STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0983

Heather Jones,
Appellant,

vs.

Hennepin County,
Respondent.

Filed April 23, 2018
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CV-15-19716

Tammy P. Friederichs, Stephen M. Thompson, Friederichs & Thompson, P.A., Bloomington, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Rebecca L.S. Holschuh, James W. Keeler, Assistant County Attorneys, Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellant Heather Jones sued respondent Hennepin County (the county) for assault, battery, sexual harassment in a place of public accommodation, and reprisal, based on alleged conduct by a county security guard at an office building. Following a trial, the jury

found in favor of the county. Jones challenges the district court's denial of her motion for a new trial, arguing that the district court (1) abused its discretion in ruling that Jones could not refer to a particular exhibit as the county's "policy"; (2) erred in its jury instructions and in its special-verdict questions; (3) abused its discretion in limiting the testimony of Jones's treating medical providers; and (4) erred in not submitting Jones's claim of future damages for emotional distress to the jury. We affirm.

FACTS

Heather Jones went to the Century Plaza Building in Minneapolis to meet with a caseworker about a housing issue. After the meeting, Jones made a phone call using a public phone on the second floor of the building. E.H., a security guard employed by the county, testified that he heard Jones yelling into the phone and asked her to lower her voice. According to E.H., Jones told him to "shut up," then hung up the phone and called E.H. "a fat f--k." E.H. told Jones that he was ejecting her from the building.

Building surveillance cameras captured the following sequence of events. After being approached by E.H., Jones walked to the elevator, and E.H. followed. Both Jones and E.H. exited the elevator on the first floor of the building. E.H. followed Jones to a service counter where she had her parking ticket validated. Jones, followed by E.H., then walked toward the building exit, opened a door, and entered the vestibule. Before exiting the building through a second set of doors, Jones stopped and lit a cigarette. E.H. reached toward the cigarette and made contact with Jones's hand. Jones then spun and flailed her arm toward E.H.

E.H. testified that Jones hit him on top of his head and tried to hit him again but missed. Jones denied hitting or trying to hit E.H. E.H. testified that he grabbed Jones's hand and shoulder, took her to the ground, and used his knee to restrain her while he radioed for assistance. Two police officers arrived and arrested Jones. Jones later pleaded guilty to a trespassing violation.

Jones sued the county, claiming that its employee, E.H., committed civil assault and battery, sexual harassment in violation of the Minnesota Human Rights Act (MHRA), and reprisal discrimination in violation of the MHRA. Following trial, a jury found that E.H. did not commit an assault or battery or violate the MHRA, and it awarded Jones no damages.

Jones filed a motion for a new trial, arguing that a number of trial irregularities deprived her of a fair trial and that several of the district court's legal rulings were in error. The district court denied the motion.

Jones appeals.

D E C I S I O N

The district court may grant a new trial because of "(a) [i]rregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial; . . . [or] (f) [e]rrors of law occurring at the trial." Minn. R. Civ. P. 59.01. We will not reverse a district court's denial of a new-trial motion absent a "clear abuse of discretion." *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 625 (Minn. 2012).

I. The district court did not commit prejudicial error by ruling that Jones could not refer to a particular exhibit as the county's "policy."

We review evidentiary rulings for an abuse of discretion. *See Kelly v. Ellefson*, 712 N.W.2d 759, 766 (Minn. 2006). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (quotation omitted). "An error is prejudicial if it might reasonably have changed the result." *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010) (quotation omitted).

Jones argues that the district court abused its discretion by ruling that Jones could not refer to an exhibit as the county's "policy." Jones contends that she suffered prejudice because she was unable to present her theory that E.H. violated the county's use-of-force policy when he forcibly detained her. The exhibit at issue was a document titled, "Removing Persons from a Facility," written by a county security-operations manager more than one year after the incident giving rise to Jones's claims. The security-operations manager characterized the document as a memorandum to security staff to remind them of the county's policy and procedures on removing persons from facilities, in which physical force was to be used only as a last resort to protect themselves or others. The district court sustained two objections—once while Jones cross-examined the county's expert witness, and once during Jones's closing argument—when Jones referred to the exhibit as the county's "policy."

The record indicates that the district court limited Jones's presentation of evidence only to the extent that Jones could not refer to the particular exhibit as the county's "policy." The district court did not limit Jones from presenting evidence to establish the existence of the county's use-of-force policy. Indeed, Jones elicited testimony from E.H. confirming that the county's policy was that security guards use physical force only as a last resort to protect themselves or others. Because the evidentiary ruling did not prevent Jones from presenting her theory of the case with regard to the county's use-of-force policy, Jones has not established that the district court committed prejudicial error. Therefore, the district court did not abuse its discretion in denying a new trial on the basis of this evidentiary ruling.

II. The district court did not commit prejudicial error in its jury instructions or in its special-verdict form.

"The [district] court has broad discretion both in writing jury instructions and in framing special verdict questions." *Dang v. St. Paul Ramsey Med. Ctr., Inc.*, 490 N.W.2d 653, 658 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992). A new trial is not required unless the jury instruction was erroneous and its effect was either prejudicial or not determinable. *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002). A jury instruction is erroneous if it "materially misstates the law." *George v. Estate of Baker*, 724 N.W.2d 1, 10 (Minn. 2006). "An error is prejudicial if there is a reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury." *Youngquist v. W. Nat'l Mut. Ins. Co.*, 716 N.W.2d 383, 386 (Minn. App. 2006) (quotation omitted).

A. Official Immunity

"Official immunity protects a public official charged by law with duties that call for the exercise of judgment or discretion unless the official is guilty of a [willful] or malicious wrong." *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 220 (Minn. 1998) (quotation omitted). Official immunity applies to the exercise of discretionary duties and does not apply when a public official exercises "mere ministerial duties," which are "absolute, certain, and imperative [duties], involving merely execution of a specific duty arising from fixed and designated facts." *Id.* (quotations omitted). "The application of immunity is a question of law . . . ." *Id.* at 219. But "[w]hether or not an officer acted maliciously or willfully is usually a question of fact to be resolved by a jury." *Johnson v. Morris*, 453 N.W.2d 31, 42 (Minn. 1990).

Jones argues that the district court improperly submitted two questions on official immunity to the jury because the application of official immunity is a question of law to be determined by the district court. The special-verdict form contained two questions labeled, "Official Immunity." The jury was asked, first, whether E.H.'s duties during the incident called for the exercise of judgment or discretion and, second, whether E.H. committed a willful or malicious wrong against Jones. Because the determination of malicious or willful conduct is generally a question of fact for the jury, the district court did not err in submitting the second question to the jury. *See Johnson*, 453 N.W.2d at 42. But the first question essentially asked the jury to determine whether official immunity applied to E.H.'s actions. Because the application of official immunity is a question of law, the district court erred in submitting the first question to the jury. *See id.* (stating that

"[w]hether official immunity applies requires the court to focus on the nature of the particular act in question," and determining that the officer's discretionary acts were of the type giving rise to official immunity).

Despite the district court's error, Jones has not shown that the error prejudiced the outcome of the trial or that its effect is indeterminable. The jury found that E.H. did not commit an assault or battery against Jones. Thus, any findings by the jury on official immunity were immaterial to its finding on liability. The district court did not abuse its discretion in denying a new trial on the basis of the special-verdict questions related to official immunity.

B. Use of Reasonable Force

In Minnesota, the circumstances in which a person may use reasonable force on another person include "when used by a person [who is] not a public officer in arresting another [person] . . . in the manner provided by law," or "when used by any person in resisting . . . an offense against the person." Minn. Stat. § 609.06, subd. 1(2), (3) (2016). The district court instructed the jury on both potential circumstances and included a corresponding question about the use of reasonable force on the special-verdict form. The district court took its jury instruction from CIVJIG 60.63, which in turn, is based on Minn. Stat. § 609.06. *See* 4A *Minnesota Practice*, CIVJIG 60.63 (2017).

Jones argues that the district court erred in instructing the jury on the use of reasonable force, on the basis that E.H. was not privileged to perform a "citizen's arrest" of Jones under Minn. Stat. § 609.06, subd. 1(2), because (1) he was acting within the scope

of his official duties as a security guard and (2) he did not arrest Jones in the "manner provided by law" because he allegedly violated the county's use-of-force policy.

Jones provides this court with no legal authority to support either of her assertions. Issues not adequately argued are deemed waived on appeal and need not be addressed by this court. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.") (quotation omitted). Moreover, because the jury found that E.H. did not commit an assault or battery, the jury did not reach the question of whether E.H.'s actions were nonetheless justified by the use of reasonable force. Therefore, prejudicial error is not obvious upon mere inspection. *See Youngquist*, 716 N.W.2d at 386 (holding that prejudicial error exists if there is a reasonable likelihood that an instruction had significant effect on the verdict). We conclude that the district court did not abuse its discretion in denying a new trial on the basis of the reasonable-force jury instruction and special-verdict question.

III. The district court did not commit prejudicial error by limiting the testimony of appellant's treating medical providers.

Jones next argues that the district court improperly limited the testimony of her three treating medical providers, which she attempted to disclose under Minn. R. Civ. P. 26.01(b)(3). Jones maintains that she made adequate disclosures under the rule.

"[T]he proper remedy for failure to disclose information regarding an expert witness is largely within the discretion of the [district] court." *State by Spannaus v. Heimer*, 393

N.W.2d 687, 691 (Minn. App. 1986) (quoting *Ford v. Chi., Milwaukee, St. Paul & Pacific R.R. Co.*, 294 N.W.2d 844, 847 (Minn. 1980)). We review the district court's evidentiary ruling for an abuse of discretion. *Id.* at 693. A new trial is warranted only if the moving party demonstrates that an improper evidentiary ruling resulted in prejudice. *Kroning*, 567 N.W.2d at 46.

Minn. R. Civ. P. 26.01(b)(3) provides that, when a party's expert witness is not required to submit a written report on her anticipated testimony, the party must disclose the "subject matter" of the witness's testimony and provide "a summary of the facts and opinions to which the witness is expected to testify." Jones and the county agree that there is no caselaw interpreting the adequacy of a party's disclosure under the rule.

Before trial, Jones submitted a rule 26.01(b)(3) disclosure in which she identified three nonretained expert witnesses—a physical therapist, a nurse practitioner, and a social worker—who treated Jones and whom she intended to call as treating experts at trial. Jones's disclosure summarized, by date of office visit, the symptoms that Jones reported to the medical providers and their diagnoses and treatment plans. The county moved to limit the medical providers' testimony, arguing that Jones failed to make an adequate disclosure under rule 26.01(b)(3) and that the providers were not qualified to testify on medical causation. The district court granted the motion to the extent that the medical providers could not testify on future treatment plans or medical causation.

Here, even if we assume, for the purposes of this appeal, that the district court improperly limited the testimony of Jones's medical providers, Jones has not shown that the ruling resulted in prejudice. The jury found that E.H. committed no underlying assault

or battery and therefore was not liable for any harm. Nonetheless, Jones contends that the district court's ruling prevented Jones from offering certain medical evidence, which Jones does not identify, that was relevant to a finding that E.H.'s contact of Jones was harmful and constituted a battery. However, the jury heard testimony from all three of Jones's medical providers on the symptoms that Jones presented following the alleged battery, which included depression, fatigue, sleeplessness, neck and ankle pain, and a facial injury. Also, medical records produced by two of the medical providers were submitted into evidence. In addition, both Jones and her daughter testified on the extent of Jones's symptoms and injuries. Moreover, the jury viewed the surveillance video footage of the incident. Jones has not shown that the exclusion of additional, unspecified medical evidence prejudiced the jury's finding on the question of battery. We conclude that the district court did not abuse its discretion in denying a new trial on the basis of any limitations on the testimony of Jones's treating medical providers.

IV. Any error in declining to submit Jones's claim of future damages for emotional distress to the jury was harmless.

Jones argues that the district court erred in not submitting her claim of future damages for emotional distress to the jury. Because the jury found no liability, and nothing in our decision upsets that finding, no damages—past or future—were available to Jones. Thus, any error by the district court in not submitting Jones's claim for future damages to the jury is harmless. We overlook harmless errors that do not affect a party's substantial rights. Minn. R. Civ. P. 61.

Affirmed.