

IN THE UTAH COURT OF APPEALS

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| Yvonne Day, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellant, |) | |
| |) | Case No. 20040697-CA |
| v. |) | F I L E D |
| |) | (September 22, 2005) |
| U-Systems, Inc., |) | |
| |) | 2005 UT App 403 |
| Defendant and Appellee. |) | |

Second District, Layton Department, 990601744
The Honorable Thomas L. Kay

Attorneys: James R. Hasenyager, Ogden, for Appellant
Kara L. Pettit, Julianne P. Blanch, and Derek
Williams, Salt Lake City, for Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Yvonne Day appeals a jury verdict finding U-Systems, Inc. (U-Systems) negligent but also finding that its negligence was not the proximate cause of her injuries. She asserts the trial court erred in excluding evidence of a contract between U-Systems and Hill Air Force Base and expert testimony regarding the standard of care on federal construction projects. Because Day has shown no prejudice due to the exclusion of the evidence, we affirm.

Pursuant to the Utah Rules of Evidence, "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected." Utah R. Evid. 103(a). "A judgment will not be reversed for an alleged error in the exclusion of evidence unless it appears in the record that the error was prejudicial." Downey State Bank v. Major-Blakeney Corp., 578 P.2d 1286, 1288 (Utah 1978). For an error to be prejudicial, "the likelihood of a different outcome must be sufficiently high to undermine confidence in the verdict." City of Hildale v. Cooke, 2001 UT 56, ¶30, 29 P.3d 697 (quotations and citation omitted). In evaluating the effect of an error, an appellate court "must consider the impact of that error in the

context of the whole proceeding." Kelson v. Salt Lake County, 784 P.2d 1152, 1157 (Utah 1989).

Even if the trial court improperly excluded the evidence, as seems likely, based on the record as a whole, the error did not affect the outcome. The evidence offered by Day is relevant only to the standard of care on the U-Systems construction site. The jury found U-Systems to be negligent. Implicit in that finding is that U-Systems owed a duty of care to Day and violated the standard of care. Because the jury found that U-Systems failed to meet a required standard of care, additional evidence regarding the standard of care would not affect the outcome.

Day argues that the evidence would help to show proximate cause. However, the evidence does not establish anything regarding causation, but merely recites applicable standards for storing the materials that injured Day. Day must show both negligence and proximate cause in order to recover; proving one does not necessarily prove the other. "In every case, negligence and proximate cause are separate and distinct factors in assigning tort liability. Proof of negligence is never enough by itself to establish liability; it must also be proved that negligence was a cause of the event which produced the injury." Holmstrom v. C.R. England, Inc., 2000 UT App 239, ¶32, 8 P.3d 281 (quotations and citations omitted).

"Proximate cause is a legal construct calling for a legal conclusion based on various factors in addition to an actual cause-effect relationship. It is common place in the law that an act, omission, or force may be an actual cause, but not a proximate cause." Bennion v. LeGrand Johnson Constr. Co., 701 P.2d 1078, 1083 (Utah 1985). "Proximate cause is generally defined as 'that cause which, in natural and continuous sequence, (unbroken by an efficient intervening cause), produces the injury and without which the result would not have occurred. It is the efficient cause--the one that necessarily sets in operation the factors that accomplish the injury.'" Clark v. Farmers Ins. Exch., 893 P.2d 598, 601 (Utah Ct. App. 1995) (quoting Mitchell v. Pearson Enters., 697 P.2d 240, 246-47 (Utah 1985)).

Here, even acknowledging that U-Systems was negligent in failing to secure the building materials, additional evidence of the need to secure the materials does not shed any further light on the cause of Day's injuries. The record shows that a co-worker moved the materials, causing them to tip and injure Day. The record also shows that Day could have requested a contractor to move the materials to clear her view of the wall. Additionally, the record shows that, absent the action by Day's co-worker pulling the materials, the materials would not have fallen. Thus, even though the materials were negligently propped

against the wall, such negligence would not have caused injury without an independent act, the efficient cause of the injury.

In sum, the excluded evidence established only a standard of care but was not relevant to causation. As a result, its exclusion did not prejudice Day and thus cannot be the basis for reversal. See Downey State Bank v. Major-Blakeney Corp., 578 P.2d 1286, 1288 (Utah 1978).

Affirmed.

Judith M. Billings,
Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge