IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROSA B. CAMACHO,
Plaintiff-Appellee,

v.

COMMONWEALTH HEALTH CENTER & DEPARTMENT OF PUBLIC HEALTH,
Defendants-Appellants.

Supreme Court No. 2014-SCC-0018-CIV

Superior Court No. 07-0484

OPINION

Cite as: 2016 MP 14

Decided December 14, 2016

Charles Brasington, Assistant Attorney General, Office of the Attorney General, Saipan, MP, Defendants-Appellants.

David G. Banes, Saipan, MP for Plaintiff-Appellee.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; PERRY B. INOS, Associate Justice; STEVEN L. HANSEN, Justice Pro Tem.

INOS, J.:

¶ 1 The Commonwealth Health Center, et al. ("CHC") appeals the judgment against CHC in favor of Rosa B. Camacho ("Appellee"). Appellee sued CHC for negligence, and after a one-day bench trial, the judge ("original judge") took the case under advisement. However, the original judge became unavailable before a decision was rendered, and a successor judge took over the case. On appeal, CHC argues the successor judge erred by: (1) applying the "public utility" standard of care from Restatement (Second) of Torts § 343A; (2) finding CHC breached its duty of care; (3) failing to certify its familiarity with the record pursuant to NMI Rule of Civil Procedure 63 ("Rule 63"); (4) assessing the credibility of a witness who testified before the original judge; and (5) refusing to recall the witness to retestify upon CHC's request. For the following reasons, we AFFIRM the trial court's ruling.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 On May 2, 2007, a water pipe in Room C-04 at CHC ruptured. When Nurse Elaine Camacho ("Nurse Camacho") checked on her patient around 2:00 a.m. in Room C-04, she found half of the floor wet. She notified housekeeping and maintenance of the situation. Maintenance tried to fix the leak that morning, but the efforts were unsuccessful and the leak worsened. Consequently, the patient was transferred directly across the hall to Room C-14. Housekeeping attempted to minimize the extent to which water leaked into the hall by laying sheets on the floor near the doorway to Room C-04. Housekeeping also placed a cone close to the center of the hallway, about three feet from the wall between Rooms C-04 and C-14, and mopped at least every fifteen minutes.

¶ 3 Appellee, who regularly visited to provide companionship and assistance to the patient in Room C-04, arrived at CHC around 6:30 the same morning. According to Nurse Camacho, as Appellee was passing the nursing station on her way to visit the patient, Nurse Camacho informed Appellee of the water leak in Room C-04 and that the patient had been moved to the room across the hall. In contrast, Appellee asserts she saw Nurse Camacho and another nurse at the nursing station but neither informed her of the leak or that the patient had been relocated. On her way to Room C-04, Appellee saw a cone with a warning sign ahead in the hall between Rooms C-04 and C-14, continued on, slipped, and fell between Rooms C-02 and C-04. Appellee testified she did not see water on the floor before she slipped. She only noticed water coming from the sidewall of Room C-04 after she had fallen.

¶ 4 Appellee sued for negligence. At trial, the court heard testimony from several witnesses, including Nurse Camacho and Appellee. At the conclusion of the trial, the original judge took the matter under advisement. But before a decision was issued, the original judge became unavailable. The case was

therefore assigned to a successor judge. The parties then stipulated before the successor judge:

> Pursuant to Com. R. Civ. Proc. 63, the parties waive any right they may have to recall any witness for further testimony. The parties further respectfully request that this Court issue its Order that it will become familiar with the record, so certify, and determine whether the proceedings in the case may be completed without prejudice to the parties, and the parties further agree and stipulate that no prejudice will result from this Court issuing such an Order and completing the proceedings in this cause.

Camacho v. Commonwealth Health Center, et al., No 07-0484 (NMI Super. Ct. Jul. 26, 2012) (Stipulation to Submit Case on the Record at 2) [hereinafter Stipulation]. The court approved the Stipulation, and stated: "[T]he Court will review the record of the prior proceedings in this case and become familiar with it and so certify upon completion." *Camacho v. Commonwealth Health Center, et al.*, No 07-0484 (NMI Super. Ct. Jul. 26, 2012) (Order Approving Stipulation to Submit Case on the Record at 1).

¶ 5 The court then issued its findings of fact and conclusions of law; however, it did not certify its familiarity with the record. The court first concluded CHC owed a duty of care to Appellee as an invitee. Then, it considered whether CHC's status as a government entity meant it "should have anticipated that [Appellee] would proceed to encounter known or obvious dangers, therefore perhaps subjecting [CHC] to liability where an ordinary possessor of land would not be subject to such liability." *Camacho v. Commonwealth Health Center, et al.*, No 07-0484 (NMI Super. Ct. Apr. 1, 2013) (Findings of Fact and Conclusions of Law at 6) [hereinafter Findings]. The court concluded CHC did have "special reason to anticipate harm to [Appellee]." *Id.* It further determined CHC breached its duty of care, concluding CHC should have anticipated that Appellee would proceed down the hall despite known or obvious dangers because it was the only way to the patient's room.

¶ 6 However, based upon Appellee's testimony that she did not see water on the floor and Nurse Camacho's testimony that the floor was dry when she saw Appellee, the court also found that the danger was not known or obvious:

> This finding is based on evidence that the danger was not known or obvious. [Appellee] testified that she did not see any water at first and [Nurse] Camacho testified that the floor was dry when she encountered [Appellee], which demonstrates that the water was at the most not obvious and at the least not known.

Id. at 7.

¶ 7 The court also found Nurse Camacho was not a credible witness for four reasons:

> (1) Housekeeping Supervisor Edward Cariño testified that he joined security's interview of Nurse Camacho after the incident, and no mention was made of any conversation Nurse Camacho had with Appellee, warning her either of the water [on] the floor, or informing her of [the patient's] room change; (2) Nurse Camacho testified that when she went to investigate the cry, she observed Appellee leaning against the wall, and did not know whether Appellee had fallen "or was getting up from sleeping or what";[1] (3) the timing of Appellee's fall and Nurse Camacho's shift change suggested Nurse Camacho was likely concerned with finishing her charting on time so she could go home; and (4) Nurse Camacho testified the floor was dry when she observed Appellee on the floor, which seemed unlikely given that the leak was apparently so severe that Housekeeping had to check on the area every fifteen minutes.

Id. at 3. CHC objected to the court's findings and conclusions, asserting the court erred by failing to certify its familiarity with the record under Rule 63. CHC further requested the court recall Nurse Camacho to testify. The court overruled the objection, finding that CHC waived its right to recall witnesses under the Rule 63 Stipulation. In the same order, the court certified its familiarity with the record. *Camacho v. Commonwealth Health Center, et. al*., No. 07-0484 (NMI Super. Ct. July 30, 2013) (Overruling of Objection to Findings of Fact and Conclusions of Law at 8) [hereinafter Overruling of Objection].

¶ 8 On November 20, 2013, CHC moved for a new trial and to alter the judgment, arguing that its liability was limited by the Government Liability Act, 7 CMC § 2202(a)(1). The court partially granted CHC's motion, reducing the judgment amount from $133,140.17 to $100,000.00, but denied the request for a new trial. CHC appeals the judgment and the subsequent order amending judgment amount.

II. JURISDICTION

¶ 9 We have jurisdiction over final judgments and orders issued by the Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 10 We review four issues on appeal. First, we determine whether the court abused its discretion by failing to certify its familiarity with the record pursuant to Rule 63 following the case reassignment. *See Lang v. Lang*, 293 B.R. 501, 507 (B.A.P. 10th Cir. 2003) (reviewing successor judge's compliance with FED. R. CIV. P. 63 for abuse of discretion). Second, we review whether the court

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[1] According to the trial court's order, Nurse Camacho stated she did not know if Appellee had fallen or "or was getting up from sleeping or what." However, we note that the trial transcript indicates Nurse Camacho testified she did not know if Appellee had fallen "or if she was getting up from slipping." Tr. 147.

abused its discretion under Rule 63 by assessing the credibility of Nurse Camacho without recalling her to testify. *Id.* at 507. Third, we review de novo whether the court erred by applying the Restatement (Second) of Torts's "public utility" standard of care. *See In re Estate of Malite*, 2011 MP 4 ¶ 9 (whether the court applied the correct legal standard is a question of law reviewed de novo). Fourth, we consider whether CHC breached its duty of care. Findings of fact are reviewed for clear error, and conclusions of law are reviewed de novo. *In re Estate of Olopai*, 2015 MP 3 ¶ 13; *see also Vollendorff v. United States*, 951 F.2d 215, 217 (9th Cir. 1991) ("The existence and extent of the standard of conduct are questions of law, reviewable de novo, but issues of breach and proximate cause are questions of fact, reviewable for clear error.").

IV. DISCUSSION

¶ 11 We address the issues on appeal in two parts: whether the court (1) committed reversible error by failing to comply with Rule 63, either by failing to certify its familiarity with the record or by failing to recall Nurse Camacho to retestify, and (2) erred by finding CHC breached its duty of care.

A. Compliance with Rule 63

¶ 12 CHC argues reversal is required because the court failed to comply with the requirements of Rule 63. Specifically, CHC contends the court failed to certify its familiarity with the record before issuing its findings of fact and conclusions of law and it improperly assessed Nurse Camacho's credibility without recalling her to testify.

1. Failure to Certify

¶ 13 A court's failure to certify its familiarity with the record is reviewed for abuse of discretion. *See Lang*, 293 B.R. at 507 (reviewing successor judge's compliance with FED. R. CIV. P. 63 for abuse of discretion). However, reversal is not warranted if the trial court's failure to certify constitutes harmless error. *See Mergentime Corp. v. Washington Metro Area Transit Auth.*, 166 F.3d 1257, 1265 (D.C. Cir. 1999) (finding no error where successor judge failed to certify but demonstrated his familiarity with the record).

¶ 14 Under Rule 63, when a judge is unable to continue with a trial or hearing, a successor judge may proceed with the case "upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties." NMI R. CIV. P. 63. The purpose of Rule 63 is to "allow successor judges to take over at *any* point after trial begins, thus creating a more 'efficient mechanism' for completing interrupted trials without causing 'unnecessary expense and delay.'" *Mergentime*, 166 F.3d at 1262 (quoting FED. R. CIV. P. 63 advisory committee's note on 1991 amendment). The rule involves a balance of efficiency and fairness—"allow[ing] successor judges to avoid retrial, but only to the extent they ensure that they can stand in the shoes of the predecessor by determining that 'the case may be completed without prejudice to the parties.'" *Id.* (quoting FED. R. CIV. P. 63). Requiring

the successor judge to certify familiarity with the record helps "avoid the injustice that may result if the substitute judge proceeds despite unfamiliarity with the action." FED. R. CIV. P. 63 advisory committee's note on 1991 amendment.

¶ 15 Rule 63 does not impose explicit formal requirements with which the court's certification must comply; rather, the court must simply "become familiar with the relevant portions of the record."[2] *Mergentime*, 166 F.3d at 1265; *see also Hoult v. Hoult*, 57 F.3d 1, 8 (1st Cir. 1995) (finding Rule 63 certification adequate when the successor judge orally certified familiarity with the record during a lobby conference). For instance, in *Mergentime*, the successor judge failed to issue an express certification under Federal Rule 63 that he had reviewed the voluminous record. 166 F.3d at 1265. The judge had directed the parties to highlight portions of the record relevant to the remaining issues in the case and indicated he needed record excerpts "to 'satisfy the mandate of Rule 63.'" *Id.* On appeal, a party argued that because of the successor judge's failure to certify, the appellate court could not know whether he actually reviewed the record. *Id.* The appellate court found that argument "elevate[d] form over substance". *Id.* While express certification was preferable, the *Mergentine* court concluded the lower court had complied with Rule 63's basic command—to become familiar with the record. This determination was echoed by the court in *Lang*, noting "(e)xpress certification by the successor judge of a record is not required as long as the successor judge uses the procedure and language indicating that he has complied with the requirements of Rule 63." 293 B.R. at 509 (citing *Mergentime*, 166 F.3d at 1265).

¶ 16 In *Hoult*, the First Circuit found that oral certification was sufficient to satisfy the Rule 63 requirements. There, a successor judge orally certified his familiarity with the record during a lobby conference between the parties. The court found that because the parties did not object at the time and because the judge orally certified his familiarity with the record, the defendant's Rule 63 objection on appeal failed. *Hoult*, 57 F.3d at 8. While there is no question that a successor court must certify its familiarity with the record, that certification can come in various explicit and implicit forms at various points in the proceedings.

¶ 17 Here, the successor judge did not certify familiarity with the record before issuing its Findings on April 1. Instead, it certified its familiarity in its July 30 ruling on CHC's Objections of Findings of Fact and Conclusions of Law.[3] We find the circumstances of this case similar to *Mergentime* in that

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[2] Because NMI Rule of Civil Procedure 63 is substantially similar to Federal Rule of Civil Procedure 63, reference to federal case law provides useful guidance. *See Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60 ("[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance.").

[3] "In accordance with NMI R. Civ. P. 63, this Court certifies it is familiar with the record and believes the case may be completed without prejudice to either party."

CHC's argument elevates form over substance. While an express certification would be preferable, CHC does not assert the court failed to fulfill the basic command of Rule 63—becoming familiar with the record. Indeed, the court's Findings indicated the case was submitted "on the record of prior proceedings pursuant to NMI R. CIV. P. 63" and that the court had "*considered the evidence and the arguments of the parties* . . . ." Findings at 1–2 (emphasis added). The court's extensive findings further demonstrate its familiarity with the record. Thus, we conclude the court did not abuse its discretion by implicitly certifying its familiarity with the record on April 1 and expressly certifying its familiarity with the record on July 30.

2. Credibility Determination

¶ 18 CHC argues the court erred by assessing the credibility of Nurse Camacho's testimony without first recalling her to testify. CHC also argues it did not waive its right to recall Nurse Camacho because it did not stipulate to allowing the court to make credibility determinations.

¶ 19 "In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness." NMI R. CIV. P. 63. If the court's conclusion depends upon testimony from a witness whose credibility is in question, "and that credibility cannot be determined from the record, the successor judge will have to recall the witness, if the witness is available without undue burden, and make her own credibility determination." *Canseco v. United States*, 97 F.3d 1224, 1227. If a party so requests, the successor judge "'shall . . . recall any witness whose testimony is material and disputed and who is available to testify again without undue burden.'" *Mergentime*, 166 F.3d at 1266 (quoting FED. R. CIV. P. 63).

¶ 20 Parties may waive the Rule 63 right to recall witnesses. In *Yules v. Gillis (In re Gillis)*, for example, the successor judge held a status conference in which the parties requested the court render its decision based "on the evidence in the trial that has already occurred." 403 B.R. 137, 143 (B.A.P. 1st Cir. 2009). The appellate court concluded, when there was no evidence that a party had received inadequate notice of the waiver or had objected to the successor

Overruling of Objection at 8. This express certification distinguishes this case from situations where a successor judge failed entirely to certify his or her familiarity with the record, thereby violating Rule 63. (*See, e.g., Canseco v. United States*, 97 F.3d 1224, 1227 (9th Cir. 1996) ("The successor judge refused to certify familiarity with the record….Before ruling on Canseco's motion for a new trial, the successor judge must certify her familiarity with the record….Because the district court failed to comply with Rule 63, we vacate its order").

judge's ruling on a trial that had already occurred, "[i]n these circumstances, it would be hard to imagine a clearer example of waiver." *Id.*

¶ 21 Here, when the case was transferred to a new judge after trial, the parties stipulated: "Pursuant to [Rule 63], the parties waive any right they may have to recall any witness for further testimony." Stipulation at 2. When the parties entered the Stipulation, it was apparent that Nurse Camacho's testimony contradicted Appellee's—CHC even conceded in closing argument that there was "a considerable credibility issue with Nurse Camacho and [Appellee]." Tr. 200. Nevertheless, the parties voluntarily and knowingly waived their right to recall a "witness whose testimony is material and disputed and who is available to testify again without undue burden" under Rule 63. As such, we conclude the parties had no right to request the recall of any witness, and the court had no obligation to recall witnesses.

¶ 22 CHC also asserts the court was required to independently recall Nurse Camacho upon reviewing the record and determining that the result would hinge upon a credibility determination. Under Rule 63, the successor judge must, "*at the request of a party*[,] recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge *may* also recall any other witness." NMI R. CIV. P. 63 (emphasis added). We find CHC's argument unpersuasive. Nothing in Rule 63 indicates the trial court has an independent duty to recall witnesses; rather, the court must recall a witness at the request of a party if the witness's "testimony is material and disputed . . . ." NMI R. CIV. P. 63. CHC was plainly aware that witness credibility determinations would be required when it entered into the Stipulation. Nevertheless, it stipulated to waive its right to recall witnesses and to submit the case on the record.

¶ 23 Accordingly, we conclude the trial court did not err by not recalling Nurse Camacho as a witness.

B. Breach of Duty of Care

¶ 24 Next, CHC argues the court applied the incorrect standard of care and erroneously found that CHC failed to discharge its duty as required. We review de novo whether the court applied the proper legal standard. *In re Estate of Malite*, 2011 MP 4 ¶ 9.

¶ 25 The Commonwealth has no written law concerning the duty of care owed to invitees; accordingly, we turn to the Restatement (Second) of Torts for the applicable law. *See* 7 CMC § 3401.[4] The Restatement offers two distinct standards for the duty of care owed to invitees. In the case of hidden dangers, or those an invitee is not likely to discover or realize, Restatement (Second) of

[4] "In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary . . . ." 7 CMC § 3401.

Torts § 343 applies. Pursuant to Section 343:

> A possessor of land is liable to invitees for physical harm caused by a condition on the land hidden from invitees if the possessor:
>
> > (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> >
> > (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> >
> > (c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts § 343 (1965).

¶ 26 When a danger is known or obvious to invitees, Restatement (Second) of Torts § 343A applies. Section 343A states:

> (1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.
>
> (2) In determining whether the possessor should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of public land, or of the facilities of a public utility, is a factor of importance indicating that the harm should be anticipated.

Restatement (Second) of Torts § 343A (1965). Section 343A(2) applies a heightened standard to a public utility or government entity when evaluating whether the possessor should anticipate harm. *Id*. § 343A(2); *see also id*. cmt. a ("(A) public utility, government, or government agency may have special reason to anticipate that one who so enters will proceed to encounter known or obvious dangers; and such a defendant may therefore be subject to liability in some cases where the ordinary possessor of land would not."). There is not a similar heightened standard under Section 343. Thus, government entities may be subject to a less generous limitation than other possessors, but only once a court has determined that Section 343A applies.

¶ 27 As such, a court's first determination must be to find whether the danger is "known or obvious [to invitees]" or whether a possessor "should expect that [invitees] will not discover or realize the danger." If the danger is known or obvious, Section 343A applies, then the court must determine if the possessor is a government entity or public utility, in which case it applies the heightened standard of Section 343A(2). If the danger is not known or not obvious to invitees, Section 343 applies to all possessors equally, regardless of whether or not they are government entities.

¶ 28 Generally, when confronted with an appeal on the trier of fact's findings in a breach of duty of care case, we would not disturb those findings so long as they are supported by substantial evidence. Indeed:

> Every case involving the question of whether a condition existing on land presents an unreasonable risk of harm to an invitee to that land is, almost necessarily, a unique case, so far as its facts are concerned. The decision of the trier of fact, if supported by substantial evidence, should mark the end of the litigation.

Morgan v. Armour & Co., 425 F.2d 233, 234 (9th Cir. 1970). However, the trier of fact must establish whether those findings are being applied under Section 343 or Section 343(A). Here, the court's order contains contradictory language as to which legal standard was applied.

¶ 29 First, in describing the duty CHC owed to Appellee, the court signaled that Section 343A applied:

> [T]he only issue remaining as to the element of duty is whether [CHC], as a government agency, . . . should have anticipated that [Appellee] would proceed to encounter known or obvious dangers, therefore perhaps subjecting [CHC] to liability where an ordinary possessor of land would not be subject to such liability. Because CHC is a government entity, operated by the Department of Health, this Court finds [CHC] did have special reason to anticipate harm to [Appellee].[5]

Id. at 6. Then, after finding CHC breached its duty of care, the court indicated the wet floor did not constitute a known or obvious danger:

> This finding is based on evidence that the danger was not known or obvious. [Appellee] testified that she did not see any water at first and [Nurse] Camacho testified that the floor was dry when she encountered [Appellee], which demonstrates that the water was at the most not obvious and at the least not known.

Findings at 7.

¶ 30 At the core of the issue, when discussing whether CHC breached its duty of care, the court vacillates between the underlying divide between the application of Section 343A and Section 343 in the same breath: "Because there was testimony that the hallway was the only way to get to Room C-14, [CHC] should have anticipated that [Appellee] would proceed to enter the area *despite known or obvious* dangers. This finding is based on evidence that *the danger was not known or obvious*." Findings at 7 (emphasis added). If the court found

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[5] The question of whether CHC is a government entity is not one for this Court to consider. The trial court determined CHC is a government entity because of its status as a public government corporation pursuant to Public Law 16-51, and CHC does not contest this determination.

that the wet floor was a known or obvious danger to invitees, it should have applied Section 343A.[6] In the alternative, if the trial court found that the danger was not a known or obvious danger to invitees, then the court should have applied Section 343.[7] The conditions determining which standard applies are mutually exclusive.

¶ 31 We find CHC's argument persuasive and conclude the court erred by applying an inconsistent standard. If the court found the wet floor was a known or obvious danger, then it could apply the liability limitation of § 343A and consider whether CHC "should anticipate the harm despite such knowledge or obviousness," in light of CHC's status as a government entity. Restatement (Second) of Torts § 343A (1965). However, if the wet floor was not a known or obvious danger, then the trial court should have determined whether CHC breached its duty of care to invitees using the test provided by Section 343. Without first conclusively establishing whether the danger was known or obvious, or not known or not obvious, the trial court could not properly apply either standard.

¶ 32 We must note, however, the court's end result was not in error. There is no question that courts have been willing to affirm a trial court's decision when it has reached the right result for the wrong reason. *See Union CATV v. City of Sturgis*, 107 F.3d 434, 442-43 (6th Cir. 1997) (disagreeing with the district court's analysis, but agreeing with the conclusion); *Williams v. BellSouth Telecomms., Inc.*, 373 F.3d 1132, 1139 (11th Cir. 2004) ("Although the district court erred in applying the wrong standard, it reached the right result, so we affirm its judgment."); *United States ex rel. Awad v. Chrysler Grp., LLC*, 571 F. App'x 366, 371 (6th Cir. 2014) ("Although the district court erred . . ., reversal is not warranted because the district court reached the correct result . . . ."). Indeed, "we may affirm the judgment . . .on any basis that the record fairly supports." *Mann v. Haigh*, 120 F.3d 34, 36 (4th Cir. 1997).

¶ 33 The trial court made the following findings of fact:

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[6] In which case the court could have properly considered whether CHC was a government entity, whether there were alternate pathways to the room, whether CHC should have provided an escort, or whether additional warnings were warranted. *See, e.g., Kinsman v. Unocal Corp.*, 37 Cal. 4th 659, 673 (2005) ("[I]t is foreseeable that even an obvious danger may cause injury, if the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that under the circumstances, a person might choose to encounter the danger.") (internal citation omitted); *Edison v. United States*, 822 F.3d 510, 522 (9th Cir. 2016) (finding that under some circumstances, a warning alone was not enough to meet the necessary standard of care for a government entity).

[7] In which case the court would consider whether CHC would or should have discovered the danger if it exercised reasonable care, whether CHC should have expected that an invitee would not discover or realize the danger or fail to protect themselves against it, and whether CHC exercised reasonable care to protect invitees against the danger. *Martinez v. Asarco, Inc.*, 918 F.2d 1467, 1472 (9th Cir. 1990).

(1) There was a leak in Room C-04;
(2) The leak resulted in water in the hallway outside of Room C-04;
(3) CHC was aware of the leak and took some steps to warn invitees of the danger; and
(4) Before falling, Appellee was not aware of water on the floor in the hallway;

Findings at 2-3. Based on these findings, the appropriate standard is found in Section 343. As such, CHC's status as a government entity is not material to our analysis. Applying this standard to the court's findings, we determine: (1) CHC knew of the leak and was aware it posed an unreasonable risk to invitees, as demonstrated by relocating the patient away from the danger, making efforts to contain the leak, and placing a cone in the hallway (Findings at 2), satisfying the first prong of the Section 343 analysis; (2) CHC should have expected that invitees would not discover the danger, and even upon discovery would not be able to protect themselves from it, as the danger impacted the single access point to that portion of the facility (Findings at 7), satisfying the second prong of the Section 343 analysis; and (3) CHC failed to exercise reasonable care under the circumstances, such as escorting invitees past the dangerous area or cordoning off the affected portion of the hallway[8] (Findings at 7), satisfying prong three of the Section 343 analysis.

¶ 34 While the court applied an inconsistent standard, it was correct in determining that CHC breached its duty of care to Appellee. Accordingly, we find that reversal is not warranted.

V. CONCLUSION

¶ 35 For the foregoing reasons, we AFFIRM the trial court's judgment.

SO ORDERED this 14th day of December, 2016.

/s/____________________
ALEXANDRO C. CASTRO
Chief Justice

/s/____________________
PERRY B. INOS
Associate Justice

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[8] CHC argues that it exercised reasonable care by placing a warning cone in the hallway by C-04. However, while the court's factual findings do not express this, the record indicates that the cone was placed in the center of the hallway, rather than the doorway of C-04. This resulted in the presumably unintended effect of steering a passerby not out of the way of the danger, the doorway to C-04, but instead amplifying the risk that a passerby would enter the zone of danger.

/s/_______________________

STEVEN L. HANSEN
Justice Pro Tem