

IN THE COURT OF APPEALS OF IOWA

No. 2-422 / 11-0597
Filed July 25, 2012

CHRISTOPHER CAGLE,
Plaintiff-Appellant,

vs.

PILOT TRAVEL CENTERS, L.L.C.,
Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Christopher Cagle appeals from district court rulings after a jury returned a
verdict in favor of Pilot Travel Centers, L.L.C. in Cagle's personal injury action.

AFFIRMED.

Anthony J. Bribriesco and William J. Bribriesco of William J. Bribriesco &
Associates, Bettendorf, for appellant.

Elliott R. McDonald III and Heather L. Carlson of McDonald, Woodward &
Carlson, P.C., Davenport, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

Christopher Cagle appeals from the district court's denial to include his proposed specification of negligence in a jury instruction and the court's assessment of costs related to trial exhibits following a jury verdict denying recovery for his personal injuries. Finding no abuse of discretion in the court's decision not to include the multiple negligence specifications in a jury instruction, as well as no abuse of discretion in the court's assessment of costs, we affirm.

I. Background Facts and Proceedings

Christopher Cagle paid to rent a shower at a truck stop owned and operated by Pilot Travel Centers, L.L.C. ("Pilot"). After exiting the shower and stepping off the bath mat, Cagle slipped and fell. He testified that he felt a slick, soapy substance on his body after he fell. Cagle brought an action against Pilot to recover for his resulting injuries. At the second trial,¹ Cagle requested the following be included as part of a jury instruction:

The defendant was negligent in one of the following:

- (a) failing to keep its premises in a reasonably safe condition by allowing a substance to remain on the shower room floor; or
- (b) failure to provide an adequate shower mat outside the shower stall; or
- (c) failure to properly supervise; or
- (d) failure to properly inspect the premises.

The district court denied Cagle's request to include the specifications regarding the mat, supervision, and inspection; instead sending to the jury only the first specification of negligence regarding the substance on the shower room floor.

¹ The first trial resulted in a deadlocked jury and was ultimately declared a mistrial.

The jury returned a unanimous verdict finding no fault on the part of Pilot. Cagle then filed a motion for a new trial based on the jury instruction issue. This motion was denied. Pilot then filed a motion to assess certain costs, which Cagle resisted. In its ruling, the district court assessed costs against Cagle, including those for medical records and trial exhibits. He appeals, contending the district court's denial of his jury instruction and assessment of costs were improper.

II. Jury Instruction

We review a claim that the district court gave improper jury instructions for correction of errors at law. We review the related claim that the district court should have given a party's requested instructions for an abuse of discretion. Error in giving or refusing to give a particular instruction does not warrant reversal unless the error is prejudicial to the party.

Mullhern v. Catholic Health Initiatives, 799 N.W.2d 104, 110 (Iowa 2011).

A court is required to give the requested instruction when it states a correct rule of law that has application to the facts of the case and is not otherwise embodied in other instructions. *Summy v. City of Des Moines*, 708 N.W.2d 333, 343 (Iowa 2006).

Parties to lawsuits are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record. When weighing the sufficiency of the evidence to support a requested instruction, we view the evidence in a light most favorable to the party seeking the instruction. Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. Instructions must be considered as a whole, and if some part was given improperly, the error is cured if the other instructions properly advise the jury as to the legal principles involved.

Herbst v. State, 616 N.W.2d 582, 585 (Iowa 2000).

Cagle argues the court's instruction with the single specification of negligence did not encompass all of Pilot's potential negligence, and the court's

refusal to instruct on the additional specifications of negligence was prejudicial. The district court found Cagle had failed to present substantial evidence on the additional specifications. We agree, particularly since the record does not show evidence that any of the additional alleged negligent acts had a causal relationship to Cagle's fall or injury.

The district court ruled the instruction regarding the shower mat would not be submitted to the jury, since Cagle's injury resulted from stepping off of the mat, not from any problem with the mat itself. Upon our deferential review, considering the evidence in the light most favorable to Cagle, we find no error in the court's refusal to instruct on this specification.

Regarding the failure to supervise and inspect instructions, the court again found insufficient evidence, and noted such findings regarding supervision and inspection would appropriately be factored into the second part of the instruction—what the defendant knew, or in the reasonable exercise of care, should have known. Neither of the specifications was linked to Cagle's fall.

We note that the failure to supervise and failure to inspect instructions are encompassed by the instruction regarding failure to keep the premises in a reasonably safe condition. Therefore, failure to give the supervision and inspection specifications constituted no error. *Compare Herbst*, 616 N.W.2d at 586–87 (holding negligence specification of “failing to provide safe and secure access” did not encompass “permitting makeshift stairs to be used for access” but did encompass a second negligent omission “failing to provide unimpeded access to the permanent stairs”) *with Scheller v. Hy-Vee Food Stores, Inc.*, 328 N.W.2d 328, 331–32 (Iowa 1982) (finding negligence specification “placing the

ashtray stand in an aisle” encompassed blocking the aisle, failing to ensure safe placement, and failure to warn).

The district court did not err in failing to include all four specifications of negligence.

III. Assessment of Costs

Cagle next appeals the assessment of certain costs against him by the district court for medical records and trial exhibits. Costs are recoverable by the successful party against the losing party. Iowa Code § 625.1 (2009). We review the district court’s determination of costs for abuse of discretion. *Cline v. Richardson*, 526 N.W.2d 166, 169 (Iowa Ct. App. 1994).

The district court initially cited the following general rule when making its assessment of taxable litigation costs:

The clerk shall tax in favor of the party recovering costs the allowance of the party’s witnesses, the fees of officers, the compensation of referees, the necessary expenses of taking depositions by commission or otherwise, *and any further sum for any other matter which the court may have awarded as costs in the progress of the action, or may allow.*

Iowa Code § 625.14 (2009) (emphasis added). The emphasized provision includes recovery for necessary litigation expenses. *Talen v. Employers Mut. Cas. Co.*, 703 N.W.2d 395, 415 (Iowa 2005); *see also Scroggs Feed & Grain Co. v. Vos*, 118 N.W.2d 543, 545 (Iowa 1962) (finding opposing party witness fees included in “[a]ny further sum” provision of Iowa Code § 625.14). The district court further cites the following regarding the cost of procuring testimony: “The necessary fees paid by the successful party in procuring copies of deeds, bonds,

wills, or other records filed as a part of the testimony shall be taxed in the bill of costs.” Iowa Code § 625.6 (2009).

Cagle brought his medical history in issue by bringing an action based on his injury. As such, medical records were not only necessary for litigation purposes but they were also admitted as part of the evidence. Trial exhibits are, by their nature, necessary litigation expenses. Because Cagle was unsuccessful at the trial court level, and because the district court carefully considered which costs should be assessed to each party as permitted by statute, we find no abuse of discretion.

Costs on appeal are assessed to the appellant.

AFFIRMED.