

SUMMARY STATEMENT

Lands v. Sunset Manor, LP

Docket No. 49916

This appeal concerns the district court's decisions to exclude expert testimony for violations of scheduling order deadlines and to include a jury instruction limiting the time period for which non-economic damages could be recovered because the plaintiff did not have expert testimony. Following a tripping accident outside the Sunset Manor apartment building, Diane Lands filed a premises liability suit against the Bingham County Senior Citizens Center, the owner of the building, and Sunset Manor, LP, the operator of the business (collectively "Sunset Manor").

Thereafter, the district court issued a scheduling order which required Lands 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 which sets disclosure requirements for retained experts—"no later than ninety (90) days before the Pre-Trial Conference[.]" which fell on March 24, 2020. The order further required all discovery to be completed "one (1) week prior to the scheduled Pre-Trial Conference[.]" which fell on June 15, 2020. However, the district court subsequently entered a written order vacating the pretrial conference and trial dates in response to the COVID-19 pandemic. This order also stated that "no previously set deadlines or scheduling deadlines are extended." Thereafter, on June 15, 2020, Lands disclosed the opinion of Dr. Carol Anderson, a previously identified retained-expert witness, and, on October 20, 2020, Lands filed an additional fact and witness disclosure which listed new non-retained expert witnesses. The district court determined that these disclosures were untimely under the provisions of its scheduling order and excluded expert testimony from these witnesses at trial.

This case proceeded to a jury 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, noting that Lands had testified that she did not know whether her short-term memory loss was a result of the fall or her "old age." Instead, the district court instructed the jury to only consider "[t]he physical and mental pain and suffering from August 9, 2017 through September 28, 2017" — the date of Lands' last medical treatment. The jury returned a verdict in favor of Lands, and a judgment was entered against Sunset Manor.

Lands appealed, arguing that the district court erred in holding that her disclosures violated the scheduling order because her deadlines were set relative to the pre-trial conference date and were automatically extended when the pre-trial conference was postponed; and the order did not set a deadline to disclose non-retained experts. Lands further argued the district court abused its discretion by instructing the jury to only consider pain and suffering from August 9, 2017, through September 28, 2017, because she was capable of telling the jury that she continued to suffer from short-term memory loss after her last doctor's appointment.

The Idaho Supreme Court affirmed the district court's decisions. Concerning the exclusion of Lands' expert witnesses, the Court held that Lands' discovery deadlines were not automatically extended by the rescheduling of the pre-trial conference and jury trial dates. The Court further determined that the scheduling order's disclosure requirement for non-retained experts lacked sufficient specificity to sustain a discovery sanction. However, the Court declined to reverse on this basis because two of the excluded witnesses were not disclosed until after the discovery completion deadline had ended and Lands failed to demonstrate that a substantial right was violated by the exclusion of the remaining non-retained expert witnesses. Concerning the jury instruction, the Court held the district court did not err by limiting Lands' non-economic damages because, under *Holdaway v. Broulim's Supermarket*, 158 Idaho 606, 349 P.3d 1197 (2015), Lands'

lay testimony on her alleged short-term memory loss—which was the sole basis for seeking non-economic damages following September 28, 2017—was not sufficient evidence from which a reasonable jury could determine that her short-term memory loss was caused by the fall.

******This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.******