

SUPREME COURT OF NEVADA

Krause Inc. and Home Depot U.S.A., Inc. v. Don Little, 117 Nev. 929

34 P.3d 566 (2001) · No. No. 36406 · Decided November 21, 2001

SUMMARY

The Supreme Court of Nevada affirmed a judgment for a plaintiff injured when a Krause Multimatic ladder collapsed. The court held that jurors may reenact an expert's experiment using admitted evidence when the reenactment is consistent with the trial evidence, and that expert testimony is not required for future pain-and-suffering damages arising from a broken bone. The court also addressed expert-witness qualification, admission of the ladder and evidence of similar accidents, and proof of a manufacturing defect.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Rose, J.; Shearing, J.; Becker, J.
JURISDICTION	Nevada
DECIDED	November 21, 2001
DOCKET	No. 36406
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying appellants' motion for judgment notwithstanding the verdict or, alternatively, a new trial in a strict-products-liability personal-injury action.
STANDARD OF REVIEW	Denial of a motion for a new trial is reviewed for abuse of discretion and will not be overturned absent a palpable abuse of discretion. Admission of expert testimony and evidentiary rulings are reviewed for abuse of discretion, with reversal warranted only for a clear or manifest abuse. An order denying judgment notwithstanding the verdict is not independently appealable, but the notice of appeal may be construed as an appeal from the underlying judgment.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Nevada.
PARTIES	Krause Inc., Home Depot U.S.A., Inc. v. Don Little

TOPICS

products liability

expert testimony

evidence

damages

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PRACTICE AREAS

products liability

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by permitting Manning to testify as an expert without adopting the Daubert standard.
2. Whether the accident ladder was properly admitted despite alleged damage caused by the expert's testing.
3. Whether jurors may use admitted evidence to reenact an expert's trial experiment during deliberations.
4. Whether curative instructions adequately remedied the erroneous presentation of two depositions concerning dissimilar accidents.
5. Whether expert testimony was required to support a manufacturing-defect instruction.
6. Whether expert testimony was required before the jury could be instructed on future pain-and-suffering damages for a broken bone.

HOLDINGS

1. Nevada retains its existing NRS 50.275 abuse-of-discretion standard for admitting expert testimony and does not adopt the Daubert standard.
2. The district court did not abuse its discretion by admitting the accident ladder because testing-related damage did not eliminate its probative value and the claimed prejudice was not unfair prejudice.
3. Jurors may use admitted evidence to reenact an expert's experiment performed or described at trial when the reenactment is consistent with that experiment; doing so does not introduce extrinsic evidence.
4. The district court's instructions to disregard the Eggers and Bloomquist depositions cured any resulting error or prejudice, so denial of a new trial was not an abuse of discretion.
5. Expert testimony is not always required to establish a manufacturing defect; an unexpected and dangerous malfunction may support an inference of defect through circumstantial evidence.
6. A broken bone is an objective injury, and a plaintiff need not present expert testimony regarding future pain and suffering before the court instructs the jury on future damages.

KEY QUOTATIONS

"We conclude that it does not." (571)

"In doing so, the jury did not produce extrinsic evidence, but rather examined the accuracy of Manning's expert testimony." (571)

"Rather, evidence of an unexpected, dangerous malfunction gives rise to an inference of a manufacturing defect." (572)

“We now hold that a broken bone is closer to the latter situation than the former, and accordingly a plaintiff need not present expert testimony before the district court instructs on future damages.” (572)

FACTUAL BACKGROUND

Don Little fell when a Krause Multimatic articulated ladder collapsed after he inadvertently bumped its release lever while standing on the third step. He suffered a two-place ankle fracture requiring surgery, casting, and later removal of an implanted plate and screws. Little's mechanical-engineering expert reproduced the accident conditions and concluded that the ladder was defectively designed, while the defense expert performed different tests and reached the opposite conclusion. Little testified that his ankle remained stiff and painful, but his treating physician did not testify about the likelihood of future pain.

PROCEDURAL HISTORY

A jury found for Little and awarded \$100,000, including \$20,000 for future pain and suffering. The district court denied Krause and Home Depot's post-verdict motion, and the Nevada Supreme Court reviewed the denial of a new trial and the underlying judgment.

DISPOSITION

affirmed

CASES CITED

- Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 970 P.2d 98 (1998)
- Hazelwood v. Harrah's, 109 Nev. 1005, 862 P.2d 1189 (1993)
- Allum v. Valley Bank of Nevada, 114 Nev. 1313, 970 P.2d 1062 (1998)
- Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995)
- Ross v. Giacomo, 97 Nev. 550, 635 P.2d 298 (1981)
- Thomas v. State, 114 Nev. 1127, 967 P.2d 1111 (1998)
- Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981)
- Hutchins v. State, 110 Nev. 103, 867 P.2d 1136 (1994)
- Mulder v. State, 116 Nev. 1, 992 P.2d 845 (2000)
- Smith v. State, 100 Nev. 570, 688 P.2d 326 (1984)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Bolin v. State, 114 Nev. 503, 960 P.2d 784 (1998)
- Schlotfeldt v. Charter Hospital of Las Vegas, 112 Nev. 42, 910 P.2d 271 (1996)
- Daly v. State, 99 Nev. 564, 665 P.2d 798 (1983)
- Barker v. State, 95 Nev. 309, 594 P.2d 719 (1979)
- Mortensen v. State, 115 Nev. 273, 986 P.2d 1105 (1999)
- Banghart v. Origoverken, 49 F.3d 1302 (8th Cir. 1995)
- Muchell v. V. & V., Inc., 263 N.J. Super. 412, 622 A.2d 1365 (Law Div. 1992)

- People v. Engler, 150 A.D.2d 827, 540 N.Y.S.2d 591 (1989)
- State v. Thacker, 95 Nev. 500, 596 P.2d 508 (1979)
- People v. Castro, 184 Cal. App. 3d 849, 229 Cal. Rptr. 280 (1986)
- Andrews v. Harley Davidson, 106 Nev. 533, 796 P.2d 1092 (1990)
- Lisle v. State, 113 Nev. 540, 937 P.2d 473 (1997)
- Galloway v. McDonald's Restaurants, 102 Nev. 534, 728 P.2d 826 (1986)
- Stackiewicz v. Nissan Motor Corp., 100 Nev. 443, 686 P.2d 925 (1984)
- Gutierrez v. Sutton Vending Service, 80 Nev. 562, 397 P.2d 3 (1964)
- Paul v. Imperial Palace, Inc., 111 Nev. 1544, 908 P.2d 226 (1995)
- Lerner Shops of Nevada, Inc. v. Marin, 83 Nev. 75, 423 P.2d 398 (1967)
- Tennessee v. Street, 471 U.S. 409 (1985)