a carpenter employee of the Wagon Wheel created the "unsafe condition," i.e., the nails and pieces of wood on the stairway.

The instruction correctly states the law. *Hatfield v. Levy Bros.*, 18 Cal. 2d 798, 117 P.2d 841; *Sanders v. MacFarlane's Candies*, 119 Cal. App. 2d 497, 259 P.2d 1010. Indeed, the Wagon Wheel does not urge that it is an incorrect statement. Objection was not made to the giving of the instruction as required by NRCP 51; hence, complaint as to its content may not now be considered.

Lathrop v. Smith, 71 Nev. 274, 288 P.2d 212. 4. The Statement by the Security Guard: Counsel for the Wagon Wheel objected to testimony from Mavrogon regarding a statement made by a security guard of the Wagon Wheel. He testified that the guard said, "Don't worry.

We take care of you. Don't worry, we take care of you. Don't worry. You going to doctors in San Francisco. * * * We take care of your case. * * * We stay behind you." The objection was on the ground that the officer's identity was not shown; that his authority was not established; that it was not shown that his duties embraced the authority to make statements for his employer.

We need not consider such objection, nor whether the proper ground for objection was asserted. It is clear from the record that the objection was not timely made. The same evidence had been previously received without objection.

Accordingly, there is no substance to this claim of error. *Barra v. Dumais*, 76 Nev. 409, 414, 356 P.2d 124, 126. Affirmed. BADT, C.J., and McNAMEE, J., concur.