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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1028**

Erica Robinson,
Appellant,

vs.

Sheraton Minneapolis West,
Respondent.

**Filed April 6, 2026
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-23-3828

A. L. Brown, Capitol City Law Group, L.L.C., St. Paul, Minnesota (for appellant)

Anthony J. Novak, Patrick H. O'Neill, III, Larson King, L.L.P., St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Larson, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A front-desk employee of a hotel gave a keycard to a woman who had been a guest of the hotel in the past but was not a guest at that time. The woman used the keycard to enter a hotel room and harass two hotel guests while they were in bed. One of the hotel guests sued the hotel, alleging negligence. A Hennepin County jury found that the hotel

was not negligent. On appeal, the plaintiff argues that the district court erred by giving the jury an innkeeper-liability instruction instead of a general-negligence instruction. We conclude that the district court did not plainly err by instructing the jury on an innkeeper's duty of care toward a guest rather than instructing the jury on general negligence. Therefore, we affirm.

FACTS

In the early-morning hours of January 15, 2023, Erica Robinson and her boyfriend, C.B., checked into the Sheraton Minneapolis West hotel. C.B. had booked the room and was the only registered guest of the hotel room they shared.

At approximately 8:30 a.m. that morning, C.B.'s former girlfriend, N.L., called the hotel three times and asked to be transferred to C.B.'s room. Her calls were transferred, but C.B. did not answer. Shortly thereafter, N.L. approached the front desk, asked the front-desk employee for a keycard to C.B.'s room, and said that she was late for work and needed to retrieve some of her belongings from the room. The front-desk employee recognized N.L. because she previously had stayed at the hotel with C.B. For that reason, the hotel employee believed that N.L. was authorized to be in C.B.'s room. The front-desk employee gave N.L. a keycard to C.B.'s room.

Shortly thereafter, N.L. used the keycard to open the door to C.B.'s room and enter the room. As N.L. did so, she used her cellphone to make a videorecording. At the time, C.B. and Robinson were lying in bed. N.L. yelled at C.B. for going with Robinson to a hotel where N.L. and C.B. had been "regulars" together. Robinson and C.B. argued with N.L. for several minutes before Robinson got out of bed and stood up. N.L.'s

videorecording captured Robinson while she was naked. Later that day, N.L. posted the videorecording to her Facebook page and “tagged” Robinson, which allowed Robinson’s family, friends, co-workers, and others to see the post. Robinson testified at trial that, as a result of N.L.’s Facebook post, she experienced anxiety and depression and missed work.

In March 2023, Robinson commenced this action against the hotel. Her complaint asserted three causes of action: (1) negligence, (2) aiding and abetting invasion of privacy, and (3) aiding and abetting intentional infliction of emotional distress.

The case was tried to a jury on three days in March and April of 2025. Robinson testified and called three additional witnesses: C.B., the front-desk employee who gave N.L. the keycard, and the hotel’s general manager. Robinson introduced exhibits consisting of screenshots of N.L.’s Facebook post, which showed Robinson while she was naked. During its cross-examination of C.B., the hotel introduced and played for the jury an excerpt of N.L.’s videorecording. The hotel did not call any witnesses or present any other evidence.

At trial, the district court and counsel thoroughly discussed the issue of jury instructions, including the instruction on Robinson’s negligence claim. On the morning of the first day of trial, the hotel’s attorney requested that the district court give a pattern instruction on innkeeper liability. *See* 4A Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Civil*, § 85.70, at 375 (6th ed. Supp. 2025). Robinson’s attorney objected, arguing that the innkeeper-liability instruction is not required and that, instead, the district court should give a pattern instruction on general negligence. *See* 4 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Civil*, § 25.10, at 183 (6th ed.

2014). Robinson's attorney explained that the innkeeper-liability instruction was objectionable because of its language requiring an innkeeper to be on notice of a third person's "vicious or dangerous potential." Robinson's attorney argued that "the plaintiff gets to choose its theory of liability" and "we didn't plead an innkeeper case." The district court overruled Robinson's objection, stating, "I think the general instruction on negligence doesn't apply, and I'm going to use [the innkeeper-liability instruction in section] 85.70 because I think an innkeeper's duty is what does apply to negligence when you're suing an innkeeper and alleging negligence." After further discussion, the district court added, "I'm going to instruct the jury according to the legal principles that have been accepted by Minnesota authorities [because] I believe 85.70 [is] appropriate for an innkeeper case." That evening, Robinson's attorney submitted a written objection, stating that innkeeper liability "seek[s] to hold the defendant . . . responsible for the acts of third parties who [are] not affiliated with the defendant" while Robinson "seeks to hold the defendant accountable for the acts of the defendant's employee." (Emphasis omitted.)

The following morning, the district court and counsel continued their discussion about jury instructions. The district court questioned Robinson's characterization of her claim as one based on harm inflicted by the hotel rather than by a third person. The hotel's attorney agreed with the district court, suggesting that a general-negligence instruction would apply only if a hotel employee directly caused harm to a guest, such as by bumping a guest with a housekeeping cart or causing a shuttle-van accident. After further discussion, the district court confirmed its earlier decision to overrule Robinson's objection

to the hotel's request for an innkeeper-liability instruction. The district court explained its ruling as follows:

[T]he plaintiff has pled a theory that describes Robinson as a guest and Sheraton as an innkeeper. I believe if I instructed solely on the grounds of general negligence, I would omit important legal nuances, including Sheraton's duty to anticipate and protect against certain harms given its special role as an innkeeper. And there is a long line of authority in Minnesota law about innkeepers.

Usually, a special relationship that gives rise to a duty to protect is found on the part of common carriers, innkeepers, possessors of land who hold it open to the public, and persons who have custody of another person. . . .

In an innkeeper situation, a plaintiff is somewhat vulnerable. Your client was in a hotel room believing that they were safe from the outside world. You've indeed argued that in your opening. And that imposes a special duty on the innkeeper. That's the innkeeper's duty . . . , and that's why I intend to give 85.70.

I don't believe a general negligence theory is supported because the plaintiff, Ms. Robinson, is seeking to hold Sheraton, the innkeeper, . . . responsible for the acts of [the front-desk employee], and there are examples throughout Minnesota law that permit jury instructions on innkeeper liability where there is derivative liability from the action of defendant's employee. . . .

The innkeeper liability . . . instruction . . . is, I believe, the appropriate instruction to give. I intend to give it.

Accordingly, the district court gave the following instruction on Robinson's negligence claim:

I'd like to talk to you about innkeeper's duty. And I am noting the innkeeper's duty for use on deciding count one, the negligence claim. The standard of conduct Sheraton

Minneapolis West is required to use reasonable care in operating its business.

Here is a definition of reasonable care. Reasonable care is the care that a reasonable person would use in similar circumstances. The failure to use reasonable care is negligence.

Now, here is a definition of negligence. Negligence is doing something that a reasonable person would not do or failing to do something that a reasonable person would do in similar circumstances.

Here is an instruction on deciding negligence. Sheraton was negligent if, number one, Sheraton was put on notice of the offending person's vicious or dangerous potential by some act or threat. And number two, Sheraton had an adequate opportunity to protect the injured person. And three, Sheraton failed to take reasonable steps to protect the injured person.

With respect to Robinson's first claim, the jury found that the hotel was not negligent. The jury also found for the hotel on Robinson's second and third claims.

In May 2025, Robinson moved for a new trial on four grounds. She argued, in part, that the district court erred by instructing the jury on innkeeper liability instead of general negligence. The district court denied the motion in a 14-page order. With respect to the jury instruction on Robinson's negligence claim, the district court reasoned that "the special relationship between Sheraton and plaintiff imposed a defined duty that supersedes general negligence" and that Robinson is not entitled "to select the governing legal duty." Robinson appeals.

DECISION

Robinson's primary argument on appeal is that, with respect to her negligence claim, the district court erred by instructing the jury on the law of innkeeper liability instead

of the law of general negligence and, for that reason, erred by denying her motion for a new trial.

Robinson’s motion for a new trial was based on a rule of civil procedure that allows a district court to grant a new trial because of “[e]rrors of law occurring at the trial.” Minn. R. Civ. P. 59.01(f); *see also Christie v. Estate of Christie*, 911 N.W.2d 833, 837-38 (Minn. 2018) (applying rule 59.01(f) to argument that district court erred in instructing jury). “The district court has broad discretion in determining jury instructions, and we will not reverse where jury instructions overall fairly and correctly state the applicable law.” *Christie*, 911 N.W.2d at 838 (quotations omitted). “To determine whether the jury instruction was erroneous, we evaluate the applicable standard of proof, which is a question of law requiring *de novo* review.” *Id.*

A.

We begin our analysis of the parties’ arguments by identifying the caselaw that defines the applicable standard of proof. *See id.*

Negligence generally is defined as “the failure to exercise the level of care that a person of ordinary prudence would exercise under the same or similar circumstances.” *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014) (citing *Flom v. Flom*, 291 N.W.2d 914, 916 (Minn. 1980)). To prevail on a common-law general-negligence claim, “a plaintiff must prove: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury.” *Id.* (citing *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)). The existence of a duty of care

generally “is a threshold question.” *Id.* (citing *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011)).

As a general rule, “a person does not owe a duty of care to another—*e.g.*, to aid, protect, or warn that person—if the harm is caused by a third party’s conduct.” *Id.* at 177-78 (citing *Delgado v. Lohmar*, 289 N.W.2d 479, 483 (Minn. 1979)). But this general rule is subject to “two exceptions.” *Fenrich v. Blake School*, 920 N.W.2d 195, 201 (Minn. 2018).

The first exception may arise if “there is a special relationship between a plaintiff and a defendant and the harm to the plaintiff is foreseeable.” *Id.* at 201-02 (quoting *Doe 169*, 845 N.W.2d at 178). One example of a duty arising from a special circumstance is the duty of an innkeeper toward a patron. *See Glay ex rel. McGill v. R.C. of St. Cloud, Inc.*, 30 N.W.3d 639, 652 (Minn. 2026).

Under the innkeeper negligence theory, an innkeeper owes a duty to protect its patrons from injuries inflicted by other patrons [if] four conditions are met: (1) the innkeeper is put on notice by some act or threat of vicious or dangerous propensities of one of its patrons, (2) the proprietor has an adequate opportunity to protect the patron from injury by the first patron but (3) the innkeeper fails to take reasonable steps to do so, and (4) injury to the patron is foreseeable.

*Id.*¹

¹It appears that the Minnesota caselaw on innkeeper liability consists entirely of cases involving claims against bars and taverns, typically arising from fights or assaults between or among customers. *See, e.g., Glay*, 30 N.W.3d at 643-45 (nightclub patron murdered by three other patrons); *Henson v. Uptown Drink, LLC*, 992 N.W.2d 185, 188-89 (Minn. 2019) (off-duty employee fatally injured while assisting with ejection of aggressive patron); *Boone v. Martinez*, 567 N.W.2d 508, 509 (Minn. 1997) (fight between two bar patrons); *Alholm v. Wilt*, 394 N.W.2d 488, 489 (Minn. 1986) (bar patron assaulted

The second exception to the general rule may arise if “the defendant’s own conduct creates a foreseeable risk of injury to a foreseeable plaintiff.” *Fenrich*, 920 N.W.2d at 202 (quoting *Domagala*, 805 N.W.2d at 23). Under this exception, a defendant may have a duty based on the defendant’s “own conduct” if such conduct was misfeasance as opposed to nonfeasance. *Id.* at 203. The term “misfeasance” means “active misconduct working positive injury to others,” while the term “nonfeasance” means “passive inaction or a failure to take steps to protect others from harm.” *Id.* (quotations omitted). “To determine whether an injury was foreseeable, we look to the defendant’s conduct and ask whether it was objectively reasonable to expect the specific danger causing the plaintiff’s injury.” *Domagala*, 805 N.W.2d at 27. The precise nature and manner of the injury need not be

by another patron); *Klingbeil v. Truesdell*, 98 N.W.2d 134, 137 (Minn. 1959); (tavern patron assaulted by another patron); *Priewe v. Bartz*, 83 N.W.2d 116, 118 (Minn. 1957) (same); *Curran v. Olson*, 92 N.W. 1124, 1124 (Minn. 1903) (same). Our federal district court has observed that “innkeeper liability claims against hotels do not seem to share identical elements with innkeeper liability claims against bars.” *Behr v. Radisson Hotels Mgmt. Co.*, No. 24-CV-2183, 2025 WL 1360699, at *6 (D. Minn. May 9, 2025). We are unaware of any Minnesota caselaw actually applying innkeeper liability to a hotel. We do not construe *Connolly v. Nicollet Hotel*, 95 N.W. 657 (Minn. 1959), to be such a case. The plaintiff in that case was a member of the general public who was injured while walking on a sidewalk outside the hotel because a guest of the hotel threw an item out of a hotel window. *Id.* at 661-62. Nonetheless, we do not have significant doubt that innkeeper liability applies to hotels in Minnesota. The supreme court has cited *Restatement (Second) of Torts* § 314A(2) (Am. L. Inst. 1965), for the proposition that “an innkeeper has a duty to its guests to take reasonable action to protect them against unreasonable risk of physical harm.” *Yang v. Voyageaire Houseboats, Inc.*, 701 N.W.2d 783, 791 (Minn. 2005). Courts in other jurisdictions have applied section 314A(2) to hotels in cases with facts that are analogous to the facts of this case. See, e.g., *Marchionda v. Embassy Suites Franchise, LLC*, 359 F. Supp. 3d 681, 693-701 (S.D. Iowa 2018) (hotel guest sexually assaulted in hotel room after hotel employee gave room key to another guest); *Knodle v. Waikiki Gateway Hotel, Inc.*, 742 P.2d 377, 384-88 (Haw. 1987) (hotel guest murdered in hotel).

foreseeable, but “the possibility of an accident” must be “clear to the person of ordinary prudence.” *Id.* (quotations omitted).

B.

As stated above, Robinson argues that the district court erred by instructing the jury on the law of innkeeper liability rather than the law of general negligence. She contends that the law of general negligence applies if a hotel’s “own conduct” creates a foreseeable risk of injury to a hotel guest. She also contends that, in this case, the front-desk employee’s act of giving out a keycard to her room was an act of “misfeasance.” She contends further that N.L.’s actions were foreseeable. For those reasons, she contends that the district court should have instructed the jury on a “general duty of reasonable care.”

In response, the hotel states that, in the district court, Robinson did not request an instruction based on the hotel’s “own conduct.” The hotel is correct. At trial, Robinson did not ever refer to the own-conduct doctrine or seek to characterize the front-desk employee’s conduct as “misfeasance.” Rather, Robinson argued to the district court that the hotel was subject to the general-negligence duty of reasonable care that always is present as a matter of law. That general-negligence theory is conceptually distinct from the own-conduct theory. In *Domagala*, the supreme court discussed them separately. 805 N.W.2d at 22-28. In *Doe 169*, the supreme court stated that, under a general-negligence theory, the general rule is that there is no duty of care to protect a person from harm caused by another person. 845 N.W.2d at 177-78. And in *Fenrich*, the supreme court explained that there are only “two exceptions” to the general rule—a special relationship between a

plaintiff and a defendant and a defendant's own conduct. 920 N.W.2d at 201-02. Thus, Robinson's argument on appeal is different from her argument in the district court.

It is well established that "[a] reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). A party may not "obtain review by raising the same general issue litigated below but under a different theory." *Id.* Robinson failed to preserve the argument that she makes on appeal, which is based on the own-conduct doctrine. Thus, her argument is deemed forfeited. *See, e.g., Morehouse v. Commissioner of Pub. Safety*, 911 N.W.2d 503, 505 n.3 (Minn. 2018) (concluding that appellant forfeited procedural-due-process argument raised for first time in supreme court because appellant pursued different due-process theory in lower courts); *Toth v. Arason*, 722 N.W.2d 437, 442-43 (Minn. 2006) (concluding that appellant forfeited argument that defendant violated section 325F.69 because plaintiff argued in district court only that defendant violated section 325F.60); *Pomush v. McGroarty*, 285 N.W.2d 91, 93 (Minn. 1979) (concluding that appellant forfeited certain negligence theories because plaintiff requested instruction on different negligence theory at trial).

C.

Even though Robinson forfeited her argument based on the own-conduct doctrine, she nonetheless may obtain appellate review of a limited scope. "A court may consider a plain error in the instructions affecting substantial rights that has not been preserved as required by Rule 51.04(a)(1) or (2)." Minn. R. Civ. P. 51.04(b). To determine whether a

district court plainly erred in a jury instruction, an appellate court seeks to determine whether “(1) there is an error, (2) that is plain, and (3) that affects a party’s substantial rights.” *Frazier v. Burlington Northern Santa Fe Co.*, 811 N.W.2d 618, 626 (Minn. 2012) (considering whether district court plainly erred in instructing jury on negligence). If an appellant can satisfy each of these three requirements, an appellate court will reverse for a new trial “only if necessary to ensure fairness and the integrity of the judicial proceedings.” *Id.* at 626-27 (quotation omitted).

We first consider whether the district court erred. Robinson does not argue that the district court erred by misstating the law of innkeeper liability; rather, Robinson argues only that the district court erred by choosing to instruct the jury on the law of innkeeper liability instead of the law of general negligence. Robinson’s evidence showed that the hotel’s front-desk employee gave a keycard to a third person, N.L., who used the keycard to enter a hotel room occupied by her and C.B. and engaged in wrongful conduct toward them. In this situation, the applicable law is based on the special relationship between an innkeeper and a guest. *See, e.g., Glay*, 30 N.W.3d at 652-54. It is significant that Robinson asked the district court to give a general-negligence instruction instead of—not in addition to—an innkeeper-liability instruction. Given Robinson’s evidence and her objections at the instructions conferences, the district court did not err by choosing to instruct the jury on the law of innkeeper liability. *See Foy v. Tria Orthopaedic Ctr. LLC*, No. A24-1788, 2025 WL 2390035, at *9 (Minn. App. Aug. 18, 2025) (concluding that district court did not err in medical-malpractice case by giving “instructions specific to the medical-malpractice context” instead of general-negligence instruction), *rev. denied* (Minn. Oct.

15, 2025); *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) (providing that nonprecedential opinions “are not binding authority . . . but . . . may be cited as persuasive authority”).²

Even if Robinson could establish the first requirement of the plain-error test, her argument would fail because she would be unable to establish the second requirement, that any such error was plain. To establish that an error is plain, the error must be “‘clear’” or “‘obvious.’” *State v. Ihle*, 640 N.W.2d 910, 917 (Minn. 2002) (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)). If the applicable law is found in caselaw, an error is clear or obvious only if the district court acted contrary to a precedential opinion. *State v. Portillo*, 998 N.W.2d 242, 250 (Minn. 2023) (stating in parenthetical that “an error cannot be deemed ‘plain,’ in the absence of binding precedent”) (quoting *United States v. Whab*, 355 F.3d 155, 158 (2d Cir. 2004)). In addition, the binding precedent must be “conclusively resolved.” *State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008). In this case, Robinson has cited no caselaw for the proposition that a district court errs by instructing a jury on the law of innkeeper liability in a case in which a hotel guest alleges that the hotel

²Given the nature of Robinson’s argument to the district court, we do not consider whether a plaintiff may be entitled to both an instruction on a duty arising from a special relationship and an instruction on a duty arising from a defendant’s own conduct. *Cf. Smits ex rel. Short v. Park Nicollet Health Servs.*, 979 N.W.2d 436, 457-60 (Minn. 2022) (considering, on review of grant of summary judgment, both whether defendant owed duty “as a matter of ordinary medical malpractice” principles and whether defendant owed duty “because it created a foreseeable risk”) (opinion of Anderson, J., for the court in part II); *Abel v. Abbott Northwestern Hosp.*, 947 N.W.2d 58, 77-79 (Minn. 2020) (considering, on review of dismissal for failure to state claim, “whether the facts alleged support a conclusion that Allina’s own conduct created a foreseeable risk of injury to a foreseeable plaintiff” but “declin[ing] to address whether a special relationship exists” because “allegations under [own-conduct] theory are sufficient to support” existence of duty).

was negligent in not protecting the guest from harm caused by a third person. Our independent research has not revealed any such caselaw. Thus, even if it could be said that the district court erred by instructing the jury on the law of innkeeper liability, the error would not be plain.

In sum, the district court did not plainly err by instructing the jury on the law of innkeeper liability instead of the law of general negligence and by denying Robinson's motion for a new trial.

D.

Before concluding, we note that Robinson also made a second argument: that the district court erred by denying her mid-trial motion to amend her complaint to add a request for punitive damages. At oral argument, Robinson's attorney acknowledged that this court would not need to consider her second argument if we were to reject her first argument. We agree. Because Robinson is not entitled to a new trial on her negligence claim, her request for punitive damages is moot.

Affirmed.