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

HO CHAN JUNG, EUN JU JUN, AND JUNG SU AN,
Plaintiffs-Appellants,

v.

MODE TOUR SAIPAN CORPORATION, MODE TOUR NETWORK, INC., JAE MIN CORPORATION, AND DOES 1 THROUGH 10,
Defendants-Appellees.

Supreme Court No. 2015-SCC-0010-CIV

Superior Court No. 09-0517-CV

OPINION

Cite as: 2017 MP 18

Decided December 27, 2017

Colin M. Thompson, Saipan, MP, for Plaintiff-Appellants.

Thomas E. Clifford, Saipan, MP, for Defendant-Appellee Mode Tour Network, Inc.

Bruce Berline, Saipan, MP, for Defendant-Appellee Mode Tour Saipan Corporation.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tempore

CASTRO, C.J.:

¶ 1 Plaintiffs-Appellants Ho Chan Jung; Eun Ju Jun; and Jung Su An (collectively "Appellants") appeal the trial court's ruling on a motion for partial summary judgment, which found punitive damages were not available in a wrongful death claim. Defendants-Appellees Mode Tour Network, Inc. ("MTN") and Mode Tour Saipan Corporation ("MTS") (collectively "Appellees") cross-appeal the jury's verdict and court's ruling on a motion for judgment as a matter of law, which found them liable for the death of Hoseung Joung ("Decedent"). Appellees argue there was insufficient evidence to support a finding of liability. Additionally, Appellants and MTS appeal the court's order reapportioning liability among the parties. For the following reasons, we AFFIRM the court's grant of partial summary judgment; REVERSE the jury's verdict; REVERSE the court's denial of judgment as a matter of law; and VACATE the court's order reforming the jury's verdict on liability.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The facts underlying the jury verdict involved Decedent falling off a cliff and dying while participating in a cliff-fishing expedition on Tinian. Appellants are Eun Ju Jun ("Jun"), Decedent's wife; Jung Su An, Decedent's mother; and Ho Chan Jung, Decedent's brother as personal representative. Appellants sued Jae Min Corporation ("Jae Min"), MTN, and MTS as defendants. Jae Min, now defunct, was the operator of the optional cliff fishing tour.[1] MTN is a Korean company that sells tour packages around the globe. MTS is an end user tour agency, a separate company from MTN, and is located on Saipan. It handles MTN customers, providing transportation, meals, and tour services.

¶ 3 In December 2008, Decedent and Jun ("the Couple") purchased a package tour from a retail travel agent who had purchased the wholesale package tour from MTN. The package tour they selected included trips to Saipan and Tinian. On Saipan, MTS provided the Couple basic services, including transportation and tours around the island. When the Couple arrived on Tinian, they decided to join an optional cliff fishing tour they had seen advertised on MTN's website and which was suggested by their Tinian tour guide, who had a service contract with MTS.

¶ 4 The Couple, along with other tourists, participated in the cliff fishing expedition before sunset in time to view the cliff line and its surroundings by daylight. The tour participants fished for a period of time between an hour and an hour and a half. Around 6:30 p.m., the group sat down for a barbecue dinner away from the cliff line. At this time it was getting dark and vehicle headlights were turned on to shed light on the picnic area. Also, at least one lantern was

[1] Jae Min was not served and did not appear at trial.

available for the group. During dinner, Decedent consumed alcohol but Jun did not believe he was intoxicated. At one point, Decedent went to relieve himself away from the lighted area and returned safely to the group.

¶ 5 As the group was packing up to leave, Jun could not find Decedent. After extensive searching, Decedent was discovered to have drowned in the waters beneath the cliff. At the time of the accident, Decedent was a twenty-nine year old college graduate in good physical health with no prior mental illness and no reported balance or night vision issues. He wore prescription glasses and was wearing them on the night in question.

¶ 6 Prior to trial, on a motion for partial summary judgment, the court concluded that punitive damages were not available in a wrongful death action. The matter proceeded to trial. The jury awarded Appellants $2,100,000,[2] finding MTN ninety percent at fault and MTS ten percent at fault for Decedent's death. Appellees filed a motion for judgment as a matter of law under NMI Rule of Civil Procedure 50(b) ("Rule 50(b) Motion"). The court denied the Rule 50(b) Motion as to the issue of liability and, on its own accord, reapportioned the liability among the parties. The court determined that MTS was fifty percent at fault, MTN was thirty percent at fault, and Decedent was twenty percent at fault.

¶ 7 Appellants appeal the court's order denying punitive damages. Appellants and MTS appeal the court's ruling as to the reapportionment of liability. Appellees appeal the jury's verdict and the court's denial of the Rule 50(b) Motion.

II. JURISDICTION

¶ 8 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 9 There are three issues on appeal. First, whether punitive damages are allowed under the Commonwealth wrongful death statute.[3] Statutory interpretation is a question of law subject to de novo review. *Indalecio v. Yarofalir*, 2006 MP 18 ¶ 7. Second, whether there was sufficient evidence to find Appellees liable for the death of Decedent. "Whether sufficient evidence supports a court's finding is a legal conclusion reviewable de novo." *In re Estate of Deleon Castro*, 4 NMI 102, 103 (1994). Third, whether the court erred when it amended the judgment after trial to reapportion liability for damages. This

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[2] Jury awarded $1.8 million in economic damages and $500,000 in noneconomic damages. The court then reduced the noneconomic damages to $300,000 pursuant to limitation of compensation in actions for wrongful death under 7 CMC § 2923 and entered judgment in the amount of $2,100,000.

[3] "For readability we often refer to our wrongful death statutory scheme simply as our 'wrongful death statute.' However, it should be noted that three statutory provisions, *i.e.*, 7 CMC §§ 2101–2103, define our wrongful death cause of action." *Indalecio*, 2006 MP 18 ¶ 6 n.1.

presents a mixed question of law and fact. "[W]hether the particular harm at issue in the case is theoretically capable of apportionment" is a question of law subject to de novo review. *United States v. Burlington N. & Santa Fe Ry. Co.*, 479 F.3d 1113, 1132 (9th Cir. 2007). Whether there is sufficient evidence "to establish a reasonable basis for the apportionment of liability" is a question of fact we review for clear error. *Id.* at 1132–33.

IV. DISCUSSION

A. Punitive Damages

¶ 10 In the last two decades, we have had few occasions to interpret our wrongful death statute, particularly to address the confines of recovery. Wrongful death action is defined as "[a] lawsuit brought on behalf of a decedent's survivors for their damages resulting from a tortious injury that caused the decedent's death." Black's Law Dictionary 1384 (9th ed. 2010). In the seminal case of *Indalecio v. Yarofalir*, we noted,

> American jurisprudence . . . has been greatly complicated by the historical context in which wrongful death statutes arose and the often ambiguous language in which they were couched. . . . This has led to the current state of the law in which similarly worded statutes are interpreted in different, and often incongruent, ways.

2006 MP 18 ¶ 8. For this reason, we stated it was important to review the historical development on wrongful death recovery to "more accurately place our statutory framework within that context." *Id.*

¶ 11 Once again, we are urged to reexamine the history of wrongful death statutes as well our own developing jurisprudence on this subject to answer whether punitive damages are recoverable in the Commonwealth.

¶ 12 Under English common law, there was no right of recovery for wrongful death. *Id.* ¶ 10. When a person died as a result of a tort, his right to any cause of action died with him. *Id.* ¶¶ 9–11. To provide a solution for this shortcoming, survival acts were enacted. *Fields v. Huff*, 510 F. Supp. 238, 240 (E.D. Ark. 1981). They preserved the decedent's claim, allowing the personal representative to seek damages the decedent could have sought, had he survived. *Id.*

¶ 13 Also, at common law, a decedent's spouse and children did not have a right of recovery. *Id.* (citing *Baker v. Bolton* (1808) 170 Eng. Rep. 1033). To remedy this "harsh rule," the English parliament enacted the first wrongful death statute—Lord Campbell's Act ("Act")—providing a cause of action for the decedent's family. *Id.* The English courts, however, strictly construed the Act to allow "probable pecuniary loss[es]" only. *Id.* (citation omitted); *see also Ito v. Macro Energy, Inc.*, 4 NMI 46, 63 (1993) ("Historically, wrongful death damages were limited to pecuniary losses.") (citation and internal quotation marks omitted). Subsequently, American legislatures and courts adopted the language and interpretation of the Act. *Indalecio*, 2006 MP 18 ¶ 13 ("Lord Campbell's Act, enacted in 1846, was the first wrongful-death statute . . . [and] became the prototype of American wrongful-death statutes, [thus] most state

statutes contained nearly identical language and have been similarly interpreted by state courts.") (internal quotation marks omitted).

¶ 14 A majority of the states which have adopted the language of the Act or equivalent language have construed their statutes to exclude recovery of punitive damages in wrongful death claims. *See Fields*, 510 F. Supp. at 240 ("[U]nder Lord Campbell's Act . . . the basis of recovery is the pecuniary loss to the survivors, from which it seems clear that punitive or exemplary damages cannot be allowed . . . . The great majority of states, under statutes which are general in their wording as to damages, construe them to exclude punitive damages."); *cf. Figueroa v. Sec'y of Health and Human Serv.*, 715 F.3d 1314, 1319 (Fed. Cir. 2013) (noting common law rule is changing because almost every state has enacted "some form of survival statute"). Each state has different reasons for reaching this conclusion, but there appear to be three overarching rationales behind it.

¶ 15 First, states have recognized that a right to recover from wrongful death claims is purely a creature of statute. Thus, if the statutes do not expressly allow punitive damages, courts have strictly construed their statutes to conclude that such a right does not exist. *Smith v. Printup*, 866 P.2d 985, 999 (Kan. 1993). Second, courts have denied punitive damages on the basis that wrongful death statutes do not preserve any cause of action for the decedent but merely create a new cause of action for the beneficiaries. *Wilson v. Whittaker*, 154 S.E.2d 124, 129 (Va. 1967). Clearly, an injured party may recover punitive damages, but once the injured party died, his right to recover punitive damages abated with him. *See Wilson*, 154 S.E. at 129 ("The right of action for damages for personal injuries, including punitive damages, if any, expires upon the death of the injured person."). And third, states have barred the recovery of punitive damages, noting that the purpose of a wrongful death statute is to compensate the deceased's next of kin, not to punish the wrongdoer. *Dahl v. North Am. Creameries*, 61 N.W.2d 916, 922 (N.D. 1953), overruled in part on other grounds by *Hopkins v. McBane*, 427 N.W.2d 85 (N.D. 1988)); *contra Bannon v. United States*, 293 F. Supp. 1050, 1053 (D. R.I. 1968) ("The Massachusetts death statute as set forth in the Massachusetts general laws is punitive in nature.").

¶ 16 The Commonwealth's wrongful death statute "stems from and is substantially the same as the Trust Territory wrongful death statute. The Trust Territory High Court determined that this statute was fashioned after England's Lord Campbell's Act . . . ." *Ito*, 4 NMI at 62 (internal citation and quotation marks omitted). Our wrongful death statute on damages states:

> [T]he court may award damages as it may think proportioned to the *pecuniary injury* resulting from the death, to the persons for whose benefit the action was brought; provided, however, that where the decedent was a child, and where the plaintiff in the suit brought under this chapter is the parent of that child, or one who stands in the place of a parent pursuant to customary law, the

> damages shall include mental pain and suffering for the loss of the child, without regard to provable pecuniary damages.

7 CMC § 2103(a) (emphasis added).

¶ 17 Though we have not addressed whether punitive damages are permitted, we have interpreted our wrongful death statute consistently with courts which have excluded recovery of punitive damages.

¶ 18 First, we held that a right to recover for wrongful death is purely a creature of statute, and thus our statute must be strictly construed to exclude any cause of action which is not expressly stated. *Ito*, 4 NMI at 62. In *Ito*, we were asked to decide whether loss of consortium damages was allowed under our statute. While acknowledging that some courts do allow loss of consortium recovery, we held that such recovery is not expressly granted under our statutory scheme, and thus a loss of consortium claim does not exist in the Commonwealth. *See id.* at 63 ("The plaintiff's loss of consortium claim therefore has no statutory basis [in the Commonwealth] . . . .").

¶ 19 Second, we determined that our wrongful death statute creates a new cause of action for the decedent's family but "does not preserve the decedent's own claims beyond death." *Indalecio*, 2006 MP 18 ¶ 17. In *Indalecio*, the mother of a deceased child sued a doctor who had treated the child, claiming wrongful death. She sought damages for decedent's pain and suffering in addition to her own loss. Before we addressed the issue on the merits, we determined whether our wrongful death statute was a pure wrongful death statute or whether it contained a survivorship component. We first noted the distinction between the two: "[a] survivorship statute operates to preserve the decedent's claim for damages; the claim 'survives' the decedent and belongs to the estate. A pure wrongful death statute, by contrast, creates a new cause of action upon the death of the decedent . . . provid[ing] a remedy to the survivors for their own injuries." *Id.* ¶ 15. Recognizing that "the purpose of our wrongful death statute is to compensate the decedent's *family* for the decedent's death," *id.* ¶ 18 (emphasis in original), we determined our statute is a "pure wrongful death statute" and does not contain a survivorship component. *Id.* ¶ 20 (internal quotation marks omitted). Accordingly, the mother could not recover for the deceased child's injuries. In other words, we determined any cause of action the decedent would have had did not survive his death.

¶ 20 Third and most importantly, we held that a party seeking damages under our wrongful death statute can recover *only* pecuniary damages. *Id.* ¶ 28. Another issue addressed in *Indalecio* was whether emotional damages were recoverable in a wrongful death claim. While we recognized there was a modern trend of liberalizing wrongful death acts to allow damages beyond pecuniary loss, we stated we were "constrained by the language of [the] statute." *Id.* ¶ 27 (citation omitted). Thus, we concluded "[r]eading our wrongful death statutory scheme as a whole, . . . our legislature created a right to recover only pecuniary losses." *Id.* ¶ 28.

¶ 21 The Commonwealth's wrongful death statute as interpreted in *Ito* and *Indalecio* undeniably tells us that our statute permits recovery of only *pecuniary damages* to compensate the decedent's family.[4] The question left for us to determine is whether punitive damages are pecuniary in nature, and if so, whether such a right of recovery is available to a decedent's family.

¶ 22 "A basic principle of construction is that language should be given its plain meaning." *Commonwealth Ports. Auth. v. Hakubotan Saipan Enter.*, 2 NMI 212, 221 (1991) (citations omitted). Black's Law Dictionary defines "pecuniary loss or damage" as "[d]amages that can be estimated and monetarily compensated." Black's Law Dictionary 357 (9th ed. 2010). "[It] must be one which can be measured by some standard." *Michigan Cent. R.R. Co. v. Vreeland*, 227 U.S. 59, 71 (1913). Pecuniary damages include both economic and noneconomic losses. *See* 7 CMC § 2923 ("[A]ll persons entitled to recover damages for wrongful death shall be entitled to jointly assert a claim for non-economic damages."); *see also Drews v. Gobel Freight Lines*, 557 N.E.2d 303, 307–08 (Ill. App. Ct. 1990) ("[W]e prefer to follow the current trend wherein our supreme court treats pecuniary damages as including both economic and noneconomic losses."). It is also "narrow in scope . . . ." *Zanakis-Pico v. Cutter Doge, Inc.*, 47 P.3d 1222, 1233 (Haw. 2002). In a wrongful death action, "[p]ecuniary loss or damages . . . should be equivalent to those pecuniary benefits or compensation that reasonably could have been expected to have resulted from the continued life of the deceased." *McCart v. Muir*, 641 P.2d 384, 391 (Kan. 1982). The purpose of pecuniary damages is to compensate the wronged party in the amount they are judged to have lost. *In re Brennan Marine, Inc. v. Brennan Marine, Inc.*, 123 F. Supp. 3d 1134, 1140 (D. Minn. 2015) (citing *Michigan Cent. R.R. Co.*, 227 U.S. at 70–71). It is also "to prevent extravagant jury verdicts based on sad emotions and injured feelings instead of actual pecuniary loss." *Ito*, 4 NMI at 63 (internal citation and quotation marks omitted).

¶ 23 Against this backdrop, an overwhelming weight of authority has concluded that punitive damages are nonpecuniary in character. *See, e.g.*, *Kopczynski v. The Jacqueline*, 742 F.2d 555, 561 (9th Cir. 1984) ("Punitive damages are non-pecuniary."); *see also McBride v. Estis Well Serv., L.L.C.*, 768 F.3d 382, 384 (5th Cir. 2014) ("[P]unitive damages are non-pecuniary losses . . . ."). Unlike pecuniary damages, punitive damages do not compensate for a loss. RESTATEMENT (SECOND) OF TORTS § 908 (1979). Rather, they are imposed to punish the wrongdoer and to deter him and others from similar wrongdoing. *Santos v. Nansay Micronesia, Inc.*, 4 NMI 155, 168 (1994) (citation omitted). For that reason, they "are not based so much upon the nature and extent of the injury as they are upon the oppression of the party who does the injury." *Johnson v. Husky Industries, Inc.*, 536 F.2d 645, 650 (6th Cir. 1976). "[They]

[4] *Cf. Indalecio*, 2006 MP 18 ¶ 28 (noting wrongful death statute allows right to recover only pecuniary losses except for the death of a child, in which case damages for mental pain and suffering are also recoverable).

may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others," RESTATEMENT (SECOND) OF TORTS § 908, but not "for mere inadvertence, mistake, errors of jjudgment [sic] and the like, which constitute ordinary negligence." *Id.* § 908 cmt. b.

¶ 24 As such, a majority of states which have adopted the Act have denied the award of punitive damages, concluding that they are nonpecuniary, and therefore not permitted by their statutes. *See Crossett v. Andrews*, 277 P.2d 117, 119 (Okla. 1954) (noting that a majority of U.S. jurisdictions which have adopted the English court's interpretation of the Act recognize that damages are limited to pecuniary loss and such a "theory necessarily excludes any award as solatium for the next of kin, or as punishment for the defendant"); *see also Atchison, Topeka & Santa Fe Ry. Co. v. Townsend*, 81 P. 205, 207 (Kan. 1905) (noting that punitive damages are not available in wrongful death statutes unless they are expressly permitted by statute). Accordingly, we conclude punitive damages are not one of the available remedies contemplated by our wrongful death statute. Therefore, a right to recover such damages is not available in the Commonwealth.

B. Sufficiency of Evidence/ Motion for Judgment as a Matter of Law

¶ 25 Appellees argue there was insufficient evidence to find them liable for Decedent's death. First, they argue there was no agency relationship between the named defendants, and second, because the danger inherent in cliff fishing was open and obvious, they did not have a duty to warn Decedent. In response, Appellants argue there was an agency relationship, or in the alternative a partnership relationship. Appellants further contend that because of this relationship, Appellees had a duty to warn Decedent about the lack of reasonable safety precautions at the cliff site under *Furuoka v. Dai-Ichi Hotel (Saipan), Inc.*, 2002 MP 5 ¶ 32.

¶ 26 Whether the court erred in denying a motion for judgment as a matter of law is subject to de novo review. *Commonwealth v. Santos*, 1998 MP 6 ¶ 4. "When considering sufficiency of the evidence questions, we determine if the evidence, when viewed in a light most favorable to the prevailing party, is sufficient to support the conclusion of the fact-finder." *Torres v. Fitial*, 2008 MP 15 ¶ 7 (citations and internal quotation marks omitted). "We do not weigh conflicting evidence or consider the credibility of witnesses." *Commonwealth v Quitano*, 2014 MP 5 ¶ 34 (citation and internal quotation marks omitted).

¶ 27 We are cognizant that an appeal of a court's ruling based on an insufficiency of evidence argument is reviewed under a "highly deferential" standard. *Id.* We are also mindful that the incident in this case is tragic. However, having reviewed the evidence, we cannot conclude that there was sufficient evidence to find Appellees liable for Decedent's death. Under *Furuoka*,

Appellees did not have a duty to warn Decedent of the dangers presented by the cliff fishing expedition.[5]

¶ 28 "The determination that a duty of care exists is an essential precondition to attaching liability for negligence. The inquiry is primarily a question of law . . . . Whether a duty is owed is simply a shorthand way of phrasing . . . whether the plaintiff's interests are entitled to legal protection against the defendant's conduct." *Furuoka*, 2002 MP 5 ¶ 32 (alteration in original) (citations and internal quotation marks omitted).

¶ 29 In *Furuoka*, we established the duty of care that special agents, travel agents, and tour operators owe to tour participants. We stated, "[a]s agents, tour operators have a duty to use reasonable efforts to inform the tour participant of information material to the agency which they had notice the traveler would desire." *Id.* ¶ 34. This "duty to disclose is limited to what is reasonable in any given circumstance, keeping in mind that a tour operator is not an insurer, nor can he be reasonably expected to predict and forewarn of the endless list of dangers in foreign travel." *Id.* Further, we noted that the duty does not include a duty to ensure safety or to ensure other actors, such as hotels, to "maintain adequate safeguards for the safety" of the tour participants. *Id.* ¶ 35. However, we concluded that "a travel agent has a duty to disclose known, or reasonably ascertainable, material information to the traveler unless that information is so clearly obvious and apparent to the traveler that, as a matter of law, the travel agent would not be negligent in failing to disclose it." *Id.* This standard appears to be a well-settled law in other jurisdictions as well. *McReynolds v. Rui Resort and Hotels, S.A.*, 880 N.W.2d 43, 48 (Neb. 2016) ("However, courts in other jurisdictions also agree that travel agents and tour operators do not owe a duty to disclose information about obvious or apparent dangers.").

¶ 30 In *McReynolds*, after plaintiff's jewelry was stolen from a safe in her hotel room, she sued the companies that arranged her trip, arguing they breached their duty to provide her a safe hotel room and failed to warn her that the hotel's key system fell below the industry standard. The district court entered summary judgment in favor of the companies. Plaintiff appealed, arguing there were genuine issues of material fact as to whether the companies were special agents and whether they owed a duty to disclose material information. *Id.* at 46–47.

¶ 31 The reviewing court denied plaintiff's appeal, concluding that the companies did not owe a duty to warn plaintiff about the hotel's key system because "any dangers it may have posed were obvious." *Id.* at 48. In so holding, the court echoed the legal standard established in *Furuoka*. It noted that many jurisdictions agree that "a travel agent who arranges vacation plans acts as more than a mere ticket agent and is a special agent of the traveler." *Id.* at 47 (internal quotation marks omitted). Under the law of agency, while travel agents do not

[5] We make this determination without deciding on the issue of agency relationship because Appellants concede the test in *Furuoka* is the applicable standard should we find that agency relationship exists.

have a duty to warn travelers regarding general safety precautions, they do have a duty to disclose information "which is relevant to affairs entrusted to [them] and which, as the agent has notice, the principal would desire." *Id.* (citation and internal quotation marks omitted). But this duty does not include a duty to disclose information about obvious or apparent dangers. *Id.* at 48. The *McReynolds* court noted this duty is consistent with the legal standard expressed in the Restatement (Third) of Torts § 18:

> A defendant can be negligent for failing to warn only if the defendant knows or can foresee that potential victims will be unaware of the hazard. Accordingly, there generally is no obligation to warn of a hazard that should be appreciated by persons whose intelligence and experience are within the normal range.

RESTATEMENT (THIRD) OF TORTS § 18 cmt. f (2010).

¶ 32 Courts from various jurisdictions have reached similar conclusions, refusing to find a duty to warn when the danger was equally obvious and apparent to the plaintiff. *See McCollum v. Friendly Hills Travel Cent.*, 217 Cal. Rptr. 919, 925–26 (1985) (refusing to find that travel agent had a duty to disclose defective conditions of the water-ski equipment where the defect was obvious to plaintiff); *Lavine v. General Mills, Inc*., 519 F. Supp. 332, 336 (N.D. Ga. 1981) ("Even if it were made, a general promise that the trip would be safe and reliable does not constitute a guarantee that no harm would befall plaintiff, particularly from as obvious a danger as traversing a rocky beach.")(internal quotation marks omitted); *Passero v. DHC Hotels and Resorts, Inc.*, 981 F. Supp. 742, 743 (D.Conn. 1996) (refusing to find liability on tour operator when plaintiff tripped over a flotation mat because the danger was equally observable by plaintiff).

¶ 33 Here, the evidence shows the danger presented by the cliff line was clearly obvious and apparent, and Decedent, whose intelligence and experience were within the normal range, appreciated the apparent danger. When it was light out, Decedent viewed the steepness of the cliff line. After doing so, he informed his wife not to go close to the edge. Jun Dep. 97. Jun testified she could not fish long because the cliff was visibly unsafe and she was afraid. Jun Dep. 82. And while Decedent was fishing, he stayed away from the edge of the cliff. Jun Dep. 82. Other evidence indicates the danger was apparent and obvious after dark as well. The police officer who was dispatched to the scene testified that he held onto his partner as a precautionary measure because he knew he could fall over the cliff line. Am. Tr. 841–42. And when Jun learned that her husband had fallen off the cliff, she was in disbelief because Decedent would have known where the cliff line was. Am. Tr. 1523.

¶ 34 The court found the danger was not apparent to Decedent because "it was a dangerous night to be in the area at all given the significantly dark night and rough, overgrown terrain." *Ho Chan Jung et al, v. Mode Tour Saipan Corp. et al*, Civ. No. 09-0517 (Super. Ct. Feb. 13, 2015) (Order Partially Grant. and Partially Den. Mot. for J. as a Matter of Law at 4). This finding, however, does

not indicate that the danger posed by the cliff line at night was unknown to Decedent. No evidence was introduced at trial to show that Appellees knew of any dangers presented by the cliff at night which Decedent did not know himself. Appellees and Decedent equally had the opportunity to observe the cliff line and its surroundings during daylight. They were both equally capable of assessing that the cliff was steep and that there was no guardrail or fence at the edge of the cliff. Because the danger was apparent and obvious, under the *Furuoka* standard, Appellees owed no duty to warn Decedent of the apparent danger.

¶ 35 We determine that the evidence, when viewed in the light most favorable to the prevailing party, was insufficient to conclude that Appellees were liable for Decedent's death. We thus conclude the court erred in finding there was legally sufficient evidence for a reasonable jury to find MTN and MTS negligent.

¶ 36 Because we find no liability, we need not address the third issue—whether the court erred when it amended the judgment after trial to reapportion liability for damages.

V. CONCLUSION

¶ 37 For the reasons stated above, we AFFIRM the court's summary judgment ruling denying punitive damages; REVERSE the jury's verdict finding MTN and MTS liable; REVERSE the court's order denying the Rule 50(b) motion; and VACATE the court's order reforming the jury's verdict on liability.

SO ORDERED this 27th day of December, 2017.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
TIMOTHY H. BELLAS
Justice Pro Tem.