

BOISE, MONDAY, FEBRUARY 12, 2024 at 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DIANE LANDS,

Plaintiff-Appellant,

v.

**SUNSET MANOR, LP; BINGHAM
COUNTY SENIOR CITIZENS CENTER,
INC.,**

Defendants-Respondents.

Docket No. 49916

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bingham County, Darren B. Simpson, District Judge.

Browning Law, Idaho Falls, for Appellant.

Farm Bureau Mutual Insurance Company of Idaho, Pocatello, for Respondents.

This appeal arises from a premises liability case and concerns the district court’s decision to exclude expert witness testimony as a sanction for violating the disclosure deadlines set forth in the court’s scheduling order. Diane Lands (“Lands”) filed suit against Sunset Manor LP, and Bingham County Senior Citizens Center Inc. after she tripped on a sidewalk outside of an apartment building owned by Bingham County Senior Citizens Center Inc., and which is operated by Sunset Manor LP (collectively “Sunset Manor”). According to the district court’s scheduling order, Lands was required to disclose “all expert witnesses in the manner outlined in Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure,” the rule setting forth the disclosure requirements for retained experts. The order further scheduled a pretrial conference for June 22, 2020, and Land’s fact and expert witness disclosure deadline was set for “no later than ninety days before the pretrial conference[.]” which fell on March 24, 2020. However, on May 5, 2020, the district court entered a written order vacating the pretrial conference and trial dates in response to the Covid-19 pandemic and also stating that “no previously set deadlines or scheduling deadlines are extended.” The district court later reiterated to the parties at a scheduling conference that it would not extend deadlines unless the parties stipulated to an extension.

On October 20, 2020, Lands filed a fact and expert witness disclosure, which identified

new non-retained expert witnesses. She subsequently filed a motion with the district court requesting permission to allow several witnesses to testify as expert witnesses at the upcoming trial. The district court denied this request, holding that Lands' disclosure was untimely and that she was informed, "both in writing and in court, that the discovery deadlines would not be extended despite the rescheduling of the jury trial." The district court later denied Lands' motion to reconsider.

Thereafter, this case proceeded to trial. After the close of evidence, the district court determined that Lands was not entitled to her requested jury instruction on future damages related to her alleged short-term memory loss. The district court further instructed the jury to consider Lands' pain and suffering up to the date of her last doctor's appointment in determining non-economic damages. The jury returned a verdict in favor of Lands, finding Sunset Manor 51% at fault and Lands 49% at fault for the incident, and a judgment was entered against Sunset Manor in the amount of \$2,819.61.

Lands appeals the district court's order excluding expert witness testimony, alleging that the district court erred (1) in interpreting its scheduling order because the order's disclosure deadlines automatically moved with the rescheduled pre-trial conference and trial dates, and (2) by requiring Lands to disclose non-retained expert witnesses in the same manner as retained expert witnesses. Lands further alleges that the district court erred in limiting the non-economic damages the jury could consider. Lands requests an award of attorney's fees.