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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0485**

Ammie Murphy,
Appellant,

vs.

Valleyfair, LLC,
Respondent.

**Filed September 26, 2022
Affirmed
Jesson, Judge
Dissenting, Kirk, Judge***

Scott County District Court
File No. 70-CV-19-10258

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Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Kirk, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JESSON, Judge

On Mother's Day in 2017, Appellant Ammie Murphy tripped and fell at the Valleyfair amusement park, injuring her arm and shoulder. She sued Respondent Valleyfair, and the jury returned a verdict finding both Murphy and Valleyfair negligent. But the jury found that neither party's negligence played a substantial part in bringing about Murphy's injury. Murphy argued that the verdict was irreconcilable and requested a new trial, but the district court denied her motion. Because the verdict is reconcilable with the facts in the record, we affirm.

FACTS

Murphy tripped and fell after exiting a ride at Valleyfair amusement park. Murphy injured her left elbow and her shoulder when she fell, and she reported numbness in her left fingers. Her husband drove her to the emergency room, and she had two surgeries on her elbow. She sued Valleyfair for negligence, and the case proceeded to a jury trial.

At trial, Murphy testified that when she fell she was carrying a drink, looking straight ahead, and hurrying to catch up with her husband and four-year-old son who were walking 20 feet ahead of her after they completed the Lucy's Tugboat ride. At the time, Murphy did not know why she tripped, but she described the location to a friend, who returned to the location later and took a photograph. When Murphy saw the photograph, she determined that she tripped on a partial curb—an elevation difference between the street area and the walkway area smaller than a typical curb. Murphy presented incident reports of patron injuries near where she fell at trial, including a report from two days

before her injury. But these reports were not specific about exactly where the other patrons fell. She also introduced a 2016 report from a Valleyfair employee reporting that multiple patrons tripped and fell over a curb near the same ride where Murphy fell. The reporter requested that Valleyfair paint the curb, but at the time of Murphy's fall, Valleyfair had not painted the entire curb.

The special-verdict form asked the jurors to determine whether Valleyfair was negligent, if Murphy was negligent, and if either of their negligence played "a substantial part in bringing about" Murphy's injury. During jury deliberations, the jury asked the court what the word "substantial" meant in the special-verdict form. Murphy's counsel suggested that the district court tell the jury, "A substantial factor is not necessarily the only factor but is sufficient to have caused the injury by itself." Valleyfair's counsel suggested referring the jury to instructions they had received on cause. The court included both suggestions in its answer.

The jury found that both Murphy and Valleyfair were negligent, but it found that neither party's negligence played a substantial part in bringing about Murphy's injury. Murphy's counsel asked the district court not to accept the verdict because it was irreconcilable. The district court denied that request, stating: "there is a factual scenario or factual conclusions that the jury could have drawn that would support the answers that the jurors gave." And the court explained that it would have been reasonable for the jury to conclude that both Murphy and Valleyfair could have been negligent, but that the predominant cause of Murphy's injury was "bad luck or happenstance." Murphy moved for a new trial, and the district court denied her request.

This appeal follows.

DECISION

The Minnesota Rules of Civil Procedure state that a district court may grant a new trial if the verdict is not justified by evidence or contradicts law. Minn. R. Civ. P. 59.01(g). We review a district court's decision to deny a new trial for an abuse of discretion. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018).

Here, the question is whether the verdict is not justified by the evidence because the special-verdict answers are irreconcilable. *See Olson v. Alexandria Indep. Sch. Dist. No. 206*, 680 N.W.2d 583, 586-87 (Minn. App. 2004) (a jury's verdict is irreconcilable when the answers to a special-verdict form are internally inconsistent). They are irreconcilable, Murphy asserts, because absent another cause, the parties cannot be both negligent yet neither a substantial cause of her injuries.

In reviewing this issue, we must attempt to reconcile the special-verdict answers in a reasonable manner consistent with the evidence and its fair inferences. *Reese v. Henke*, 152 N.W.2d 63, 66 (Minn. 1967). And unless no reasonable mind could find as the jury did, this court will not set aside a jury's special-verdict answers. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 734 (Minn. 1997).

To determine whether the completed special-verdict form is irreconcilable, we first turn to the required elements of Murphy's negligence claim and how each party addressed them at trial. We then examine whether the jury's findings that both parties were negligent are reconcilable with its determination that neither's negligence was a substantial factor in causing Murphy's injury.

A successful negligence claim requires a plaintiff to prove four elements: “(1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) the breach of the duty being the proximate cause of the injury.” *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764, 767 (Minn. 2005). Here, Murphy ascribed negligence to Valleyfair for its failure to either paint the partial curb or place a barrier, such as a fence, around it. Valleyfair denied any negligence and further asserted that Murphy’s own negligence caused her to trip and fall. One of its arguments in this regard was that Murphy tripped over her own feet, not the curb.

Based on the evidence at trial, we agree with the district court that the jury could have reasonably found that both parties acted negligently, yet neither party’s negligence was a substantial factor in causing Murphy’s injury. The jury could have found that Murphy tripped as she hurried to join her family—but not necessarily on the unpainted partial curb. Murphy was looking straight ahead when she fell, and she did not identify the curb as the cause of her injury until she saw a photo of it after-the-fact. And when asked at trial: “do you know what you tripped on?” Murphy at one point answered “no.”

Furthermore, the incident reports that Murphy introduced into the record were not specific about where patrons had tripped and fallen in the past, and Murphy could not pinpoint exactly which part of the curb she tripped on—painted or unpainted. In sum, the jury could have found that Valleyfair was negligent for not providing warning of the curb, but that this failure did not cause Murphy to fall. *See George v. Est. of Baker*, 724 N.W.2d 1, 11 (Minn. 2006) (“If the harm would have occurred even without the negligent act, the act could not have been a substantial factor in bringing about the harm.”).

We so conclude mindful that, in determining whether a verdict is justified by the evidence, a district court exercises “the broadest possible discretionary power.” *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004) (quotation omitted). As a result, we “will not set aside a jury verdict on an appeal from a district court’s denial of a motion for a new trial unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict.” *Navarre v. S. Wash. Cnty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002). Because the jury’s special-verdict responses are reconcilable as described above, the district court here acted within its wide discretion in denying a new trial.

Still, Murphy (and amicus curiae, the Minnesota Association of Justice) assert that where a jury finds negligence, as it did here, there must be causation unless the evidence in the record presents another cause. Happenstance or bad luck, to use the phrase from the district court, does not suffice.¹ But the district court here did not rely solely on “happenstance or bad luck” to reconcile the special-verdict answers. It also referred to “factual scenarios” that would support both jury answers. One factual scenario—and one is all that is necessary—is the scenario that Murphy tripped, but not on the partial curb. *See Reese*, 152 N.W.2d at 66.

Nor are we persuaded that—even if this factual scenario did not exist—caselaw supports the broad rule Murphy proposes. In arguing that where there is a finding of negligence, there must be a causation finding absent another cause (i.e., more than bad

¹ Murphy further alleges that the district court’s reliance on happenstance or bad luck does not suffice because happenstance and bad luck are outside the record.

luck), Murphy relies most heavily on *Clifford*. 681 N.W.2d at 680. In *Clifford*, a patient died of lithium poisoning after receiving Lithobid, a drug containing lithium and used to treat bipolar disorder, instead of Liquibid, a decongestant. *Id.* at 681. The supreme court determined that only the physician, the nurse, or the pharmacy could have been negligent in providing her with that medication. *Id.* at 688. The jury found that the physician and the nurse were negligent, but their negligence was not a direct cause of Clifford's death. *Id.* at 686. The supreme court held that this verdict was irreconcilable because *only* the physician, the nurse, or the pharmacy could have caused Clifford's death, so it granted a new trial. *Id.* at 689. Based on this caselaw, Murphy argues that if a jury finds negligence without causation, the verdict is irreconcilable unless there is evidence of another cause.

We do not read *Clifford* to support the broad rule that Murphy suggests. First, the case at hand is distinguishable from *Clifford*. Unlike administering the incorrect medication, mistakes such as falling at an amusement park happen frequently with and without negligence. Murphy could have tripped for any number of reasons, while only a limited number of parties could have given Clifford the wrong medication. The facts of *Clifford* are too unique to impose the overarching causation rule that Murphy requests.

Nor do the additional cases Murphy cites support her causation proposal. Certainly, in *George* and *Hauenstein*, the Minnesota Supreme Court held that the verdicts were reconcilable because of evidence of other causes. *George*, 724 N.W.2d at 7 (car-accident case also involving bad weather); *Hauenstein v. Loctite Corp.*, 347 N.W.2d 272 (Minn. 1984) (product-liability case about an adhesive that can cause blindness also involving a defective nozzle). And in *Bergemann*, the Minnesota Supreme Court granted

a new trial because there was no evidence of another cause in the record. *Bergemann v. Mut. Serv. Ins. Co.*, 270 N.W.2d 107, 109 (Minn. 1978) (verdict irreconcilable in car-accident case where jury found driver not negligent, township negligent, but township's negligence not direct cause of accident). But although there may have been other causes in *George* and *Hauenstein*, and an absence thereof in *Bergemann*, these cases do not create a requirement that there must always be another cause when a jury finds negligence without causation.² Nor will we create such a rule where the Minnesota Supreme Court has not done so.

In sum, evidence in the record supports the jury's verdict, so it is reconcilable. The presence or absence of another cause beyond this evidence does not change our analysis. And we are mindful of the supreme court's instruction that when a jury finds "negligence without causation, we have been generally disinclined to second-guess the verdict." *George*, 724 N.W.2d at 6. We see no reason to deviate from that guidance here. Because the district court exercised its broad discretionary power in determining that the verdict was reconcilable, and we conclude that there is at least one reasonable way to reconcile the jury's verdict based on the evidence in the record, we affirm.

Affirmed.

² In fact, the Minnesota Supreme Court recently explained that sometimes people trip in the ordinary course, not because of anyone's negligence. *Staub as Tr. of Weeks v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 626 n.12 (Minn. 2021).

KIRK, Judge (dissenting)

I respectfully dissent.

After determining that both Murphy and Valleyfair were negligent, the jury found that neither Murphy nor Valleyfair was a substantial cause of Murphy's injury, despite no evidence of another cause of Murphy's injury in the record. After Murphy challenged the verdict as irreconcilable, the district court denied her motion, stating that "bad luck" or "happenstance" could have caused Murphy's fall.

The district court abused its discretion in two ways. First, it reconciled the verdict based on evidence not in the record. Second, it disregarded Minnesota caselaw on findings of negligence without causation. I would conclude that the verdict is irreconcilable and would reverse and remand for a new trial.

As the majority states, this court must reconcile a jury's special-verdict answers in a reasonable manner consistent with the evidence in the record and its fair inferences. *Reese v. Henke*, 152 N.W.2d 63, 66 (Minn. 1967). A district court cannot set aside a jury's answer to a special-verdict form when there is competent evidence in the record to support the reasonableness of a jury's conclusion. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 734-35 (Minn. 1997). But when no such evidence exists in the record, the verdict is irreconcilable, and the district court may grant a new trial. Minn. R. Civ. P. 59.01(g).

Here, there was no evidence in the record of any cause of Murphy's injury other than her negligence and Valleyfair's negligence. "Bad luck" and "happenstance" were not presented to the jury as potential causes of Murphy's injury on the special-verdict form,

and neither party's counsel argued these theories of causation at trial. Because there is no evidence of bad luck or happenstance in the record, and the jury was not asked if bad luck or happenstance caused Murphy's injuries, the district court went beyond the record in seeking to reconcile a verdict that cannot be reconciled.

To reconcile a verdict that found negligence without causation goes against a substantial body of Minnesota caselaw that requires another cause when a jury finds that both parties are negligent, but neither caused the injury. The Minnesota Supreme Court has upheld this logic in case after case. For example, the supreme court upheld a verdict when a jury found that both a taxi driver and truck driver were negligent in a car crash case, but neither party caused the accident. *George v. Est. of Baker*, 724 N.W.2d 1, 6 (Minn. 2006). The district court held that the jury's finding was reconcilable because of evidence of inclement weather in the record, which could have caused the accident. *Id.* Another district court reconciled a verdict where both the manufacturer and user of a product were negligent, but neither caused the user's injuries because the product's nozzle was defective, and the Minnesota Supreme Court upheld that finding. *Hauenstein v. Loctite Corp.*, 347 N.W.2d 272, 276 (Minn. 1984).

Yet another Minnesota court found that a jury finding of negligence by both drivers but no causation by either in a car crash was reconcilable because of evidence of a defective yield sign in the record as well. *Bergemann v. Mut. Serv. Ins. Co.*, 270 N.W.2d 107, 110 (Minn. 1978). And the Minnesota Supreme Court upheld that decision as well. *Id.* Finally, the Minnesota Supreme Court found that when only one of two parties could have caused a patient's death, a jury verdict that only one was negligent, but neither's negligence caused

the patient's death was irreconcilable. *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 688 (Minn. 2004). Thus, in Minnesota, when there is evidence of another cause in the record, a jury finding of negligence without causation is reconcilable. But when the record lacks evidence of another cause, the verdict is irreconcilable.

The majority sidesteps this caselaw, opting to focus on Murphy's burden of proof instead. But even if Murphy did not meet her burden of proof to show that Valleyfair's negligence caused her injury, that does not change the fact that the jury's verdict cannot be reconciled by the facts in the record. Neither party claimed that anything besides the other party's negligence caused Murphy's injuries, yet the district court found that the verdict was reconcilable. There is no evidence of another cause here, and bad luck or happenstance cannot meet that requirement. No reasonable mind could find as this jury did. *Domtar*, 563 N.W.2d 734.

Finally, the word "substantial" as used in the jury instructions and verdict form seemed to challenge the jury. Immediately before returning their verdict, the jury requested a definition of the word 'substantial,' and the district court gave them a definition that Murphy's attorney suggested. Once the jury reached its verdict that both parties were negligent but neither party's negligence played a substantial part in bringing about Murphy's injury, the verdict might have been easily reconcilable had the district court returned the jury to deliberate with a new interrogatory on the special verdict form. An instruction such as: "If you find both parties negligent, did their combined negligence play

a substantial part in bringing about the injury? If you answer yes, then you must compare the fault of the parties by answering question 5³ on the original special verdict form.”

I dissent from the result the majority reaches today.

³ Question 5 asked the jury to apportion fault between negligent parties and required the total to equal 100%.