United States Court of Appeals
For the Eighth Circuit

No. 25-1506

Raya Nsheiwat

Plaintiff - Appellant

v.

Walmart, Inc.

Defendant - Appellees

Appeal from United States District Court
for the Southern District of Iowa

Submitted: January 14, 2026
Filed: August 17, 2026
[Unpublished]

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

Raya Nsheiwat sued Walmart for negligence, alleging she slipped and fell on a plastic clothes hanger while returning her shopping cart to a parking lot cart corral.

Relevant here, the magistrate judge[1] bifurcated the trial into a liability phase and a damages phase and sequestered all but two witnesses. Walmart moved in limine to exclude two of Nsheiwat's experts, Russell Kendzior and Andrew Rentschler. The district court[2] excluded Kendzior's testimony from trial, and limited Rentschler's testimony to the trial's damages phase. Following the liability phase, the jury returned a verdict in Walmart's favor. Nsheiwat appeals, challenging the district court's (1) bifurcation of the trial; (2) sequestration of Nsheiwat's "attorney-in-fact"; (3) exclusion of the testimony of Kendzior, and partial exclusion of the testimony of Rentschler. We address these issues in turn.

As an initial matter, Walmart argues we lack jurisdiction to review the magistrate judge's bifurcation of the trial and sequestration of the witnesses because Nsheiwat did not object to the magistrate judge's orders within Rule 72(a)'s 14-day deadline, and "[a] party may not assign as error a defect in the order not timely objected to." Fed. R. Civ. P. 72(a). We disagree. "The district judge has jurisdiction over [a] case at all times." *Thomas v. Arn*, 474 U.S. 140, 154 (1985). It is true that a litigant may not leapfrog the district court and appeal a magistrate's ruling directly to the court of appeals. *See Daley v. Marriott Int'l, Inc.*, 415 F.3d 889, 893 n.9 (8th Cir. 2005). But here, Nsheiwat argued and the district court considered both issues in its order denying her motion for a new trial. Because the district court addressed both issues' merits, we have jurisdiction to review its decisions. *See K.C.1986 Ltd. P'ship v. Reade Mfg.*, 472 F.3d 1009, 1017 (8th Cir. 2007) ("The district court has the inherent power to reconsider and modify an interlocutory order any time prior to the entry of judgment." (citation omitted)).

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[1]The Honorable Helen C. Adams, Chief United States Magistrate Judge for the Southern District of Iowa.

[2]The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa, now retired. Following Judge Pratt's retirement, the case was reassigned to the Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

Turning to the merits, Nsheiwat first argues her trial should not have been bifurcated into liability and damages phases. We review the decision to bifurcate a trial for abuse of discretion, *Farmers Coop. Co. v. Senske & Son Transfer Co.*, 572 F.3d 492, 498 (8th Cir. 2009), and we disagree with Nsheiwat. Courts may bifurcate trials into separate phases "[f]or convenience, to avoid prejudice, or to expedite and economize . . . ." Fed. R. Civ. P. 42(b). We give district courts "considerable latitude" in this determination. *Rolscreen Co. v. Pella Prods. of St. Louis, Inc.*, 64 F.3d 1202, 1209 (8th Cir. 1995). Here, the magistrate judge reasoned that bifurcating Nsheiwat's trial would be more expedient and economical, noting that many witnesses were expected to testify only in the damages phase, which is common in tort trials. *See e.g.*, *O'Dell v. Hercules, Inc.*, 904 F.2d 1194, 1201–02 (8th Cir. 1990); *Beeck v. Aquaslide 'N' Dive Corp.*, 562 F.2d 537, 541–42 (8th Cir. 1977). And the magistrate judge determined Nsheiwat could alleviate any prejudice "through motions in limine, jury instructions, voir dire, and cooperation of counsel." So we conclude the decision to bifurcate Nsheiwat's trial was not an abuse of discretion. *See Rolscreen Co.*, 64 F.3d at 1209.

Second, Nsheiwat argues the district court wrongly excluded Shalabh Kumar, her "attorney-in-fact," from trial. We review the decision to sequester witnesses for abuse of discretion, *United States v. Corey*, 36 F.4th 819, 822 (8th Cir. 2022), and we again disagree with Nsheiwat. "At a party's request, the court must order witnesses excluded from the courtroom" unless the person is "essential to presenting the party's claim or defense" or the "person [is] authorized by statute to be present." Fed. R. Evid. 615(a)(3)–(4). Even if the district court erroneously sequestered Kumar, it need not grant a new trial absent prejudice. *See Corey*, 36 F.4th at 822. Here, Walmart designated Kumar as a witness for both phases of the trial. Nsheiwat argues she was substantially prejudiced because her attorneys could not confer with Kumar to obtain authorization to move for a mistrial at the close of Walmart's case. The magistrate judge decided to sequester the witnesses long before trial, so Nsheiwat's legal team had ample time to seek permission from Kumar or make alternate arrangements before the trial began. As such, we conclude Nsheiwat was not prejudiced by Kumar's exclusion from trial. The district court, consequently, did not abuse its discretion when it denied her motion for a new trial on this ground.

Third, Nsheiwat argues the district court erred by excluding Kendzior's expert testimony and partially excluding Renstchler's expert testimony. We disagree. "We review the exclusion of an expert's opinions under the deferential abuse of discretion standard and will not reverse unless the district court's ruling is 'manifestly erroneous.'" *Bliv, Inc. v. Charter Oak Fire Ins. Co.*, 159 F.4th 539, 542 (8th Cir. 2025) (quoting *Sprafka v. Med. Device Bus. Servs., Inc.*, 139 F.4th 656, 660 (8th Cir. 2025)). "Only when the evidence excluded is of such a critical nature that there is 'no reasonable assurance that the jury would have reached the same conclusion had the evidence been admitted' has a district court so abused its discretion." *Wilson v. City of Des Moines*, 442 F.3d 637, 641 (8th Cir. 2006) (quoting *Stephens v. Rheem Mfg. Co.*, 220 F.3d 882, 885 (8th Cir. 2000)). When determining whether an expert's testimony is admissible under Federal Rule of Evidence 702, we apply the three-part *Daubert* test. *Lauzon v. Senco Prods., Inc.*, 270 F.3d 681, 686 (8th Cir. 2001); *see also Daubert v. Merrell Dow Pharms, Inc.*, 509 U.S. 579 (1993). *Daubert*'s first prong is relevant in this appeal: "[E]vidence based on scientific, technical, or other specialized knowledge *must be useful to the finder of fact* in deciding the ultimate issue of fact." *Lauzon*, 270 F.3d at 686 (emphasis added).

Starting with Kendzior, the district court excluded his testimony because his "opinions do not rely on or apply any specialized knowledge or expertise," and his conclusions were "common-sense judgments fully within the common knowledge and experience of a lay juror," rather than "reasoned opinions of a uniquely qualified expert." We agree. For example, Kendzior gave the following opinions in his report: (1) had Walmart inspected the cart corral and removed the hanger, Nsheiwat "would not have slipped and fallen and in-turn injured herself," and (2) the "nationally recognized industry standards . . . serve as a basis for establishing the standard of care for the retail industry." In our view, the district court was right to exclude both opinions because they would not have assisted the jury. The first opinion is plainly common sense. *See Ellis v. Miller Oil Purchasing Co.*, 738 F.2d 269, 270 (8th Cir.

1984) ("Where the subject matter is within the knowledge or experience of lay people, expert testimony is superfluous."). And the second opinion concerns the scope of Walmart's legal duty, which is a question of law for the court to decide. *See Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009).

To the extent Nsheiwat argues the district court should have at least admitted Kendzior's testimony as to the industry standards, we still disagree. True, expert testimony explaining industry standards can be admissible to establish a breach of care. *See, e.g.*, *S. Pine Helicopters, Inc. v. Phx. Aviation Managers, Inc.*, 320 F.3d 838, 841 (8th Cir. 2003); *Scobee v. USAA Cas. Ins. Co.*, 168 F.4th 507, 515 (8th Cir. 2026). But Kendzior's report only identified general safety practices, such as "[i]nspecting all walking surfaces," "[p]romptly notifying persons responsible for cleanup of affected conditions," and "[p]lacing signage, barriers or personnel until clean-up is complete." Kendzior also stated that Walmart should have "[a] written housekeeping program . . . describ[ing] materials, equipment, scheduling, methods, and training of those conducting housekeeping"; and that "walkways [and] . . . parking spaces . . . be kept in a proper state of repair and maintained free from hazardous conditions." These "standards" are not the sort of specialized practices we have generally allowed experts to testify to. *See Ellis*, 738 F.2d at 270. Rather, they are common sense and within the realm of a jurors' personal knowledge. *See Salem v. U.S. Lines Co.*, 370 U.S. 31, 35 (1962) (noting expert testimony "may properly be excluded" if jurors "are as capable of comprehending the primary facts and of drawing correct conclusions from them as are witnesses possessed of special or peculiar training, experience, or observation in respect of the subject under investigation").

Even assuming the district court should have let Kendzior testify to industry standards, any error was harmless because the jury had other evidence of Walmart's breach. *See Cooper v. City of St. Louis*, 999 F.3d 1138, 1140 (8th Cir. 2021). Namely, the jury heard testimony regarding Walmart's safety policies, which required daily "safety sweeps" of the parking lot, procedures for employees to "[t]ake different routes when walking to and from lunch or breaks in order to identify and correct potential hazards," to "inspect the parking lot for . . . trash safety hazards," and "pick up debris on a regular basis." Because the jury received evidence of Walmart's standards — which were at least the same as, if not more stringent than, the industry standards — Kendzior's testimony would not have helped or substantially influenced the jury. *See Hall v. Arthur*, 141 F.3d 844, 850 (8th Cir. 1998) (determining expert testimony was improperly excluded but deciding the error was harmless because other evidence established the same propositions). Thus, the district court did not abuse its discretion in excluding Kendzior's expert testimony. And even if it did, its error was harmless.

Turning to Rentschler, Nsheiwat contends the district court abused its discretion when it limited his testimony to the damages phase of trial, because it was also relevant to causation. We agree with the district court that Rentschler's "report assume[d] Nsheiwat slipped on a hanger and [did] not address alternative causes." This is simply not probative of causation. *See O'Dell*, 904 F.2d at 1203 (determining the district court properly excluded testimony concerning actual symptoms of injury from the liability phase of a bifurcated trial). And even if it had some marginal probative value, this was substantially outweighed by the risk that the jury would mistake Rentschler's assumption that Nsheiwat slipped on a plastic hanger for actual proof that it caused her fall. *See United States v. Coutentos*, 651 F.3d 809, 821 (8th Cir. 2011) (determining there was no abuse of discretion in excluding expert testimony with marginal probative value, because it would have confused the issues and mislead the jury).

Rentschler also opined that "[a] plastic hanger . . . would be capable of causing a loss of friction between the bottom of Ms. Nsheiwat's foot and the ground that resulted in the kinematics associated with her fall." But as the district court recognized, jurors do not need experts to tell them tripping on hangers can cause falls. This is, again, just common sense. *See Ellis*, 738 F.2d at 270. Thus, the district court did not abuse its discretion by limiting Rentschler's testimony to the damages phase of the trial.

For these reasons, we affirm the district court's judgment.