

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-2391

HELEN RAPINE,
Appellant

v.

MARINA ASSOCIATES d/b/a
Harrah's Casino Hotel Atlantic City

*Amended per Clerk's Order dated 2/23/07

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 04-cv-00590)
District Judge: Honorable Legrome D. Davis

Submitted Under Third Circuit LAR 34.1(a)
on September 12, 2007

Before: RENDELL, FUENTES and CHAGARES, Circuit Judges.

(Filed: October 15, 2007)

OPINION OF THE COURT

RENDELL, Circuit Judge.

Appellant Helen Rapine (“Rapine”) appeals the District Court’s entry of final judgment and its denial of her motion for a new trial following a jury verdict in favor of appellee Marina Associates d/b/a/ Harrah’s Casino Hotel Atlantic City (“Harrah’s”). Rapine sued Harrah’s, claiming that she suffered a fracture to her right femur when she fell off a bench in the elevator lobby of Harrah’s casino hotel. On appeal, Rapine alleges that the District Court erred in (1) precluding her from introducing evidence or making any argument that the bench was inappropriate for and/or dangerous to senior citizens, such as Rapine; (2) instructing the jury as to the duty owed to a business invitee; and (3) permitting the jury to examine the bench during jury deliberations without supervision. For the reasons stated below, we will affirm the District Court on all grounds.

I. Background¹

On December 7, 2005, the District Court began a two-day trial on Rapine’s negligence claim against Harrah’s. Rapine’s theory of liability was that Harrah’s was negligent in failing to protect Rapine, a business invitee, from a dangerous condition about which Harrah’s knew or should have known.

¹As we write for the benefit of the parties alone, we include only those facts necessary for the disposition of this appeal.

Before opening arguments, Plaintiff's counsel asked to admit a set of “exemplars,” which were mailings and coupons from Harrah’s, soliciting Rapine to come to the casino. (Appx. 56.) Although these particular exemplars were mailed to Rapine in 2005—after the accident—Rapine’s counsel asserted that the solicitations were similar to those that Rapine had received before the accident. Rapine’s counsel argued that the exemplars were relevant as part of Rapine’s theory of the case that Harrah’s actively solicited senior citizens like Rapine, who was 73 years of age at the time of the accident, to be customers of its casino hotel. Counsel for Harrah’s countered that the mere fact that senior citizens are part of the casino’s clientele does not sufficiently establish that the casino has a higher duty of care. After expressing concern that he had not previously been aware that marketing strategies would be an issue in the case, the District Court permitted the production of the “exemplars” for the purpose of showing Rapine’s status as a business invitee, but not for the purpose of supporting a broader theory of liability suggesting that the casino’s premises are unsafe for *all* senior citizens.

The jury deliberated on December 8, 2005, and roughly two hours after the close of evidence, the jury returned a verdict for Harrah’s, finding that Harrah’s had not been negligent in maintaining the bench on its premises. During jury deliberations, the jury had been allowed to inspect the bench, which had been admitted into evidence, without supervision in the courtroom. Also, after the jury instructions had been given in their entirety, the District Court, upon Rapine’s request, read a supplemental oral instruction to the jury regarding the duty of business owners to their business invitees. As discussed

below, the parties dispute whether, upon a subsequent request from the jury, the jurors received a written copy of this oral supplement.

On December 16, 2005, Rapine filed a motion for a new trial under Federal Rule of Civil Procedure 59, which was denied by the District Court. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

II. Discussion

A. Evidence Concerning Senior Citizens

Rapine's first assignment of error is that the District Court improperly precluded Rapine from introducing evidence and argument that Harrah's would solicit and invite senior citizens to its premises, and that the bench at issue was hazardous to senior citizens in general, including Rapine. We review a ruling to admit or exclude evidence for an abuse of discretion. *Renda v. King*, 347 F.3d 550, 553 (3d Cir. 2003). To show an abuse of discretion, Rapine "must show the district court's action was 'arbitrary, fanciful[,] or clearly unreasonable.'" *Stecyk v. Bell Helicopter Textron, Inc.*, 295 F.3d 408, 412 (3d Cir. 2002) (quoting *Stich v. United States*, 730 F.2d 115, 118 (3d Cir. 1984)). We will not disturb a trial court's exercise of discretion unless "no reasonable person would adopt the district court's view." *Oddi v. Ford Motor Co.*, 234 F.3d 136, 146 (3d Cir. 2000).

As the District Court recognized in its denial of Rapine's motion for a new trial, Rapine failed to provide any trial transcript citations supporting her contention that the

District Court actually granted a motion *in limine* precluding Rapine from introducing evidence that Harrah’s solicited senior citizens to its premises and that the bench was hazardous to senior citizens. *Rapine v. Harrah’s Atlantic City*, No. Civ.A.

2:04CV00590LDD, 2006 WL 724548, at *2 (E.D. Pa. Mar. 21, 2006). Rapine fares no better in her quest for record citations on appeal. In fact, as summarized above, the transcript reveals only that, prior to opening arguments, Harrah’s objected to the introduction of two exhibits on the ground of relevance: both were direct-mailing solicitations to Rapine in 2005 (after the accident had already occurred) to visit Harrah’s’ casino hotel. The District Court ultimately permitted the introduction of these exhibits “for the purpose of showing plaintiff’s status as a business invitee, but not for the purpose of supporting a broader theory of liability suggesting that defendant’s premises are unsafe for *all* senior citizens.” *Id.* at *2 (emphasis in original). As the District Court summarized:

[T]he Court’s ruling did not preclude plaintiff from introducing evidence that defendant actively solicited plaintiff to visit its premises and that the bench was unsafe for *this* particular plaintiff, as a senior citizen. . . . [T]o the extent that plaintiff argues that it should have been entitled to introduce the two exhibits for the purpose of presenting a legal theory that defendant’s premises are unsafe for *all* senior citizens, the Court finds no error in its previous ruling, again concluding that such a broad and generalized theory is irrelevant to the particular facts of the case, unduly prejudicial to defendant, and unsupported by plaintiff’s evidentiary proofs.

Id. (citing Fed. R. Evid. 401, 403 and footnoting Rapine’s deficient factual offers of proof).

After a review of the record, we find no reason to disturb the District Court’s ruling. The District Court did not preclude evidence regarding the particular plaintiff at issue, *i.e.*, Rapine was not precluded from presenting evidence that *she* was solicited by Harrah’s or of *her* decreased visual ability or dexterity due to her age, and the record before the District Court did not otherwise support Rapine’s “broad and generalized theory” of liability. The District Court thus did not exceed the permissible bounds of its discretion in limiting the use of the exhibits at issue.

B. Recitation of Jury Instruction Pertaining to Business Invitees

Rapine next argues that the District Court erred in failing to provide the jury with a complete statement of law in response to its written request during deliberations that the Court reread its instruction on the duty owed to a business invitee. Notably, Rapine does not challenge the substance of the original jury charge, as supplemented upon Rapine’s request;² she contends only that upon the jury’s request, the District Court “provided to the jury, in written form, the charge that it had originally read, *not* including the [supplemental] explanation.” (Appellant’s Br. 14 (emphasis in original).)

²After the close of evidence and prior to the jury charge, the parties agreed that the District Court should instruct the jury with, *inter alia*, the Standard Jury Charge, section 120.32, entitled “Duty of Owner or Occupant of Premises to Invitee.” During the charge, however, the Court paraphrased the standard charge and, in doing so, neglected to include a statement of the law with respect to “conditions not readily apparent.” Rapine’s counsel objected to the instruction as given. The District Court agreed and orally supplemented its instruction to the satisfaction of both parties.

Oddly enough, Rapine raised this very same issue before the District Court in her motion for a new trial, and the District Court responded by stating that it did in fact submit to the jury “both the Court’s original written charge and plaintiff’s supplemental written charge pertaining to the duty of business owners to business invitees.”³ *Rapine*, 2006 WL 724548, at *4 n.9. The District Court further explained that “[p]laintiff’s supplemental written charge formed part of the oral jury instruction; it was read to the jury after the Court read its original written charge.” *Id.* The District Court’s explanation is not ambiguous. Thus, it appears that Rapine’s current appeal is a challenge to the veracity of the District Court’s statement—a challenge for which Rapine

³The record reflects that the following exchange occurred after the jury had been polled and dismissed:

Plaintiff’s counsel: Your Honor, just for the record, your deputy has advised that in response to the jury’s second question, the Court had submitted something to the jury in writing, is it possible, just for the record, just to have that marked so that we know --

Court: Yes, it’s a written charge. It’s the same thing that I read to the jury which is they would have asked, as I say on my protocol, I do give the jury the written charge and it’s the written charge that you -- the written version of the oral charge that you’ve heard. That’s fine. That will be maintained. That’s not an issue.

(Appx. 289-90).

provides no factual or record support. There being no reason for us to question the explanation before us, we will not disturb the District Court's proceedings in this regard.⁴

C. Unsupervised Examination of Bench

In her final assignment of error, Rapine contends that the District Court erred in permitting the jury to inspect and examine the bench unsupervised during deliberations, thereby providing the jury with the opportunity to “perform their own tests and recreations.” (Appellant's Br. 15.) Once again, we review the District Court's decision for an abuse of discretion. *Banghart v. Origoverken*, 49 F.3d 1302, 1305 (8th Cir. 1994) (“Unless there has been an abuse of discretion by the trial court, we will not set aside the court's decision to deny a motion for new trial based on allegations of juror misconduct.”).

After reviewing the record, we conclude that there is little to add to the District Court's thorough, fair, and well-reasoned analysis of this issue in its opinion denying Rapine's Rule 59 motion on this ground. Of particular note is the fact that the District

⁴Even were Rapine able to show that the District Court submitted an incomplete business invitee instruction to the jury upon its request, she would be unsuccessful in this aspect of her appeal. Once a jury instruction is given, we generally ask ourselves whether “viewed in light of the evidence, the charge as a whole fairly and adequately submits the issues in the case to the jury, and reverse ‘only if the instruction was capable of confusing and thereby misleading the jury.’” *Bennis v. Gable*, 823 F.2d 723, 727 (3d Cir. 1987) (quoting *Link v. Mercedes-Benz of No. Am., Inc.*, 788 F.2d 918, 922 (3d Cir. 1986)). As stated above, Rapine does not challenge the substance of the original, supplemented instruction; nor does she provide this Court with any reason to conclude that, in light of the evidence and the original instruction, the jury was confused or misled.

Court specifically instructed the jury, through the Court’s deputy, not to conduct any “experimentation” on the bench and not to “recreate the event.” (App. 218.) Further, Rapine proffered no evidence below—nor any on appeal—that the jury actually conducted any improper experiments or recreations of the accident. *See Banghart v. Origoverken*, 49 F.3d 1302, 1307 (8th Cir. 1994) (considering paralegal’s affidavit detailing post-verdict discussions with jurors in determining whether jury performed improper experimentation during deliberation). Finding no abuse of discretion, we will affirm the District Court for the reasons set forth in its March 21, 2006 opinion. *See Rapine*, 2006 WL 724548, at *3.

III. Conclusion

For the reasons set forth above, we will AFFIRM the Order of the District Court on all grounds.