IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

WROUGHT CORPORATION, INC.,	)	No. 64032-1-I
Appellant,	)	
v.	)	UNPUBLISHED OPINION
MARIO INTERIANO,	)	
Respondent.	)	FILED: May 9, 2011

Schindler, J. — A general contractor has a nondelegable duty to ensure compliance with the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW (WISHA), for the protection of all workers at the jobsite, including subcontractors. A subcontractor is only responsible for complying with WISHA safety regulations where the dangerous condition is either created by or under the control of the subcontractor. Subcontractor Mario Interiano was seriously injured when the safety barrier installed by the general contractor gave way and he fell 20 feet down an elevator shaft. After a two-week trial, the jury found the general contractor Wrought Corporation, Inc. primarily negligent. Wrought seeks reversal of the $1,560,000 judgment on the verdict. Wrought argues that the trial court erred (1) in denying the

motion to introduce into evidence deposition testimony of an employee in order to establish Interiano's responsibility for the area around the elevator shaft, (2) in precluding Wrought's workplace safety expert from testifying that Interiano had a duty to provide a safe workplace, (3) by refusing to instruct the jury that every employer has a statutory duty to provide a safe workplace, and (4) by denying its motion for reconsideration and new trial. We reject Wrought's arguments and affirm the judgment on the verdict.

FACTS

Wrought Corporation, Inc. was the general contractor on a residential construction project in Mukilteo. Mario Interiano is a specialty subcontractor doing business as Nelson General Contractor (Interiano). In 2005, Wrought hired Interiano for the residential project in Mukilteo to do the interior trim work, install the handrails and doors, and prime and paint the walls.

On November 17, 2005, Interiano and his employee Nelson Rodriguez planned to trim the windows and work on the sliding glass doors on the third floor. Interiano unloaded his tools, including an air compressor with a 100-foot hose. Interiano decided to untangle the hose by extending it from the third floor down the open elevator shaft. Wrought had installed a safety barrier across the opening of the elevator shaft. The safety barrier consisted of two-by-four boards that were wedged inside the door jamb of the elevator shaft in the shape of an "X."

Interiano squatted down near the opening of the elevator shaft and dropped the hose down the shaft. When Interiano stood up, he lost his balance and grabbed onto

the safety barrier. The boards gave way, and Interiano fell 20 feet down the elevator shaft, landing feet first on a concrete slab. The impact shattered his heel bones and caused a burst fracture in his lumbar spine.

On August 9, 2007, Interiano filed a personal injury lawsuit against Wrought for

breach of the statutory duty to comply with WISHA safety regulations, including the regulations related to the safety barrier. Wrought denied liability. Wrought claimed Interiano was responsible for the area around the elevator shaft, including the safety barrier, because he "created the unsafe condition which caused his injuries." The court scheduled the trial for May 22, 2009.

On November 22, 2008, Wrought deposed Rodriguez. At the beginning of the deposition, Wrought's attorney repeatedly asked Rodriguez about his immigration status.[1]

Several months later, Wrought had difficulty serving Rodriguez with a subpoena for trial. Interiano's attorney offered to assist Wrought and made arrangements to serve the subpoena on Rodriguez. But Wrought's attorney then told Interiano's attorney that Wrought did not intend to call Rodriguez as a witness in its case. The May 18, 2009 e-mail from Wrought's attorney states, in pertinent part:

> Clarification. We are not intending to call these witnesses in our case in chief. We intend only to cross-examine them after you call them to the stand. Teresita Aguilar, Ana Garcia Interiano, Nelson Rodriguez.

At the beginning of the trial on May 26, 2009, Interiano's attorney stated that Interiano did not intend to call Rodriguez as a witness at trial. Over the course of the next two weeks, Interiano and Wrought called a number of witnesses to testify, including Interiano, the president of Wrought Shawn Roten, and workplace safety experts Richard Gleason and Mark Lawless.

Interiano testified that on the day of the accident, he planned to "finish some window trim, and . . . some window doors, like for a patio" on the third floor. Interiano

[1] Interiano's attorney objected and instructed Rodriguez that he did not have to answer the questions.

testified that he had not trimmed the elevator shaft either on or before the day of the accident. Interiano also said that he did not know when the elevator was going to be installed because the elevator shaft was the wrong size and needed to be reframed. Interiano testified that he and Rodriguez did not either put up or take down the safety barrier to the elevator shaft. Photographs taken eight days after the accident show that the elevator shaft is framed but otherwise unfinished.

Interiano's workplace safety expert Richard Gleason testified that because Interiano testified that he did not construct the elevator shaft or do any work on the elevator shaft, Interiano was not responsible for the safety barrier. Gleason testified that the safety barrier installed by Wrought did not meet safety standards.[2] Gleason said that instead of properly nailing the boards into the drywall, the boards were wedged inside the door jamb of the elevator shaft.

Wrought's president, Shawn Roten, testified that Interiano was responsible for installing the elevator doors and the trim around the elevator doors. Roten said that Interiano and his crew painted the walls on the third floor, including the walls around the elevator shaft opening. Roten claimed that the safety barrier had to be removed before painting the wall. However, on cross-examination, Rotten admitted that the walls on the third floor were painted at least three weeks before Interiano's accident. Roten also admitted that Wrought installed the safety barrier and that the photographs accurately depicted the elevator shaft at the time of the accident.[3]

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[2] WAC 296-155-505 provides that a railing and a toe board or an enclosing screen able to withstand 200 pounds is required for a wall opening with a drop off of 4 feet or more. WAC 296-155-505(5) and (7).

[3] During trial, Interiano's attorney also informed the court that two documents from Wrought's files showed "very clearly that the elevator doors were being installed on March 10, 2006. There were no elevator doors that were going to be installed on November 17, 2005, at all. Period. End of story."

The trial was scheduled to conclude on Thursday, June 4. On June 2, Wrought's attorney told the court that because Wrought did not "have the ability to locate [Rodriguez] and bring him into court," the attorney wanted to read a portion of his deposition testimony into evidence. Interiano objected to introducing the deposition testimony into evidence because Wrought had not established that Rodriguez was unavailable. The trial court reserved ruling.

The next day, on June 3, Wrought's attorney informed the court that he had unsuccessfully attempted to locate and serve Rodriguez with a subpoena to testify at trial.

> I have attempted to locate and to serve Nelson Rodriguez who is an individual whose testimony I wanted to offer into evidence. And I have not yet been able to do so. . . . I don't believe that he's available. . . . I actually have a process server that went to a residence that we believed to be where he lived. We found that information out today.

Wrought renewed the request to read a portion of Rodriguez's deposition testimony into evidence. Wrought's attorney argued that the deposition testimony was necessary to establish Interiano's "scope of work" the day of the accident. However, Wrought did not make an offer of proof as to exactly what Rodriguez said in his deposition.

> MR. JONES: I intend to call him to speak to the scope of what they were to do that day; the scope of work that they were to do that day.
> THE COURT: And does his deposition indicate that?
> MR. JONES: Yes. It's one page. It's not even a page. I think it's four lines. It's a question, it's a response, another question and a response, I believe.

Interiano again objected on the grounds that Wrought could not show Rodriguez was unavailable. Interiano also argued that Wrought had not exercised due diligence in waiting until the end of trial to serve the subpoena on Rodriguez. Interiano's

attorney

states:

> We know that [Wrought] had a process server outside Mr. Rodriguez's home. . . . [T]here is a whole lot of stuff that has been going on in this case outside the courtroom that . . . quite frankly, we were very concerned about in terms of intimidation of people . . . .
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> My point is, Mr. Rodriguez lives in Seattle, King County. As we understand the rules, he is not unavailable by where he lives. And I think you need a much greater showing that there has been due diligence before his testimony can be read. He is here in King County and they can get him if they want him.
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> . . . .
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> Rodriguez may not be here legally. We were told by Mr. Rodriguez that process servers were showing up at his friend's house, at relatives' homes and trying to serve him with a subpoena. He was trying to figure out what's going on. And he was very concerned, as the Court may understand, about walking down to a courthouse after getting a subpoena and who was going to be here waiting for him, like the INS.

Interiano also objected to admission of the deposition testimony as misleading and prejudicial. Interiano's attorney told the court that the testimony only referred to "doors." Because Wrought did not ask Rodriguez during the deposition to clarify what type of doors he was referring to, Interiano argued that the deposition testimony was misleading.[4]

The court ruled the deposition testimony was misleading and prejudicial and denied Wrought's request to read Rodriguez's deposition testimony into evidence. However, the court gave Wrought additional time, "today and . . . tomorrow," to

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[4] Rodriguez's deposition testimony provided, in pertinent part:

> Q. What did you do when you got to work that day?
> A. We were going to install doors that day.
> . . . .
> Q. Where were you going to install doors? What rooms, what floors?
> A. Upstairs.
> Q. On which floor?
> A. Third.
> Q. And which doors were you going to install on the third floor?
> A. I don't remember how the layout of the house was. It's quite a while.

subpoena Rodriguez.

> Mr. Jones, unless you give me something else, I'm really -- I can't -- . . . that is so misleading. And I really can't allow you to utilize that.
>
> I'm going to, at this point, give you more time in the sense that you have today and you have tomorrow to secure this individual in terms of his testimony live in court. I'm not going to allow you to utilize that deposition because of whatever language barriers there may be, because of the limited record of a deposition, because of the possible misrepresentation that can't be corrected once we just simply rely on a deposition. I can't do that, and I won't allow it. You can try to secure this individual.

The following day, on June 4, Wrought did not renew its request to introduce a portion of Rodriguez's deposition testimony into evidence.

Before Wrought called its workplace safety expert Mark Lawless to testify on the last day of trial, Interiano made a motion to exclude testimony about a subcontractor's independent duty to comply with WISHA. The court granted Interiano's motion to preclude Lawless from testifying that Interiano had a duty to comply with WISHA regulations for the elevator shaft and the safety barrier.

Lawless testified that the safety barrier did not meet WISHA safety regulations but that Interiano should have determined whether the safety barrier was faulty. Lawless also testified that Interiano created a hazardous condition by working around the elevator shaft opening.

At the conclusion of the evidence, the court denied Wrought's request to instruct the jury that "[e]very employer" on a jobsite has a duty to provide a safe workplace in compliance with WISHA. The court ruled:

> I did not find that there was any duty for the subcontractor to do anything more than what he had done under the statutory provision. There's just no duty that I found in the law that would permit the Court to offer this instruction or any other that says there was a violation of the

statutory requirement.

The jury awarded $1.95 million in damages. The jury found Wrought was 80 percent negligent and attributed 20 percent to Interiano. On June 22, the court entered a $1.56 million judgment on the verdict in favor of Interiano.

On July 2, Wrought filed a motion for reconsideration and new trial. Wrought claimed that because Rodriguez was unavailable, the trial court erred in refusing to admit Rodriguez's deposition testimony into evidence. For the first time, Wrought submitted two declarations dated June 3: a declaration from a legal assistant and a declaration from a private investigator describing efforts to serve Rodriguez with a subpoena to testify at trial.[5] Wrought claimed that because Rodriguez's deposition testimony would have provided the factual basis for expert testimony, the court erred in not allowing its workplace safety expert to testify about the independent duty of a subcontractor and not giving its proposed jury instruction.

The court denied the motion for reconsideration and new trial. The court ruled, in pertinent part:

> The Court precluded the deposition testimony of Nelson Rodriguez because he was available to testify and this court expected that defense counsel would call Mr. Rodriguez. There was no evidence presented that allowed the court to find that Mr. Rodriguez refused to appear and defense counsel did not advise the court that such was the case. The court assumed that counsel had simply decided to drop the issue and not call Mr. Rodriguez.
>
> Throughout the entire trial the court and all counsel engaged in

[5] The declaration of the legal assistant states that on April 17, a legal messenger attempted to serve Rodriguez with a subpoena to attend trial but the legal messenger was told that Rodriguez no longer lived at that address. The declaration of the private investigator states that on the morning of June 3, the private investigator attempted to serve Rodriguez with a subpoena to attend trial on June 4 by leaving a copy with Rodriguez's cousin and another copy on Rodriguez's car. According to the declaration, the private investigator returned that evening and gave a copy of the subpoena to the wife of Rodriguez's cousin, who told the private investigator that Rodriguez "works nights and that he wouldn't be back until tomorrow." The private investigator also left a copy through an opening in Rodriguez's car window.

> numerous "on the record" discussions about the law of the case and statutory duties. . . . The court concluded based on the evidence presented that defendants retained control over the premises (elevator shaft) and thus retained the primary statutory duty for safety.

Wrought appeals.

ANALYSIS

Wrought contends the trial court erred (1) in denying the motion to introduce deposition testimony of Rodriguez into evidence in order to establish Interiano's responsibility for the area around the elevator shaft, (2) in precluding Wrought's workplace safety expert from testifying that Interiano had an independent duty as a subcontractor to provide a safe workplace, (3) by refusing to instruct the jury that every employer has a statutory duty to provide a safe workplace, and (4) by denying its motion for reconsideration and a new trial.

Deposition Testimony

Wrought argues that the court erred in denying the motion to introduce the deposition testimony of Rodriguez into evidence because he was unavailable and it exercised due diligence in attempting to subpoena him. Wrought claims that Rodriguez's deposition testimony contradicted Interiano's testimony and established Interiano was responsible for the area around the elevator shaft.

We review an evidentiary ruling for manifest abuse of discretion. Allen v. Asbestos Corp., Ltd., 138 Wn. App. 564, 570, 157 P.3d 406 (2007). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. Erickson v. Kerr, 125 Wn.2d 183, 191, 883 P.2d 313 (1994).

If a witness is unavailable to testify at trial, the court may admit the former

deposition. ER 804(b)(1).[6] ER 804(a) states that a witness is "unavailable" if the witness "[i]s absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance . . . by process or other reasonable means." ER 804(a)(5). The inability to serve a witness with a subpoena to testify at trial is not sufficient to establish the witness is unavailable under ER 804. Rice v. Janovich, 109 Wn.2d 48, 57-58, 742 P.2d 1230 (1987). The party seeking to introduce the former testimony must also show all reasonable means were used to obtain the presence of the witness at trial. Rice, 109 Wn.2d at 57.

In Rice, the trial court relied on the attorney's representation that four out-of-state witnesses were unavailable in admitting the former testimony. Rice, 109 Wn.2d at 57. On appeal, the Washington Supreme Court rejected the argument that the "inability to subpoena the witnesses is alone sufficient to establish unavailability" and reversed. Rice, 109 Wn.2d at 57-58. The court held:

> While plaintiff made unsupported statements to the trial court that the costs of bringing the witnesses to this state would be prohibitive, these unsupported representations do not alone merit a conclusion the witnesses were unavailable, nor do they indicate any effort by the plaintiff to make a reasonable effort to obtain the attendance of the witnesses. Since no showing of unavailability was made, the trial court erred in admitting the former testimony of the plaintiff's witnesses. The admission of evidence without a proper showing of unavailability of the witness is reversible error.

Rice, 109 Wn.2d at 58.

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[6] ER 804(b)(1) provides, in pertinent part:

> Testimony given as a witness . . . in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered . . . had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

Here, as in Rice, Wrought made unsupported statements to the trial court that

Rodriguez was unavailable. When Wrought made a motion to introduce Rodriguez's deposition testimony into evidence at trial, it did not present the declarations of the legal assistant or the private investigator or any other proof to show that it had made reasonable efforts to serve Rodriguez with a subpoena. Wrought submitted the declarations describing the efforts made to serve Rodriguez for the first time nearly a month after trial in support of the motion for reconsideration and new trial. Based on the record at trial, the court did not abuse its discretion in denying Wrought's motion to admit Rodriguez's deposition testimony under ER 804.

We also conclude the trial court did not abuse its discretion in excluding the deposition testimony under ER 403 because the reference in the deposition testimony to "doors" was misleading and prejudicial.[7] As Interiano pointed out to the court, the reference to "doors" was ambiguous and probably referred to the sliding glass doors and not elevator doors. And Wrought's attorney conceded that he had not asked Rodriguez in the deposition to clarify which doors he was referring to.

Statutory Duty Of A Subcontractor

Wrought asserts the trial court erred in not allowing its expert witness to testify that Interiano had an independent statutory duty as a subcontractor to ensure a safe workplace and comply with WISHA.

WISHA governs safety standards for employers. RCW 49.17.060 and WAC 296-155-040 impose a nondelegable duty on employers to comply with WISHA. RCW 49.17.060 states:

Each employer:

[7] The court may exclude relevant evidence when "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." ER 403.

> (1) Shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees: PROVIDED, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and
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> (2) Shall comply with the rules, regulations, and orders promulgated under this chapter.

The WAC regulation mirrors RCW 49.17.060. WAC 296-155-040 provides, in part:

> (1) Each employer shall furnish to each employee a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to employees.
>
> (2) Every employer shall require safety devices, furnish safeguards, and shall adopt and use practices, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe. Every employer shall do everything reasonably necessary to protect the life and safety of employees.

In Stute v. P.B.M.C., Inc., 114 Wn.2d 454, 788 P.2d 545 (1990), the Washington Supreme Court held that a general contractor has a nondelegable duty to ensure compliance with safety regulations for the protection of all employees at the worksite, including the employees of a subcontractor. Stute, 114 Wn.2d at 464. The court concluded that the general contractor assumes primary responsibility because its "innate supervisory authority constitutes sufficient control over the workplace." Stute, 114 Wn.2d at 464. The court explained that the policy rationale for placing this responsibility upon a general contractor is because the "general contractor's supervisory authority places the general in the best position to ensure compliance with safety regulations." Stute, 114 Wn.2d at 463.

By contrast, a subcontractor has limited liability under WISHA. A subcontractor is only liable for failure to comply with safety regulations where the dangerous condition

"was under control of or created by" the subcontractor. Ward v. Ceco Corp., 40 Wn. App. 619, 624-25, 699 P.2d 814 (1985).

In Ward, an employee slipped and fell off a wooden platform built by the subcontractor. Ward, 40 Wn. App. at 620. The subcontractor had sprayed the platform with an oil substance but did not install safety guardrails. Ward, 40 Wn. App. at 621. Because the subcontractor created the dangerous condition, the court held that the subcontractor had a duty to comply with safety regulations and erect guardrails for all employees who would be working within the "'zone of danger'" created by the subcontractor. Ward, 40 Wn. App. at 625-26.

Wrought relies on the undisputed evidence that Interiano was responsible for painting the wall around the elevator shaft to argue that Interiano had a duty to comply with the WISHA regulations for the elevator shaft safety barrier. Wrought also asserts that Interiano or his employee removed the safety barrier before painting the wall. Below, Wrought argued that "Interiano had a duty as a subcontractor to keep -- to inspect the barrier in the elevator shaft opening and make sure it was adequate" because he was working on the third floor.

> And by utilizing this area that's contemplated as a permissible area to do his work and to prepare for his work where he has control of the entire third floor of the house -- and he himself had control of that with respect to what he was doing, and there wasn't anybody else there that day that was doing anything at the time, so he had control of that entire area -- the opening is part of his area of control.

The trial court granted the motion to preclude Wrought's expert from testifying that Interiano had an independent duty to conform with WISHA because there were no facts "to support anybody coming in here to say [Interiano] had control" of the elevator

shaft work area. The court rejected Wrought's argument that because Interiano was unraveling the hose of the air compressor down the elevator shaft on the third floor, he was responsible for complying with the safety regulations for the safety barrier.

> The logic of that argument would turn Stute, and some other cases, on its head, because . . . that would say that then any time a sub comes into a construction zone that that contractor . . . becomes responsible for working in an area.
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> A painter who is painting walks up the stairs, thinks the railing is affixed, holds onto the railing, and, in fact, it's not affixed to the wall and he falls off and he falls down. The logic of your argument is that that painter, because that's the zone of where he's working, is responsible now somehow for ensuring the safety that that rail is attached to the wall before the steps are used . . . . I haven't heard any testimony that we have put that within the scope of Mario's zone of which he then becomes responsible to secure the safety . . . . But in terms of the law, I don't believe there's any facts to support anybody coming in here to say he had control over that . . . . He was going to be doing some trim work. He was not going to be working around that elevator. He wasn't going to be setting the door in that day at all, and out of convenience puts this hose down there.

ER 702 permits expert testimony where "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." The trial court has broad discretion in ruling on the admissibility of expert testimony. Philippides v. Bernard, 151 Wn.2d 376, 393, 88 P.3d 939 (2004). We will not disturb the trial court's ruling "'[i]f the reasons for admitting or excluding the opinion evidence are 'fairly debatable.'" Grp. Health Coop. of Puget Sound, Inc. v. The Dep't of Revenue, 106 Wn.2d 391, 398, 722 P.2d 787 (1986) (quoting Walker v. Bangs, 92 Wn.2d 854, 858, 601 P.2d 1279 (1979)). It is well established that expert testimony that lacks an adequate foundation and is speculative and conclusory is inadmissible. Miller v. Likins, 109 Wn. App. 140, 148, 34 P.3d 835 (2001).

Here, because there was no evidence that Interiano either created a dangerous condition or was in control of the elevator shaft on the day of the accident, the court did not abuse its discretion in limiting the expert testimony. Interiano testified that he planned to finish the trim on the third floor windows and work on the sliding glass doors. Interiano also testified that he had not done any trim work around the elevator shaft on or before the day of the accident. On cross-examination, Wrought's president admitted that the third floor walls around the elevator shaft had been painted more than three weeks before the accident, and the photographs showing the elevator shaft was unfinished at the time were accurate.

Wrought also argues that it was entitled to present expert testimony on the duty of a subcontractor in order to rebut the testimony of Interiano's expert Gleason that Interiano did not have a duty as to the safety barrier. The premise of Wrought's argument is flawed. The record shows Gleason testified that Interiano did not have a duty to comply with the safety regulations for the safety barrier because the testimony at trial established that Interiano did not have any responsibility for the safety barrier.[8] The trial court did not abuse its discretion in precluding Wrought's expert from testifying that Interiano had an independent duty to comply with the WISHA regulations for the elevator shaft safety barrier.

Wrought also contends the trial court erred in refusing to instruct the jury that Interiano had a statutory duty to provide a safe workplace.[9] "A trial court's decision to

[8] Gleason testified, in pertinent part:

Q: For a worker like [Interiano] doing that kind of work on this site, do industry standards require him to put up safety rails across the elevator shaft?

A: Not unless he built the shaft, and it's my understanding he didn't have anything to do with that work around the shaft.

give a jury instruction is reviewed de novo if based upon a matter of law, or for abuse of discretion if based upon a matter of fact." Kappelman v. Lutz, 167 Wn.2d 1, 6, 217 P.3d 286 (2009). Wrought's proposed instruction states:

> Every employer owes a duty to furnish a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to its employees or to other employees on the jobsite, and to comply with the rules, regulations, and orders promulgated in the Washington Industrial Safety and Health Act, known as WISHA.

Because the proposed instruction holds a subcontractor to the same standard as a general contractor, it is contrary to Stute and Ward. As a matter of law and the evidence at trial, the court did not err in refusing the proposed instruction.

Motion For Reconsideration And A New Trial

Wrought claims the trial court erred in denying its motion for reconsideration and new trial under CR 59(a)(1), (8), and (9).[10] The trial court's decision to deny a motion for reconsideration or new trial under CR 59(a) is reviewed for abuse of discretion. Aluminum Co. of Am. v. Aetna Cas. & Sur. Co., 140 Wn.2d 517, 537, 998 P.2d 856 (2000). "We will disturb a trial court's decision to deny a new trial only for a clear abuse of that discretion or when it is predicated on an erroneous interpretation of the

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[9] The court refused to give the proposed instruction because:

> I did not find that there was any duty for the subcontractor to do anything more than what he had done under the statutory provision. There's just no duty that I found in the law that would permit the Court to offer this instruction or any other that says there was a violation of the statutory requirement.

[10] CR 59(a) provides, in pertinent part, that a motion for reconsideration or new trial may be granted based on:

> (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;
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> . . . .
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> (8) Error in law occurring at the trial and objected to at the time by the party making the application; or
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> (9) That substantial justice has not been done.

law." State v. Cho, 108 Wn. App. 315, 320, 30 P.3d 496 (2001).

Because the trial court did not err in denying Wrought's motion to introduce the deposition testimony of Rodriguez into evidence, or in precluding Wrought's workplace safety expert from testifying about a subcontractor's independent duty to comply with safety standards and refusing to give Wrought's proposed jury instruction on the independent duty of a subcontractor, the trial court did not abuse its discretion in denying the motion for reconsideration or new trial under CR 59(a)(1), (8), and (9).

We affirm the trial court's rulings and entry of judgment on the jury verdict.

Schindler, J.

WE CONCUR:

Cox, J.