

STEVEN C. SUTTON et al.

v.

SUNDAY RIVER SKIWAY CORP.

Argued September 12, 2012

Decided October 4, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,  
GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Steven and Paula Sutton appeal from a judgment following a jury trial in the Superior Court (Oxford County, *Cuddy, J.*) denying recovery for injuries sustained in Mr. Sutton's fall from a chairlift at Sunday River Ski Resort. The Suttons contend the trial court erred in excluding certain evidence and refusing to give requested jury instructions.

Contrary to the Suttons' contention, the court did not err when it excluded evidence of a subsequent incident, concluding that it was irrelevant and not substantially similar. *Simon v. Town of Kennebunkport*, 417 A.2d 982, 986 (Me. 1980). Nor did it err when it excluded evidence of discovery violations or refused to instruct the jury on inferences from the destruction of evidence or admissions by conduct because the evidence did not support either instruction. *Clewley v. Whitney*, 2002 ME 61, ¶ 8, 794 A.2d 87; *Ginn v. Penobscot*, 334 A.2d 874, 880 (Me. 1975) (holding inferences must be drawn from proven facts, rather than mere surmise or conjecture). The court also did not abuse its discretion in concluding that the evidence of a self-governing mechanism on the lift was outside the knowledge of the Suttons' expert witness. *State v. Cookson*, 2003 ME 136, ¶¶ 20-22, 837 A.2d 101.

The issue of the exclusion of evidence showing damage to the lift terminal was not preserved for appeal. The court did not make a decision on the motion in limine before trial and the Suttons never attempted to introduce the evidence during the trial. M. R. Evid. 103(c); *State v. Knight*, 623 A.2d 1292, 1293 (Me. 1993). Nonetheless, this Court will review the court's decision for obvious error prejudicing the appealing party's substantial rights. *Knight*, 623 A.2d at 1293. Doing so, we find no obvious error affecting the Suttons' substantial rights. *Id.*

Finally, the court did not err in refusing to give the requested instructions on *res ipsa loquitur* because the evidence did not establish that Mr. Sutton's fall was "[an] event [] of a kind which ordinarily does not occur in the absence of negligence." *Poulin v. Aquaboggin Waterslide*, 567 A.2d 925, 926 (Me. 1989).

The entry is:

Judgment affirmed.

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**On the briefs:**

Anthony K. Ferguson, Esq., Fales & Fales, P.A., Lewiston, for appellants Steven and Paula Sutton

Evan M. Hansen, Esq., and Roy T. Pierce, Esq., Preti, Flaherty, Beliveau & Pachios, LLP, Portland, for appellee Sunday River Skiway Corporation

**At oral argument:**

Anthony K. Ferguson, Esq., for appellants Steven and Paula Sutton

Roy T. Pierce, Esq., for appellee Sunday River Skiway Corporation