


1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 1/30/2023 11:13 AM

2 **RENE OROZCO,**

3 Plaintiff-Appellant,

4 v.


Mark Reynolds
No. A-1-CA-40246

5 **BOARD OF COUNTY COMMISSIONERS**
6 **OF THE COUNTY OF SANDOVAL and**
7 **Corrections Officer BRIAN EDWARDS,**

8 Defendants-Appellees.

9 **APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY**
10 **James A. Noel, District Judge**

11 Meintzer Law Firm
12 Ed Meintzer
13 Los Lunas, NM

14 Steven K. Sanders and Associates, LLC
15 Steven K. Sanders
16 Albuquerque, NM

17 for Appellant

18 New Mexico Association of Counties
19 Brandon Huss
20 Albuquerque, NM

21 for Appellees

22 **MEMORANDUM OPINION**

23 **ATTREP, Chief Judge.**

24 {1} Plaintiff appeals from the district court's order granting summary judgment in
25 favor of Defendants on the basis that Plaintiff failed to provide an expert witness to

1 rebut evidence presented by Defendants’ expert witness regarding the standard of
2 care in monitoring inmates and providing medical care at the Sandoval County
3 Detention Center (SCDC). We issued a calendar notice proposing to affirm. Plaintiff
4 has filed a memorandum in opposition, which we have duly considered.
5 Unpersuaded, we affirm.

6 {2} In his memorandum in opposition, Plaintiff continues to argue that expert
7 testimony was not required to establish Defendants’ negligence because the attack
8 occurred in front of correctional officers and because he was released and not taken
9 to a hospital per medical recommendations. [MIO 5-6] Specifically, he argues that
10 “expert testimony on the standard of care is not necessary as the negligence can be
11 determined by the common knowledge of average persons.” [MIO 6]

12 {3} Plaintiff does not dispute any of the facts relied upon in the calendar notice.
13 Rather, he asserts that our reliance on *Villalobos v. Board of County Commissioners*
14 *of Doña Ana County*, 2014-NMCA-044, 322 P.3d 439, was incorrect, as that case
15 addressed a correctional facility’s failure to monitor inmates not within view of
16 correctional officers. [MIO 6-7] He argues that because the attack occurred directly
17 in front of correctional officers, this case is unlike the assault in *Villalobos*, which
18 occurred out of the correctional officers’ sight, so expert testimony is not needed, as
19 the average lay juror can determine that correctional officers were negligent.

1 [MIO 7] In a related argument, Plaintiff argues that *Villalobos* involved the
2 monitoring of inmates, which Plaintiff asserts was not at issue here. [MIO 8]

3 {4} We disagree with Plaintiff’s contention that *Villalobos* is inapplicable because
4 this case does not involve the monitoring of inmates. This case involved the
5 supervision of inmates, including Plaintiff, within the direct sight of correctional
6 officers. Further, the immediate removal of Plaintiff from the pod, which Plaintiff
7 contends should have occurred, would have necessitated the monitoring and
8 supervision of other inmates. Consequently, we are unpersuaded that dispensing
9 with the standard of care is appropriate merely because inmates are within
10 correctional officers’ direct sight. Additionally, contrary to Plaintiff’s contention, the
11 proposed disposition does not mandate that every action against a detention center
12 requires expert testimony. Nor has this Court interpreted *Villalobos* as requiring an
13 expert in every case against a detention center. *See id.* ¶ 6 (“Although a case in which
14 an expert is not necessary to establish negligence in a prison context may exist, it is
15 not this case.”). Rather, whether expert testimony is necessary depends on the
16 specific facts and circumstances in each case. *See id.* ¶¶ 8-11.

17 {5} Plaintiff further argues, citing *Richter v. Presbyterian Healthcare Services*,
18 2014-NMCA-056, 326 P.3d 50, that because expert testimony is not always required
19 in the medical malpractice context to establish a claim of negligence, similarly,
20 expert testimony was not required here because an average lay juror could determine

1 that correctional officers were negligent. [MIO 9-11] We disagree. In *Richter*, this
2 Court discussed the difference between “medical or professional negligence claims”
3 and “ordinary negligence claims.” *Id.* ¶ 21. To distinguish between the two, this
4 Court adopted a test that considers whether professional interpretation of certain
5 conduct is necessary. *Id.* ¶ 22. The Court explained that “[i]f the act involves the use
6 of specialized knowledge or skill to make a judgment call as to the appropriate thing
7 to do or not do, expert testimony will likely be needed to assess the resultant act or
8 failure to act. If not, expert testimony is not required.” *Id.*

9 {6} Based on the facts and circumstances in this case, a professional interpretation
10 of the standard of care regarding correctional facility procedures is required. Given
11 the chaotic scene and Plaintiff’s panicked state, including Plaintiff yelling that other
12 inmates threatened they were going to “f*** him up” as he pleaded to be removed
13 [MIO 2], Plaintiff’s immediate removal from the pod could have endangered both
14 correctional officers and inmates. In such a situation, the design of the correctional
15 officers’ security station, its location in the facility relative to the surrounding pods
16 and secured areas, and the safety and security of other inmates as well as correctional
17 officers in responding to such an incident must be established by an expert skilled in
18 the safety procedures and layout of the correctional facility. The average lay juror
19 cannot be expected to understand, without the assistance of expert testimony, what
20 the standard of care is regarding inmate and officer safety, or response times in the

1 midst of fights and violent outbreaks. Without such expert testimony, Plaintiff
2 cannot establish whether the correctional officers' response to Plaintiff's pleas to be
3 immediately removed from the pod fell below the standard of care.

4 {7} Insofar as Plaintiff continues to argue that expert testimony is not needed to
5 determine SCDC's negligence for failure to provide Plaintiff hospital care when the
6 SCDC's own medical staff recommended it [MIO 4], we are similarly unpersuaded.¹

7 We recognize, as Plaintiff points out, that this is not a medical negligence claim.

8 [MIO 12] However, without expert testimony concerning both SCDC's internal
9 policies for transferring inmates for hospital care and whether Plaintiff's injuries

10 warranted further hospital care, the average juror would not have the necessary

11 information to evaluate Defendants' actions and whether such actions fell below the

12 standard of care. Thus, we conclude that, absent expert testimony, Plaintiff lacks

13 evidence to support his theory that a breach of the standard of care occurred.

14 {8} We therefore conclude that expert testimony was required to rebut

15 Defendants' evidence regarding prison industry standards in the monitoring and

¹We note that Defendants asserted in their motion for summary judgment that SCDC relies exclusively on an independent contractor for all medical services to make all medical decisions, and as a result, they are immune from claims under the New Mexico Tort Claims Act. [RP 140, 145] Plaintiff's response to the motion for summary judgment does not dispute that fact, but argues that it does not absolve Defendants of negligence. [RP 186] For purposes of this opinion, we assume without deciding that SCDC could be liable for the negligence of the independent contractor's failures.

1 provision of medical care for inmates; Plaintiff provided none. Unpersuaded that
2 Plaintiff's arguments change our proposed disposition, we conclude that Plaintiff
3 fails to meet his burden of establishing error on appeal. *See State v. Aragon*, 1999-
4 NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (stating that the party claiming error
5 bears the burden of establishing error).

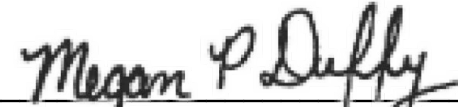
6 {9} For the reasons stated in our notice of proposed disposition and herein, we
7 affirm the district court's grant of summary judgment in favor of Defendants.

8 {10} **IT IS SO ORDERED.**

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JENNIFER L. ATTREP, Chief Judge

11 **WE CONCUR:**

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13 _____
MEGAN P. DUFFY, Judge

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15 _____
SHAMMARA H. HENDERSON, Judge