

IN THE SUPREME COURT, STATE OF WYOMING

2026 WY 104

APRIL TERM, A.D. 2026

September 24, 2026

TARA ROSE and JAMES ROSE, as
co-conservators for and on behalf of
KATHLEEN ROSE,

Appellants
(Plaintiffs),

v.

CAMPBELL COUNTY HEALTH
d/b/a CAMPBELL COUNTY
MEMORIAL HOSPITAL, a/k/a
CAMPBELL COUNTY HOSPITAL
DISTRICT d/b/a CAMPBELL
COUNTY MEMORIAL HOSPITAL,

Appellee
(Defendant).

S-26-0028

*Appeal from the District Court of Campbell County
The Honorable Michael J. McGrady, Judge*

Representing Appellant:

Michael J. Fitzgerald and James E. Fitzgerald, The Fitzgerald Law Firm, Cheyenne,
Wyoming. Argument by Mr. Fitzgerald.

Representing Appellee:

Scott E. Ortiz and Zara S. Mason, Williams, Porter, Day & Neville, P.C., Casper,
Wyoming. Argument by Ms. Mason.

Before BOOMGAARDEN, C.J., and GRAY, FENN, and HILL, JJ., and HIBBEN, DJ.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Third. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82002, of any typographical or other formal errors so that correction may be made before final publication in the permanent volume.

HIBBEN, District Judge.

[¶1] This appeal arises from a medical malpractice and institutional negligence action brought by Appellants against Cambell County Health (“CCH”). Following a seven-day jury trial in Campbell County, the jury returned a verdict in favor of CCH. The jury’s determination was guided by a special verdict form containing a threshold question, Question 1a, which asked whether a non-party adolescent patient had “inappropriately touched” Ms. Rose. Under the structure of the verdict form, the jury answered this question in the negative, which concluded their deliberations and resulted in a defense verdict. On appeal, Appellants contend an error of law occurred at trial because the verdict form required the jury to make a determination regarding an intentional tort without instructing the jury on the legal definition of that intentional tort under Wyoming law.

[¶2] Appellants challenge the judgment, the denial of the motion for a new trial, and the order on costs. We hold that the Appellants fully preserved their objections to the special verdict form and did not waive their right to challenge the inclusion of Question 1a on appeal. However, on the merits, we find that no error occurred. The special verdict form and the accompanying instructions correctly stated the law of Wyoming, and the phrase “inappropriately touch” did not require a formal legal definition. Furthermore, the district court acted within its sound discretion when responding to the jury’s inquiries during deliberations, and substantial evidence supported the jury’s verdict. Finally, the district court’s order on costs is affirmed.

ISSUES

[¶3] We rephrase the relevant issues as follows:

- 1) Did the Appellants preserve their objection to the special verdict form for appeal?
- 2) Did the special verdict form and jury instructions amount to an error of law?
- 3) Did the district court abuse its discretion by denying Appellants’ motion for a new trial?
- 4) Did the district court abuse its discretion by awarding costs to CCH?

FACTS

[¶ 4] Kathleen “Katie” Rose, a sixteen-year-old girl, was a victim of a brutal rape in November of 2021. Following this traumatic event, Ms. Rose experienced psychiatric disorders and suicidal ideation, leading to her admission into CCH’s adolescent inpatient psychiatric unit for mental health care and treatment in January 2022. When Ms. Rose was

admitted, there were two teenage female patients and one teenage male patient, Z.L., admitted to the same unit.

[¶ 5] On January 9, 2022, Ms. Rose and the three other teenage patients were sitting on individual chairs watching a movie in a common room. A member of CCH staff was in the nurse's station where the common room could be monitored, but was not physically present in the room with the patients. During the movie, Ms. Rose fell asleep. When Ms. Rose awoke, another patient told her that Z.L. had been touching her buttocks with his foot while she had been sleeping. Ms. Rose then claimed that while she was awake, Z.L. moved his chair closer to hers and put his hand in her pants. Ms. Rose reported the incident to CCH and she underwent a sexual assault examination. Three days later, Ms. Rose was discharged from CCH.

[¶ 6] Appellants, as co-conservators of Ms. Rose, filed a medical malpractice complaint alleging that the teenage patients were inadequately supervised by CCH employees, and due to this alleged negligence, Ms. Rose was harmed. Prior to the conclusion of the seven-day jury trial, the parties submitted proposed jury instructions and special verdict forms. CCH's primary theory of defense was that Z.L. had never inappropriately touched Ms. Rose. CCH proposed Question 1a on their special verdict form, asking the following: "Did Z.L. inappropriately touch Katie Rose?" Appellants objected, arguing that the jury should be asked whether CCH breached the duties owed to Ms. Rose and whether that breach caused her harm. The district court ruled that Question 1a would be included on the special verdict form as a threshold factual question. No jury instruction included a definition for "inappropriately touched."

[¶ 7] After deliberations began, the jury submitted a question to the court regarding Question 1a:

"The first question dictates, "inappropriate" touching, but per CCH and Standard of Care, Any touching is considered inappropriate. Are we to Refine this to 'touched in a sexual manner' or use the hospital and SOC's definition?"

The parties and court discussed the issue, and the court determined that the instructions were broad enough to encompass both non-sexual and sexual contact and referred the jury to review the instructions already given.

[¶ 8] Approximately seven hours later, the jury submitted a second question:

"Is it allowed for patients to touch on the Behavioral Health Ward at CCH? The jury cannot find a definitive policy answer."

The parties could not reach an agreement on a stipulation, and the court informed the jury that the court could not answer their question. Shortly after receiving a response to the second question, the jury returned a verdict answering “No” to Question 1a, finding in favor of CCH.

[¶ 9] Appellants filed a motion for a new trial, raising identical issues as presented to this Court. The district court denied the motion. CCH then filed a motion for costs with an attached certificate of costs. The district court granted the motion, finding that the response filed by the Appellants was untimely.

[¶ 10] Appellants appeal the judgment and the order denying their motion for new trial and request remand for a new trial. Alternatively, they request the matter be remanded for a determination of whether costs claimed by CCH were actually and necessarily incurred.

DISCUSSION

I. Did the Appellants preserve their objection to the special verdict form for appeal?

A. Standard of Review

[¶ 11] CCH contends Appellants waived their right to challenge Question 1a on the special verdict form by failing to object. A failure to object to jury instructions precludes appellate review unless plain or fundamental error is found. *Beavis ex rel. Beavis v. Campbell Cnty. Mem’l Hosp.*, 2001 WY 32, ¶ 12, 20 P.3d 508, 512 (Wyo. 2001); *Goggins v. Harwood*, 704 P.2d 1282, 1289 (Wyo. 1985) (other citations omitted). Objections must be timely made and must state “distinctly the matter objected to and the grounds for the objection.” W.R.C.P. 51(c). “A party alleging error in a special verdict form must be vigilant. Failure to object to a special verdict form will not be considered on appeal if the complaining party failed to object or present their own alternative at trial.” *Beckwith v. Weber*, 2012 WY 62, ¶ 30, 277 P.3d 713, 721 (Wyo. 2012) (citing *Duffy v. Brown*, 708 P.2d 433, 439 (Wyo. 1985)) (other citations omitted).

B. Appellants Preserved Their Objection

[¶ 12] “The matter of waiver is grounded, among other things, on the proposition that jury trials are time-consuming and costly proceedings and while a litigant is entitled to a fair trial, certain it is that he has responsibilities to assist the trial court in bringing about such a result.” *DeWitty v. Decker*, 383 P.2d 734, 736 (Wyo. 1963). Objecting to a special verdict form question allows the district court an opportunity to avoid error. *Rissler & McMurry Co. v. Atl. Richfield Co.*, 559 P.2d 25, 30, n.1 (Wyo. 1977). The Appellants noted their objection to Question 1a during the jury instructions conference:

[Counsel]: But so, no, the first question shouldn't be was she inappropriately touched. The question should just be, did they breach their duty and did it cause harm and have Z.L. on the verdict form as an actor.

The district court rephrased the objection to CCH for a response:

So the plaintiffs have conceded that Z.L. will be on the verdict form as an actor in the apportionment. The defendants have submitted on that, the first question is, "Did Z.L. inappropriately touch Kathleen Rose?" And—and then, "Was that a proximate cause of her injury?" And the plaintiffs' position is that, that's all subsumed within the questions associated, was there duty, breach, causation, and if she was not inappropriately touched by Z.L., there's no cause here.

Appellants properly objected to the insertion of the threshold factual question on the special verdict form. Appellants also proposed and argued for the use of special verdict form questions they submitted to the court prior to trial. The district court was apprised of Appellants' position and chose to reject it. The objection is preserved, and this issue is properly before the Court.

II. Did the verdict form and jury instructions amount to an error of law?

A. Standard of Review

[¶ 13] We review challenges to jury instructions under an abuse of discretion standard. *Addakai v. State*, 2015 WY 30, ¶ 37, 344 P.3d 761, 770 (Wyo. 2015) (citing *Budder v. State*, 2010 WY 123, ¶ 7, 238 P.3d 575, 577 (Wyo. 2010)). We have also said the following:

When we review claims of error involving jury instructions, the district court is afforded significant deference. A district court is "given wide latitude in instructing the jury and, as long as the instructions correctly state the law and the entire charge covers the relevant issue, reversible error will not be found." Its ruling on an instruction must be prejudicial to constitute reversible error. Because the purpose of jury instructions is to provide guidance on the applicable law, prejudice will result when the instructions confuse or mislead the jury.

Stocki v. Nunn, 2015 WY 75, ¶ 21, 351 P.3d 911, 917-918 (Wyo. 2015) (citing *Brown v. State*, 2015 WY 4, ¶ 40, 340 P.3d 1020, 1031 (Wyo. 2015)) (quoting *Luedtke v. State*, 2005 WY 98, ¶ 28, 117 P.3d 1227, 1232 (Wyo. 2005)) (other internal citations omitted).

[¶ 14] We review de novo the legal sufficiency of jury instructions. *Merit Energy Co., LLC v. Horr*, 2016 WY 3, ¶ 23, 366 P.3d 489, 496 (Wyo. 2016) (citing *Pina v. Christensen*, 2009 WY 64, ¶ 5, 206 P.3d 1298, 1299–300 (Wyo. 2009)). Sufficient instructions correctly state the law, are not misleading, and permit the parties to argue their respective theories of the case. *Id.*, ¶ 22. 366 P.3d at 496.

[¶ 15] Regarding the verdict form pursuant to W.R.C.P. 49, “[t]he submission of . . . a particular form of special verdict is vested in the sound discretion of the trial court,” and reversal may be predicated upon an abuse of that discretion. *Stocki*, ¶ 22, 351 P.3d at 918 (quoting *Turcq v. Shanahan*, 950 P.2d 47, 53 (Wyo. 1997)) (citing *HJO v. State (In re KMO)*, 2012 WY 99, ¶ 28, 280 P.3d 1203, 1213 (Wyo. 2012)). The verdict form is considered together with the jury instructions submitted to the jury. *Id.*

B. The Predicate Question Was Proper

[¶ 16] Throughout trial, Appellants referred to the “inappropriate touching” as “sexual molestation” or “sexual assault” beginning in opening statement and continuing through closing argument. Witnesses repeatedly referred to the incident as “sexual assault” or “sexual molestation.” Within the context of this case, the “inappropriate touch” was Z.L.’s alleged act of placing his hands down Ms. Rose’s pants. In closing argument, Appellants argued this touching did occur:

You’re also being asked to find if what Z.L. did was a cause of Katie Rose’s damages. And there are only two people who know what truly happened and it’s Katie Rose, and Z.L., and you didn’t hear from Z.L. You heard from Katie Rose. And Katie Rose bravely came up into the courtroom and sat in that chair and told you that while she was on the 5th floor Z.L. stuck his hand down her pants, stuck it under—his hand under her underwear and touched her vagina.

[¶ 17] Appellants’ contention instruction is clear that the “inappropriate touch” was the alleged act of placing his hands inside her pants:

[O]n January 8th or 9th, 2022, Ms. Rose, Z.L., and two additional adolescent patients on the Behavioral Health Services Unit, were watching a moving together in the common area. No CCH staff were in the common room with the adolescent patients. Ms. Rose was left unattended. Z.L. began touching Ms. Rose’s buttocks. Z.L. then put his hand down Ms. Rose’s pants inside of her underwear and touched her vagina.

[¶ 18] CCH argued this touching never occurred. CCH was entitled to present its theory of defense. *See, e.g., United States v. Ortiz*, 804 F.2d 1161, 1163–64 (10th Cir. 1986). Credibility was an issue in this case, and there was sufficient evidence for the jury to find as CCH requested. This is a proper predicate factual question because, if this contact did not occur, then CCH could not have been found liable for alleged harm incurred. *See Selby v. Conquistador Apartments, Ltd.*, 990 P.2d 491, 494–95 (Wyo. 1999). The district court did not abuse its discretion by submitting Question 1a as a factual gateway on the special verdict form to the jury.

C. No Definition Was Necessary for “Inappropriate Touch,” and No Instruction Was Needed for Elements of Civil Battery

[¶ 19] Appellants argue that under W.R.C.P. 49(a)(2), the court must give instructions and explanations necessary to enable the jury to make its findings on submitted issues. Appellants assert that the omission of a definition for “inappropriate touch” and the omission of an instruction on the elements of civil battery misled the jury into believing they had to find a “sexual assault.” We disagree. Jury Instruction No. 1 included the parties’ contentions. Appellants contended that Z.L. touched Ms. Rose’s buttocks and put his hand down her pants, while CCH contended the touching never occurred. While contention instructions are not law, they present facts supporting the parties’ theories. *See generally Garnick v. Teton Cnty. Sch. Dist. No. 1*, 2002 WY 18, ¶ 30, 39 P.3d 1034, 1048 (Wyo. 2002).

[¶ 20] The jury also had the information necessary to determine what constituted “inappropriate touching” within the context of the trial. *See supra* ¶ 16. None of Appellants’ witnesses testified that the touching or kicking of the buttocks caused Ms. Rose’s subsequent trauma. Rather, Appellants’ witnesses testified that Ms. Rose’s trauma resulted from being sexually assaulted while in an institution. As used in this case, all parties used the phrase “inappropriate touch” as a synonym for sexual touching. Indeed, Appellants never referenced kicking or poking Ms. Rose’s buttocks during closing argument. “Inappropriate touching” did not need to be defined as an abstract legal term to “correctly state the law,” avoid misleading the jury, or “permit the parties to argue their respective theories of the case.” *Merit Energy Co., LLC*, 2016 WY 3, ¶ 22, 366 P.3d at 496. The jury was fully capable of applying the phrase as used by the parties during trial.

[¶ 21] The instructions and verdict form, considered together, correctly stated the law and adequately guided the jury.

D. The District Court Did Not Abuse Its Discretion by Not Answering the Jury’s Inquiries

[¶ 22] Appellants also argue the jury’s inquiries demonstrated that the jury instructions and verdict form were confusing and prejudicial, and the district court erred by not substantively answering the jury’s questions. Wyoming Statute § 1-11-209 states, “After the jurors have retired for deliberation . . . if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court where information upon the matter of law shall be given.”

[¶ 23] During deliberations, the jury submitted two written inquiries, which the district court answered as follows:

Juror Question No. 1: The first question dictates, “inappropriate” touching, but per CCH and Standard of Care, Any touching is considered inappropriate. Are we to Refine this to “touched in a sexual manner” or use the hospital and SOC’s definition?

Juror Question Instruction No. 1: The Court received the question from the jury regarding question one on the verdict form. The Court at this time asks the jury to review all the instructions given in this matter to answer the question.

Juror Question No. 2: Is it allowed for patients to touch on the Behavioral Health Ward at CCH? The jury cannot find a definitive policy answer.

Juror Question Instruction No. 2: The Court received the question from the jury regarding whether patients on the Behavioral Health Ward at CCH are allowed to touch.

Members of the jury: The Court cannot answer your question. It is for you as fact finders to interpret the evidence, weigh it, and evaluate it without further directions from the Court. Please proceed with your deliberations.

[¶ 24] Issues of fact are to be determined by the jury, while issues of law are for the court to resolve. *Snow v. State*, 2009 WY 117, ¶ 30, 216 P.3d 505, 514 (Wyo. 2009) (citing *Lapp v. City of Worland*, 612 P.2d 868, 873 (Wyo. 1980)). The jury’s questions did not seek clarification of the governing legal standard, but rather reflected their internal process of weighing the trial evidence and applying it to the threshold question. The district court recognized that issuing a mid-deliberation legal definition carried a high risk of emphasizing certain evidence to the detriment, potentially, of other evidence, or suggesting unintended legal significance, or invading the jury’s role as trier of fact.

[¶ 25] If the court had instructed that any touch constituted an “inappropriate touch” for liability purposes, the court would have effectively directed a verdict on that issue and bypassed Appellants’ burden to prove that this specific contact caused Ms. Rose’s psychiatric damages. *Merit Energy Co., LLC*, 2016 WY 3, ¶ 22, 366 P.3d at 496 (quoting *Pina*, 2009 WY 64, ¶ 5, 206 P.3d at 1299–300) (sufficient jury instructions must “permit the parties to argue their respective theories of the case.”). On the other hand, if the court had restricted the definition to strictly sexual contact, it would have improperly limited the Appellants’ broad theory and pleadings. *Id.*

[¶ 26] By referring the jury to the complete instructions and informing the jury that the court could not answer factual inquiries, the district court preserved the province of the jury while minimizing potential prejudice. Under these circumstances, the court’s restraint was both prudent and legally sound and did not constitute an abuse of discretion.

III. Did the district court abuse its discretion by denying Appellants’ motion for a new trial?

A. Standard of Review

[¶ 27] Absent an abuse of discretion, we will not overturn a trial court’s ruling on a motion for a new trial. *Willey v. Willey*, 2016 WY 116, ¶ 44, 385 P.3d 290, 302–03 (Wyo. 2016) (citing *Hannifan v. Am. Nat’l Bank of Cheyenne*, 2008 WY 65, ¶ 37, 185 P.3d 679, 693 (Wyo. 2008)).

In determining whether there has been an abuse of discretion, we focus on the “reasonableness of the choice made by the trial court.” If the trial court could reasonably conclude as it did and the ruling is one based on sound judgment with regard to what is right under the circumstances, it will not be disturbed absent a showing that some facet of the ruling is arbitrary or capricious.

Id. (quoting *Jordan v. Brackin*, 992 P.2d 1096, 1098 (Wyo. 1999)). “When a party moves for a new trial on the grounds the verdict is inconsistent with the evidence, we review the record to determine if there is sufficient evidence to support the jury’s verdict.” *Cardenas v. Fossen*, 2024 WY 117, ¶ 27, 558 P.3d 943, 951 (Wyo. 2024). Evidence is assumed in favor of CCH, any conflicting evidence is not considered, and CCH is afforded the benefit of every favorable inference that may reasonably and fairly be drawn. *See id.*

B. The District Court Did Not Abuse Its Discretion by Denying Appellants’ Motion for a New Trial

[¶ 28] Appellants argue that because Z.L. admitted to kicking Ms. Rose's buttocks, and witness D.H. corroborated this, the undisputed evidence shows an offensive contact occurred. Appellants argue that sexual assault was not a required element of their negligence claim against CCH. However, at trial, Appellants frequently utilized the terms “sexual assault” and “sexual molestation” to describe the substance of the incident causing Ms. Rose’s harm. It was reasonable for the jury to infer that the “inappropriate touch” required to establish liability for damages was sexual in nature. Further, “[W]hen the facts permit the drawing of more than one inference, then it is for the jury to choose which one will be utilized and, if supported by substantial evidence, the jury’s choice will be held by us to be conclusive.” *Reese v. Dow Chem. Co.*, 728 P.2d 1118, 1120 (Wyo. 1986) (quoting *Crown Cork & Seal Co., Inc. v. Admiral Beverage Corp.*, 638 P.2d 1272, 1275 (Wyo. 1982)). Evidence at trial included testimony from two witnesses who testified they did not see Z.L. putting his hand down Ms. Rose’s pants; Ms. Rose testified she would not always be truthful in order to get desired outcomes; and Ms. Rose’s father testified he had difficulty discerning whether Ms. Rose was being honest. As for evidence related to poking or kicking in the buttocks, the Appellants failed to present evidence that this non-sexual contact (poking or kicking) was the cause of Ms. Rose’s severe psychiatric injuries. Therefore, sufficient evidence existed for the jury to answer Question 1a in the negative. The district court did not act arbitrarily or capriciously, and its denial of Appellants’ motion for a new trial was not an abuse of discretion.

IV. Did the district court abuse its discretion by awarding costs to CCH?

A. Standard of Review

[¶ 29] We review a district court’s award of costs under an abuse of discretion standard. *Beckwith*, ¶ 32, 277 P.3d at 721 (citing *Wilson v. Tyrrell*, 2011 WY 7, ¶ 58, 246 P.3d 265, 281 (Wyo. 2011)). The party contesting the ruling must show the court “act[ed] in a manner which exceeds the bounds of reason under the circumstances.” *Id.* (citations omitted).

B. The District Court Did Not Abuse Its Discretion By Awarding Costs

[¶ 30] “[T]he court may award and tax costs and apportion them between the parties on the same or adverse sides as it deems right and equitable.” W.S. § 1-14-126(a); *Bellis v. Kersey*, 2010 WY 138, ¶ 23, 241 P.3d 818, 825 (Wyo. 2010). The procedure for seeking costs is set forth in U.R.D.C. 501, requiring the prevailing party to file “an itemized certificate of costs within twenty days after entry of the ‘final judgment allowing costs.’” *Bellis*, ¶ 24, 241 P.3d at 826 (quoting U.R.D.C. 501(a)(1)). An objection to a certificate of costs is required within ten days after service, and costs are taxed as set forth in the certificate if no objections are filed. *Id.* (citing U.R.D.C. 501(a)(2)). “There is no indication in U.R.D.C. 501 that this time limit is discretionary.” *Id.*, ¶ 26, 241 P.3d at 826.

[¶ 31] CCH filed a motion for costs, which included a certificate of costs as an exhibit, in accordance with the requirements set forth in W.R.C.P. 54(d) and U.R.D.C. 501(a)(1). Appellants filed a response to the motion following deadlines set under W.R.C.P. 6(c)(2) instead of an objection following deadlines set under U.R.D.C. 501(a)(2). Appellants' response was filed eighteen days after CCH's motion for costs was filed. Appellants' response was untimely under the ten-day requirement of service of objections to a certificate of costs as stated in U.R.D.C. 501(a)(2). Therefore, the district court did not abuse its discretion by taxing Appellants as set forth in CCH's motion for costs.

CONCLUSION

[¶32] The judgment, order denying motion for new trial, and order for costs are AFFIRMED.