STATE OF MICHIGAN

COURT OF APPEALS

DIANE L. DOWDEN,

Plaintiff-Appellee,

v

OTIS ELEVATOR COMPANY,

Defendant-Appellant.

UNPUBLISHED
July 20, 2001

No. 219294
Genesee Circuit Court
LC No. 96-045960-NO

Before: K. F. Kelly, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant appeals by right from a judgment for plaintiff entered after a jury verdict. The jury found that defendant's negligent maintenance of an elevator ultimately injured plaintiff, who stumbled while exiting the elevator because the elevator car stopped below the floor level. We affirm.

Defendant argues that the trial court erred by denying its motion for a directed verdict because plaintiff did not prove that her causation theory was more probable than other causation theories. We review de novo a trial court's decision to deny a motion for a directed verdict, *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997), viewing the evidence up to the time of the motion in the light most favorable to the opposing party. *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000).

Plaintiff's causation theory was that defendant negligently allowed carbon dust to build up in the elevator's motor generator, thereby causing an electrical problem and ultimately a misleveling of the elevator. Defendant contends that because misleveling can also be caused by other factors, including a change in an elevator car's weight, and because another elevator company had recently made alterations to the elevator car in question that might have changed its weight,[1] plaintiff failed to show that her theory of causation was anything more than speculative. We disagree. Indeed, plaintiff presented testimony from an expert witness that the most likely cause of the misleveling was carbon dust buildup and that defendant's maintenance personnel

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[1] We note that defendant's expert witness admitted during defendant's presentation of the case that he did not know if the alterations actually did add weight to or subtract weight from the car.

should have noticed and eliminated the buildup. The expert admitted that misleveling can be caused by a number of factors but nonetheless concluded that because defendant subsequently fixed the problem in this case by adjusting the motor generator in a particular fashion, the most likely cause of the misleveling was carbon dust buildup. Moreover, he answered "no" when asked if the prior alterations to the car made by the other elevator company had anything to do with the mechanical room or the motor generator, and he stated unequivocally that defendant was responsible for the misleveling of the elevator. Another witness testified that the prior alterations were "cosmetic" in nature. This testimony sufficed to show that plaintiff's theory of causation was more probable than others. See *Skinner v Square D Co*, 445 Mich 153, 164-166; 516 NW2d 475 (1994) (indicating that a plaintiff must show that the proffered theory of causation is more likely than others to avoid a directed verdict for the defendant in a negligence case).

Defendant contends that plaintiff's expert should not have been qualified as an expert and that his conclusions were unworthy of belief. However, plaintiff's expert was clearly qualified to render opinion testimony under MRE 702. Contrary to defendant's argument, the expert's testimony was not inherently unreliable, given his testimony that he was familiar with the maintenance necessary for the type of elevator in question and that he had (1) worked in the elevator industry for thirty-four years, (2) worked as an elevator inspector for the state of Indiana for seven years, (3) served as the director of elevator safety for the state of Indiana for five years, (4) surveyed elevator maintenance as an independent consultant for a year, and (5) trained elevator inspectors regarding maintenance issues for six years. While another factfinder might have concluded that the witnesses aligned with defendant (who testified that carbon dust buildup was not the cause of the misleveling) were the more persuasive witnesses and therefore ruled for defendant, the jury in this case nonetheless permissibly concluded that plaintiff's expert was persuasive and that defendant's negligent failure to remove carbon dust buildup was the most likely cause of the misleveling of the elevator. The trial court did not err by qualifying the witness in question as an expert and by allowing this case to be submitted to the jury.

Defendant additionally argues that the trial court improperly excluded from trial inspection and safety records showing that the elevator was not misleveling in 1996 and 1997 (plaintiff's injury occurred in 1995). Defendant contends that the records were relevant to show that adjusting the motor generator after plaintiff's injury permanently fixed the misleveling problem, thereby suggesting that the misleveling that caused plaintiff's injury resulted from a change in the elevator car's weight and not from a buildup of carbon dust (because, according to defendant, an adjustment to the motor generator would only temporarily fix misleveling caused by carbon dust accumulation but would permanently fix misleveling caused by a change in the weight of the car). We review a trial court's decision to exclude evidence for an abuse of discretion. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999). An abuse of discretion exists if an unprejudiced person, considering the facts available to the trial court, would find no justification for the ruling. *Id.*

We find no abuse of discretion here. Indeed, we fail to see how the records supported an inference that a weight change caused the misleveling in 1995. Evidence introduced before defendant sought to admit the inspection and safety records at trial showed that carbon dust accumulates in the motor generator over time, requiring regular cleaning of the generator. Thus, the danger of carbon dust buildup would have remained, regardless of the type of problem that

existed in 1995. The records merely showed that the motor generator was being kept clean of carbon dust and did not have a weight-change problem in 1996 and 1997. Because this showing was not relevant to the cause of plaintiff's accident in 1995, the trial court did not abuse its discretion by excluding the records. See MRE 401 and 402.

We decline plaintiff's invitation to impose sanctions on defendant for bringing a vexatious appeal. See MCR 7.216(C)(1). Although we disagree with defendant's arguments, they are not so utterly without merit as to be vexatious.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Michael R. Smolenski
/s/ Patrick M. Meter