

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