

## **SUMMARY STATEMENT**

*Oksman v. City of Idaho Falls*

Docket No. 49904

After slipping and falling on a wet surface in the lobby of the West Deist Aquatic Center and injuring her knee, Appellant Michelle Oksman brought a lawsuit alleging negligence against Respondent City of Idaho Falls (the “City”). Shortly after her fall, Oksman alleged a woman attending to her said, “People fall down there all the time.” Oksman was unable to identify the person who made the statement until after she saw Facebook photos, and she then identified the person as Rhonda Newman, the aquatic center’s manager.

At trial, Oksman attempted to testify that Newman was the person who had stated that people fall all the time in the same location where Oksman fell. The City objected to the testimony and the district court sustained the hearsay objection based on Oksman’s initial inability to identify who made the statement, and the fact that other people were in the area when Oksman fell.

While examining Newman during her case in chief, Oksman’s counsel read from Newman’s deposition while asking Newman to confirm the questions she was asked and the answers she gave at her deposition prior to trial. The City objected to the form of the questions, arguing it was improper impeachment. The district court sustained the objections. When the City later cross-examined Newman, Oksman objected to questions as leading, which the district court overruled because they were asked during cross-examination.

Near the end of Oksman’s case-in-chief, Oksman’s attorney tried to recall Oksman as a witness to respond to Newman’s testimony. The district court did not permit Oksman to retake the stand at that time, but allowed Oksman to offer rebuttal testimony after the defense had an opportunity to present its case.

The court declined to give Oksman’s requested jury instruction about the reasonable value for necessary services, explaining that because there was no evidence at trial that Oksman had paid any out-of-pocket expenses for necessary services, the jury would not be instructed on that issue.

The jury concluded that the City was not negligent and returned a verdict in its favor. The district court then entered a judgment dismissing Oksman’s complaint with prejudice.

The Supreme Court began its analysis by analyzing whether the district court properly sustained objections to Oksman’s attempted testimony that Newman made the statement, “People fall down there all the time.” The Court held that the district court erred by not allowing Oksman to testify based on her personal knowledge that Newman made the statement, particularly when the court’s decision was based on its doubts as to Oksman’s ability to identify who among many other people in the area may have made the statement, and that the error was prejudicial. As a result of this error the Supreme Court vacated the judgment and remanded the case for a new trial.

As guidance on remand for issues likely to rise again, the Court held that the district court did not err when it denied Oksman’s attempts to impeach Newman with her deposition testimony without asking a question first. The Court held that the district court did not err when it overruled Oksman’s objections based on leading questions during Newman’s cross-examination by the City’s attorney. The Court held that the district court erred in refusing to give Oksman’s requested jury instruction on the reasonable value for necessary services because an award of damages for lost household services does not require a cash outlay. Neither party was awarded attorney fees on appeal.

***\*\*\*This summary constitutes no part of the Court's opinion. It has been prepared by court staff for the convenience of the public.\*\*\****