UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-9159

SYLVIA GARCIA,

Plaintiff-Appellant,

VERSUS

EXCEL CORP.,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Texas

(5:92-CV-122-C)

(March 1, 1995)

Before KING, GARWOOD, and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

In this diversity jurisdiction action against Excel Corporation ("Excel"), Sylvia Garcia ("Garcia") appeals the district court's exclusion of evidence regarding negligent training. Finding error, we vacate and remand for a new trial.

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Garcia was an employee at a meat-packing facility owned and operated by Excel in Texas. Her work station was by a conveyor belt which moved cuts of meat with an assignment to remove and bag tenderloins. In June 1990 Garcia observed a significantly larger and heavier piece of meat that should have been removed from the belt by others before reaching her station. Believing that she was obliged to pick up the meat and return it to the employees who had missed it, she attempted a retrieval and injured her back in the process.

At trial of her suit against Excel, Garcia's counsel attempted to elicit testimony from various witnesses about Excel's allegedly negligent training of Garcia as causing her employment-related injury. Each attempt was met with an objection that the issue of negligent training was outside the scope of the pleadings as no specific allegations of negligence in training had been made in the complaint. The district court sustained the objections, barring testimony of any negligence of Excel based on a failure to train its employees. Garcia made a proper offer of proof and bill of exception with evidence of lack of training. During closing arguments counsel for Excel stated to the jury, over Garcia's objection, that it was being sued for negligence on two specific grounds that did not include negligence in Excel's training of its employees. The jury rejected Garcia's demands. Garcia timely appeals.

Analysis

Garcia claims that the district court erred in refusing to allow testimony of Excel's negligence in training its employees and in permitting Excel's counsel to state during closing argument that Garcia's claims for negligence were limited to the specific breaches of duty alleged in the pleadings. Finding merit in the first claim, we reverse and remand.

Rule 8 provides that a pleading is to contain "a short and plain statement of the claim showing that the pleader is entitled to relief."[1] There is no requirement that a complaint for an action grounded in negligence specifically state which legal duty a defendant has breached.[2] Instead, the rules embrace an approach grounded upon "simplicity and brevity" that fosters "nonlegalistic [and] nonjargonistic" statements of a plaintiff's claim.[3] Official Form 9 sets out a sample complaint for negligence that does not contain any mention or discussion of specific theories of negligence.

The instant complaint exceeds the minimums required by the rules. The complaint states that "the negligence of Excel

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[1]Fed.R.Civ.P. 8.

[2]Great Atlantic and Pacific Tea Company v. Jones, 294 F.2d 495 (5th Cir. 1961). Accord, Century "21" Shows v. Owens, 400 F.2d 603 (8th Cir. 1968).

[3]Fed.R.Civ.P. 84; Trevino v. Union Pacific R. Co., 916 F.2d 1230, 1234 (9th Cir. 1990).

Corporation proximately caused Plaintiff's injuries," and that Excel

> was negligent in numerous respects, some of which are as follows:
>
> - Failing to have a proper number of employees operating the line to prevent large pieces of meat from coming down the conveyor belt.
>
> - Negligence in placing plaintiff in this job position for which she was not physically capable of working.

(Emphasis added.) The complaint clearly states that it is enumerating "some" of "numerous" possible theories of negligence. The fact that there were other unspecified theories of negligence mentioned in the complaint was sufficient to place defendant on notice that there were other possible bases of recovery, and, should Excel have desired to limit the litigation to the allegations specified in the complaint, it could have moved, via Rule 12(e), for a more definite statement of the theories of negligence or breach of duty Excel was alleged to have violated.[4]

Further, Excel had other methods to limit the issues that would be litigated, including pretrial discovery, a Rule 56(d) partial summary judgment motion, or specifications in the pretrial order.[5] In this case, the pretrial order contained a reiteration of Garcia's claim that "the accident was a direct and proximate result of the negligence of Excel Corporation." Additionally,

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[4]Fed.R.Civ.P. 12(e); Great Atlantic and Pacific Tea Co.

[5]Wright and Miller, Federal Practice and Procedure, § 1202 (2d ed. 1990).

among the contested issues of fact listed in the pretrial order was the following: "Was the negligence, if any, of Excel Corporation a proximate cause of this injury." The listed contested issues included none directed to specific acts or omissions of Excel. As "the pretrial order controls the course of the trial,"[6] if Excel wished to have specific theories of liability noted, it should have raised its objection when the pretrial order was under consideration by the court. We conclude that the ruling of the trial court excluding testimony on the issue of Excel's negligence in its training of its employees was erroneous.

Once a ruling of the trial court excluding evidence is found erroneous, a showing of substantial prejudice to the complaining party is required to justify a reversal.[7] Such prejudice exists in this case. Plaintiff sought to show at trial that she was under the impression that it was her responsibility to retrieve the large piece of meat in question and that Excel was negligent in its failure to instruct her otherwise. The court's ruling prevented this. Excel, on the other hand, elicited testimony tending to show that the heavy lifting allegedly responsible for Garcia's back injury was not required by her job and counsel stated during closing argument that Garcia had never been told by her employer to pick up the large piece of meat in question. Thus, Garcia was

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[6]Fed.R.Civ.P. 16; Trinity Carton Co. v. Falstaff Brewing Corp., 767 F.2d 184, 192 n.13 (5th Cir. 1985).

[7]Fed.R.Civ.P. 61; Smith v. Wal-Mart Stores (No. 471), 891 F.2d 1177 (5th Cir. 1990); King v. Gulf Oil Co., 581 F.2d 1184 (5th Cir. 1978).

denied the opportunity to advance a theory of negligence in training and to offer evidence necessary to support it, but Excel was allowed to present evidence and argument that Garcia was not required by her training to perform the task that allegedly caused her injury. Excel does not argue that this theory of negligence could not be a viable basis for recovery.

In light of this error and the resulting prejudice, we **VACATE** the judgment of the district court and **REMAND** for a new trial consistent herewith.