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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1967**

Corey Smith, a minor, by and through his
Guardian Ad Litem, Michael L. Weiner,
Appellant,

vs.

Sea Life Minnesota, LLC,
Respondent,

MOAC Mall Holdings, LLC,
Respondent,

Otis Elevator Company,
Respondent.

**Filed September 8, 2026
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-22-2261

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Considered and decided by Rasmusson, Presiding Judge; Johnson, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A six-year-old boy fell over the handrail of an escalator near an aquarium at the Mall of America. This action was commenced on his behalf against Sea Life Minnesota LLC, which operated the aquarium; MOAC Mall Holdings LLC, which owned and operated the mall; and the Otis Elevator Company, which manufactured and installed the escalator. The case was tried to a Hennepin County jury, which returned a defense verdict. We conclude that the district court did not err by denying Smith's motion to amend the complaint to allege a claim against Otis of breach of a post-sale duty to warn, did not err by granting in part MOAC's summary-judgment motion on Smith's negligence claim relating to the escalator, and did not err by denying Smith's motion for a new trial. Therefore, we affirm.

FACTS

In February 2019, six-year-old Corey Smith visited the Sea Life aquarium at the Mall of America with his father and his four-year-old brother. The aquarium is located on the mezzanine level of the mall, which is below the ground floor. Guests and others may enter and exit the aquarium by using escalators to and from the mall's ground floor.

After their aquarium visit, Smith and his family members rode up the escalator that led to the ground floor. When they reached the ground floor, Smith's father walked a short distance away to answer a telephone call. Smith and his brother remained near the escalators, playing at the top of the down escalator. A surveillance videocamera captured him grabbing the moving handrail as he stood directly behind it. The handrail briefly lifted him off the floor, but he let go, and his feet returned to the ground. Smith repeated this action a few times. On the last occasion, however, Smith held onto the handrail a bit longer. The handrail carried him upward to the highest point and then began to carry him downward while he lay prone on top of it. He looked downward to his left, lost his balance, and fell approximately 27 feet to the mezzanine floor. He sustained significant injuries, including a concussion, a loss of consciousness, a hematoma, liver and bladder contusions, and fractures to his leg and pelvis.

In February 2022, Smith, through a guardian *ad litem*, commenced this action against Sea Life and MOAC, alleging a claim of negligence against each defendant.

In April 2023, MOAC moved for summary judgment. In August 2023, the district court granted MOAC's motion in part and denied it in part. The district court's partial grant of that motion is challenged on appeal and is discussed below in part II.

Meanwhile, Smith amended the complaint in December 2022 to add Otis as a defendant and to assert a negligence claim against it. Otis moved for summary judgment in October 2023, after which Smith moved to amend the complaint to assert additional claims against Otis. In March 2024, the district court granted Otis's motion for summary judgment and denied Smith's motion for leave to amend the complaint to add duty-to-warn

claims against Otis. The district court's denial of Smith's motion to amend the complaint is challenged on appeal with respect to a post-sale duty to warn and is discussed below in part I.

The case was tried to a jury on eight days in March 2025. Smith called eleven witnesses, while Sea Life and MOAC called nine. The jury returned a special-verdict form in which it found that neither Sea Life nor MOAC were negligent but that Smith's father was negligent and that his negligence was the only direct cause of Smith's injuries. The district court entered judgment on the jury's verdict in April 2025. Smith filed a motion for a new trial, which the district court denied in September 2025. The district court's denial of Smith's motion for a new trial is challenged on appeal and is discussed below in part III.

DECISION

I. Denial of Motion to Amend Complaint (Otis)

Smith first argues that the district court erred by denying his request for leave to amend the complaint to add a claim against Otis of breach of a post-sale duty to warn.

After a defendant has served a responsive pleading, a plaintiff may amend the complaint "only by leave of court or by written consent of the adverse party." Minn. R. Civ. P. 15.01. Leave of court "shall be freely given when justice so requires." *Id.* But leave should not be given if the proposed amendment would be futile. *Bridgewater Tel. Co. v. City of Monticello*, 765 N.W.2d 905, 915 (Minn. App. 2009), *rev. denied* (Minn. June 16, 2009). Accordingly, a district court "should deny a motion to amend a complaint where the proposed claim could not withstand summary judgment." *Rosenberg v. Heritage*

Renovations, LLC, 685 N.W.2d 320, 332 (Minn. 2004). This court applies an abuse-of-discretion standard of review to a district court’s denial of a motion to amend a complaint, but if “a district court denies a motion to amend on the ground of futility, our review of the district court’s ruling may turn on whether it was correct in an underlying legal ruling.” *U.S. Bank NA v. RBP Realty, LLC*, 888 N.W.2d 699, 705 (Minn. App. 2016) (quotation omitted), *rev. denied* (Minn. Apr. 18, 2017). A party is entitled to summary judgment if “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. The evidence must be viewed in the light most favorable to the non-moving party. *Henry v. Independent Sch. Dist. No. 625*, 988 N.W.2d 868, 880 (Minn. 2023). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to a district court’s decision to grant a motion for summary judgment. *Henry*, 988 N.W.2d at 880.

Smith’s proposed claim against Otis is a products-liability claim (in contrast with the premises-liability claims asserted against Sea Life and MOAC). A manufacturer of a product has “a duty to warn of a safety hazard that is present at the time of sale” if the manufacturer “has actual or constructive knowledge of danger to users.” *Great Northern Ins. Co. v. Honeywell Int’l, Inc.*, 911 N.W.2d 510, 519 (Minn. 2018) (quotation omitted). In addition, a manufacturer of a product may have a post-sale duty to warn. *Id.* The general rule is as follows:

One engaged in the business of selling or otherwise distributing products is subject to liability for harm to persons or property caused by the seller's failure to provide a warning after the time of sale or distribution of a product if a reasonable person in the seller's position would provide such a warning.

Id. at 520 (quoting Restatement (Third) of Torts: Products Liability § 10(a) (Am. L. Inst. 1998)). Furthermore:

A reasonable person in the seller's position would provide a warning after the time of sale if:

(1) the seller knows or reasonably should know that the product poses a substantial risk of harm to persons or property; and

(2) those to whom a warning might be provided can be identified and can reasonably be assumed to be unaware of the risk of harm; and

(3) a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and

(4) the risk of harm is sufficiently great to justify the burden of providing a warning.

Id. (quoting Restatement (Third) of Torts: Products Liability § 10(b)). Under this test, a manufacturer has a post-sale duty to warn only if all four requirements are satisfied. *Id.* The existence of such a duty is a question of law, which is subject to a *de novo* standard of review. *Id.* at 519.

In this case, the district court determined that Otis did not have a post-sale duty to warn because the first and second requirements of the above-described test are not satisfied. Smith challenges the district court's reasoning with respect to both of those requirements.

A. First Requirement

With respect to the first requirement—that the seller knows or reasonably should know that the product poses a substantial risk of harm to persons or property—the district court determined that the escalator did not pose a substantial risk of harm such that no warning was necessary. The district court reasoned that “the escalator was code-compliant and certified as safe when installed, as required by code” and the “State of Minnesota deemed the escalator safe as-is” following the incident.

Smith challenges the district court’s reasoning. The pertinent question is whether Otis knew or reasonably should have known, based on information obtained after installing the escalator, that it posed a substantial risk of harm to others. *See Great Northern Ins. Co.*, 911 N.W.2d at 520; Restatement (Third) of Torts: Products Liability § 10(b)(1). The escalator’s code-compliance is relevant to that question but not dispositive. *Cf.* Restatement (Third) of Torts: Products Liability § 4(b) (providing that “a product’s compliance with an applicable product safety statute or administrative regulation . . . does not preclude as a matter of law a finding of product defect”).

Smith argues that the first requirement is satisfied by evidence in the record of the motion to amend. Specifically, Smith refers to an engineer’s master’s thesis concerning escalator safety, which is dated 2010. The thesis discusses 330 falls over the sides of escalators worldwide between 1987 and 2007, 146 of which involved minors. Smith asserts that an Otis representative testified in deposition to an awareness of the misuse of escalators and the risks associated with unattended children. The Otis representative testified that Otis is aware that misuse of escalators occurs, just as misuse occurs with

“every other machine that is sold in the market,” but that escalator falls are extremely rare. The representative testified that Otis escalators facilitate more than one billion rides per day on a worldwide basis and that 330 falls over a 20-year period, as documented in the thesis, represents “an extremely low probability.” That testimony conforms to the thesis itself, which states that “the incident rate is low.” The Otis representative testified further that he was unaware of any incident similar to what happened in this case and that there would have been no risk of a fall if Smith had been properly supervised. The record of the motion to amend also shows that, between 1992 and 2019, there were only three falls over the side of an escalator at the Mall of America, all of which involved intoxicated adults.

Smith emphasizes evidence that the existence of an escalator in an open atrium creates an additional risk of injury. In response, Otis argues that this fact is not “a risk inherent in the escalator itself” or a “deficiency in the escalator as a manufactured product” but, rather, a risk factor associated with “the siting and architectural conditions chosen by the owner” of the escalator. Otis persuasively argues that “[t]he post-sale duty to warn does not extend to risks arising from premises conditions, building layout, or downstream installation choices” made by purchasers because “those are premises issues, not product issues.”

In light of the evidence in the record of the motion to amend, the district court did not err by determining that the first requirement of the *Restatement* test is not satisfied.

B. Second Requirement

With respect to the second requirement—that those to whom a warning might be provided can be identified and can reasonably be assumed to be unaware of the risk of harm—the district court determined that “there is no evidence to suggest that Sea Life or MOAC were unaware of the risk of harm” because “the risk of falling from heights is open and obvious.”

Smith challenges the district court’s reasoning by arguing that the district court wrongly considered whether Sea Life or MOAC actually were unaware of the risk of harm, not whether Otis could reasonably assume that they were unaware. In an attempt to show that Sea Life and MOAC’s awareness could not be reasonably assumed, Smith submitted evidence of a letter sent to MOAC by a different escalator manufacturer in 2014 “to advise [the mall] of a potential safety situation.” But this letter does not create a genuine issue of material fact if, as the district court reasoned, the risk of harm is obvious. Otis argues that the district court correctly reasoned that the risk was obvious to Sea Life and MOAC and, thus, “[i]t is reasonable to assume that the premises owner, who installed the escalator in an open atrium, was aware of and knew of this risk.” Smith does not effectively dispute that such a risk was obvious to Sea Life and MOAC, in which event it would be reasonable for Otis to assume that Sea Life and MOAC were not unaware of the risk.

The same reasoning applies to members of the public who used the escalator. The record shows that the escalator had a warning sign cautioning passengers to “Attend Children” and a pictogram of an adult holding the hand of a child. Given the existence of

this warning, there is no reason to assume that members of the public are both unaware of the risk of harm *and* susceptible to a second warning of that risk.

Thus, the district court did not err by determining that the first and second requirements of the *Restatement's* post-sale duty-to-warn test are not satisfied. Because all four requirements must be satisfied to establish a post-sale duty to warn, the district court did not err by denying Smith's motion to amend the complaint to add a post-sale duty-to-warn claim against Otis.

II. Grant of Partial Summary Judgment (MOAC)

Smith also argues that the district court erred by granting MOAC's summary-judgment motion in part. As stated above, summary judgment is proper if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. The evidence must be viewed in the light most favorable to the non-moving party. *Henry*, 988 N.W.2d at 880. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler*, 751 N.W.2d at 564. This court applies a *de novo* standard of review to a district court's decision to grant a motion for summary judgment. *Henry*, 988 N.W.2d at 880.

MOAC filed a motion for summary judgment in April 2023, approximately two years before trial. Smith had alleged that MOAC was negligent on the ground that it breached a duty to inspect and maintain its premises and to operate the escalator and surrounding area in a safe manner. MOAC argued in its summary-judgment papers, among other things, that it did not owe a duty of care with respect to the escalator because MOAC

had relinquished control of the escalator to Sea Life. The district court agreed with MOAC to an extent by concluding that MOAC did *not* have a duty with respect to the escalator itself because it was within the premises leased by Sea Life and MOAC did not retain any control over it. But the district court disagreed with MOAC in part by concluding that MOAC *did* have a duty with respect to the area surrounding the top of the escalator, which was part of the common area of the mall. Accordingly, the district court granted MOAC's motion in part and denied it in part.

“If a landowner retains no control over the land after the tenant takes possession, then the landowner should not be liable for the tenant's negligence in maintaining the premises if they have been turned over in good condition.” *Filipczak v. International Brotherhood of Elec. Workers, Loc. 110*, 195 N.W.2d 433, 435 (Minn. 1972). An exception to this rule exists if the landlord maintains control over the premises. *Oakland v. Stenlund*, 420 N.W.2d 248, 251 (Minn. App. 1988), *rev. denied* (Minn. Apr. 20, 1988).

The summary-judgment record includes the lease between MOAC and Sea Life that was in effect at the time of Smith's fall. The lease made a distinction between the common areas of the mall and the premises that were leased to Sea Life. The lease defined the scope of the common areas by listing numerous types of spaces inside and outside the mall and provided that such areas “shall at all times be subject to the exclusive control and management of” MOAC. The lease required Sea Life to “abide by all rules and regulations” for the common areas and to “not interfere with landlord's or other tenants' rights to use any part of the common areas.”

The lease also defined the scope of Sea Life's leased premises. The lease assigned to Sea Life control and management of its leased premises. The lease required Sea Life to maintain its leased "premises (including all entrances and vestibules) and all . . . equipment and appurtenances thereof (including . . . mechanical equipment and appurtenances) and all parts of the premises, and parts of tenant's work not on the premises, not required herein to be maintained by landlord." The lease defined the "mechanical equipment" that Sea Life was responsible for maintaining to include "escalators . . . located within the premises."

The record also includes evidence that Sea Life was the only tenant on the mezzanine level of the mall and that the escalators leading to and from Sea Life's leased premises were used exclusively by Sea Life's guests, employees, and vendors. Sea Life maintained and repaired those escalators without any direction or interference by MOAC. Sea Life applied for annual operating permits, paid permit fees, coordinated inspections with regulators, and hired a company for maintenance and repairs of the escalators within its leased premises. In addition, Sea Life turned off and barricaded the escalators to the mezzanine level when the aquarium was closed to prevent mall customers from entering Sea Life's leased premises during those times. That practice stands in contrast with the common-area escalators elsewhere in the mall, which remained operational until one to two hours after the mall closed.

The district court acknowledged that MOAC retained control over the escalators in the common area of the mall. But the district court interpreted the lease, including diagrams attached to the lease, to provide that the escalator from which Smith fell was not

in the common area and, thus, was not within MOAC's control. In determining that Sea Life had sole control over the escalator, the district court referred to the evidence that Sea Life took full responsibility for the escalator at issue and turned it off and barricaded it when the aquarium was closed.

Smith contends that the escalator at issue was within the mall's common area and, thus, within MOAC's control. But Smith does not challenge the district court's reliance on the diagrams attached to the lease, which show that the escalator was within Sea Life's leased premises, which is mutually exclusive of the mall's common areas. Smith contends that MOAC retained control of *all* escalators in the mall because the word "escalators" appears in a long list of places and things that are within the common area of the mall. But that provision applies only to escalators within the common areas, not to escalators within tenants' leased premises. As MOAC notes, the lease prohibited Sea Life from interfering with other tenants' rights to use the common area, and the undisputed evidence shows that Sea Life exercised control over the escalator at issue by turning off and barricading access to it while the aquarium was closed. Smith also contends—without citation to any legal authority—that Sea Life's obligation to maintain the escalator did not divest MOAC of control over the escalator. But that argument is inconsistent with the lease, which plainly gives control of the leased premises to Sea Life. Smith last contends that the lease is ambiguous and that the jury should have been allowed to make a factual finding concerning which company controlled the escalator. But the lease is not ambiguous, and Smith does not identify any extrinsic evidence that might have caused the jury to find that MOAC controlled the escalator.

For these reasons, there are no genuine issues of material fact as to whether the escalator from which Smith fell was within MOAC's control. Thus, the district court did not err by granting in part MOAC's summary-judgment motion as it relates to Smith's claim that MOAC negligently maintained and operated the escalator.

III. Denial of Motion for New Trial (Sea Life and MOAC)

Smith last argues that, for three reasons, the district court erred by denying his motion for a new trial.

In the district court, Smith relied on a rule that allows a district court to grant a new trial based on "[e]rrors of law occurring at the trial." Minn. R. Civ. P. 59.01(f). This court applies an abuse-of-discretion standard of review to a district court's decision to grant or deny a motion for a new trial. *Glaxo ex. rel McGill v. R.C. of St. Cloud, Inc.*, 30 N.W.3d 639, 651 (Minn. 2026); *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018).

A. Evidentiary Rulings

Smith argues that he is entitled to a new trial on the ground that the district court erred by excluding three categories of evidence he offered. This court applies an abuse-of-discretion standard of review to a district court's rulings on evidentiary issues. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012).

First, Smith contends that the district court erred by excluding evidence of three other over-the-side escalator falls at the mall, which occurred in 2003, 2016, and 2017. The supreme court has held that "evidence as to similar accidents suffered by others under similar circumstances at times not too remote from the accident involved in the litigation is admissible to show the dangerous character of the place of injury or that defendant had

notice or knowledge of the dangers attendant upon the maintenance of the place of injury.” *Colby v. Gibbons*, 276 N.W.2d 170, 176 (Minn. 1979) (quotation omitted). Such evidence may be admissible if “the circumstances surrounding the other accidents were *substantially the same* as those involved in the accident in litigation.” *Id.* (emphasis added) (quotation omitted).

Each of the three escalator falls that Smith offered involved other escalators at the mall and, more importantly, involved adults who were under the influence of alcohol. In each of those three incidents, an intoxicated adult chose to sit or ride on the handrail. In this case, an unsupervised child was playing near an escalator and grabbed the handrail, apparently without intending to sit or ride on it. The district court excluded the evidence for those reasons. Given that the three other falls were not “substantially the same as” Smith’s fall, the district court did not abuse its discretion by excluding the evidence. *See id.* (quotation omitted).

Second, Smith contends that the district court erred by excluding evidence of two other over-the-side escalator falls that occurred at places other than the Mall of America but involved children who fell in a manner similar to Smith. In one of the incidents, which was described in the master’s thesis, a six-year-old child fell from an escalator on the fourth floor of a shopping center in 2007 after being dragged upward by an escalator handrail. In the other incident, a child fell from an escalator on the third floor of a mall in 2009 after being lifted by an escalator handrail. The district court excluded evidence of these two incidents on the ground that this case is focused on one particular escalator and one particular set of circumstances and that branching out to other states and facilities risked

confusing the jury. The district court's reasoning is consistent with the caselaw, which allows for evidence of other, similar incidents only if it is "not too remote from the accident involved in the litigation" and likely "to show the dangerous character of the place of injury." *See id.* (quotation omitted). In addition, the jury heard evidence that MOAC generally was aware of escalator misuse because the district court admitted into evidence a letter from another escalator company that was selling fall-protection devices. Furthermore, witnesses called by both Smith and the defense testified about the general risks of children playing on escalators. For all of these reasons, the district court did not abuse its discretion by excluding evidence of two escalator falls by children in locations other than the Mall of America.

Third, Smith contends that the district court erred by excluding evidence of devices that might have prevented Smith's fall, specifically, "side curtains." Smith asserts that this evidence is relevant to show that property owners elsewhere were aware of the risks of open-sided escalators and took steps to mitigate those risks. In its post-trial order, the district court reasoned that the evidence might have caused jurors to "incorrectly hold defendants to a foreign-based standard of care not recognized in Minnesota law." The district court's reasoning is consistent with *Buzzell v. Bliss*, 358 N.W.2d 695 (Minn. App. 1984), *rev. denied* (Minn. Mar. 13, 1985), in which the district court excluded a plaintiff's proffered evidence of safety devices used in the operation of mechanical punch presses in England. *Id.* at 699. This court affirmed, reasoning that the evidence, "even if probative to some degree," had the "potential to confuse or mislead the jury." *Id.* In addition, the jury in this case heard evidence that Sea Life and MOAC were aware of "devices to guard

against” over-the-side escalator falls. Accordingly, the district did not abuse its discretion by excluding additional evidence of such devices.

B. Jury Instructions

Smith also argues that he is entitled to a new trial on the ground that the district court erred by denying his request for a jury instruction concerning foreseeability.

The district court instructed the jury on Smith’s negligence claims in a manner consistent with a commonly used pattern instruction. *See* 4 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Civil*, § 25.10, at 183 (6th ed. 2014). The instruction defined the terms “reasonable care,” “negligence,” and “foreseeability.” The last of those definitions stated, “An injury is foreseeable if a reasonable person or a company in the same or similar circumstances would have foreseen it. The exact way an injury occurred does not have to be foreseeable.”

At the instructions conference, Smith requested an additional paragraph concerning foreseeability, which would have provided as follows: “Knowledge of Dangerous Condition: A possessor can be negligent if it: (1) caused the dangerous condition; (2) knew that the dangerous condition existed; or (3) should have known that the dangerous condition existed.” The district court declined to include this additional language on the ground that the third clause of Smith’s proposed instruction, which includes the language that Smith most wanted to incorporate, was repetitious of the existing definition of foreseeability.

On appeal, Smith argues that the concept of foreseeability is distinct from the concept of notice and that the jury needed instructions on both concepts. MOAC argues

in response that, without Smith's suggested additional language, the instruction was correct and fair and that the requested language might have confused the jury by appearing to provide two definitions of negligence.

"A party is not entitled to a specific instruction on his theory of the case when the substance of the requested specific instructions is adequately contained in the general charge." *Kinning v. Nelson*, 281 N.W.2d 849, 853 (Minn. 1979). In addition, a district court reasonably may deny an instruction if it might cause confusion by appearing to require "the jury to answer the same question twice." *See Glay ex. rel McGill*, 30 N.W.3d at 655. "A district court has broad discretion to fashion jury instructions," and an appellate court "will not disturb a district court's decision regarding jury instructions absent an abuse of discretion." *Id.* at 651. In this instance, the district court did not abuse its discretion by denying Smith's request to insert additional language into the negligence instruction, for the reasons stated by the district court.

C. Curative Instruction

Smith argues that he is entitled to a new trial on the ground that the district court erred by giving a curative instruction following closing argument in response to objections by Sea Life and MOAC.

The issue arose when Smith's attorney referred to the defendants' position concerning whether Smith's father was negligent. Smith's attorney stated that the defendants might be "withdrawing their claim that [Smith's father] should be found negligent," that "it kind of sounded like they said we're not blaming" Smith's father, and that "it sounds like there may be agreement among the parties that you can't saddle

[Smith's father] with negligence for this event." The issue was material because the special-verdict form asked the jury to determine whether Smith's father was negligent and, if so, to determine the percentage of negligence attributable to him.

After Smith's closing argument, Sea Life and MOAC asserted objections on the ground that Smith's attorney had implied that the defendants had agreed that Smith's father was not negligent. Sea Life and MOAC requested a curative instruction to clarify that there was no agreement between the parties that Smith's father was not negligent. The district court asked Smith's attorney whether it would be "acceptable" for the court "simply to clarify there was no agreement and they should follow the verdict form." Smith's attorney answered in the affirmative. The district court gave the following curative instruction:

You heard in the final closing argument about whether there was an agreement between the parties as to [Smith's father] being negligent or not being negligent. There was . . . no agreement between the parties on [Smith's father] and whether he was negligent. Again, you should follow the jury instructions and answer the questions on the special verdict form.

On appeal, Smith argues that the curative instruction was erroneous for two reasons: first, that it was "not neutral" because it implied that Smith's attorney had misstated the defendants' arguments and, second, that the curative instruction did not cure anything because Smith's attorney stated merely that "it sounds like there may be an agreement."

Sea Life argues in response that Smith's argument is forfeited because Smith's attorney agreed or acquiesced to the curative instruction. It is true that, by agreeing that the district court's proposed curative instruction was "acceptable," Smith's attorney

forfeited the argument that is made on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Even if we were to consider the argument, we would conclude that the curative instruction is well within a district court's "broad discretion to fashion appropriate curative instructions." *Poston v. Colestock*, 540 N.W.2d 92, 94 (Minn. App. 1995) (quotation omitted), *rev. denied* (Minn. Jan. 25, 1996). Smith's attorney strongly suggested that defendants had agreed that the jury should not find that Smith's father was negligent, even though the question was included in the special-verdict form. The district court appropriately corrected or clarified that issue by informing the jury, in simple language, that there was no such agreement between the parties. Thus, the district court did not abuse its discretion in giving the curative instruction.

We note that Smith also makes a cumulative-error argument. Because we have concluded that the district court did not commit any error, we need not reach Smith's cumulative-error argument.

Affirmed.