

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

BSREP III PBG RESORT, LLC, a foreign limited liability company,
d/b/a **PGA NATIONAL RESORT AND SPA**,
Appellant,

v.

LORI GINSBURG,
Appellee.

No. 4D2025-0428

[September 9, 2026]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Luis Delgado, Jr., Judge; L.T. Case No. 502023CA002697XXXXMB.

Hinda Klein of Conroy Simberg, Hollywood, for appellant.

David L. Luck, Marisa Glassman, and Andres A. Hermida of Morgan & Morgan, Miami, and R. Christopher Rodems of Morgan & Morgan, Orlando, for appellee.

FORST, J.

Appellant PGA National Resort and Spa (“PGA”) appeals from the trial court’s final judgment for Appellee Lori Ginsburg (“Ginsburg”) following a jury verdict awarding \$603,578.70 in damages on a premises liability claim arising from a trip and fall in PGA’s guest parking lot. PGA challenges the trial court’s denial of its motion for directed verdict and the trial court’s decision to take judicial notice of “section 1003.2.7.1” of an unspecified edition of the Florida Building Code (“FBC”).

We affirm the trial court’s denial of PGA’s motion for directed verdict without discussion. However, because the trial court erred as a matter of law in treating the FBC like a statute subject to mandatory judicial notice, failing to afford PGA the procedural protections required by sections 90.203 and 90.204, Florida Statutes (2024), and admitting an out-of-date administrative code provision into evidence without determining whether the provision applied to this case, we reverse and remand for a new trial.

Background

Ginsburg and her husband were walking through PGA's guest parking lot when Ginsburg tripped on a missing section of asphalt and fell, fracturing her right wrist. The defect in the pavement was described at trial as approximately six to eight inches long, four to six inches wide, and up to three-quarters of an inch to one inch deep. Because the parking lot lacked sidewalks, guests walked on the asphalt surface to reach their vehicles. Both Ginsburg and her husband testified that overhead lights and palm trees created shifting shadows across the asphalt surface that obscured the defect, and Ginsburg's husband testified that the shadows had "camouflaged" the pavement and he "could not see a pothole on the ground."

Ginsburg filed suit alleging premises liability based on PGA's failure to maintain its property in a reasonably safe condition and failure to warn of a dangerous condition. PGA denied liability and asserted a comparative negligence defense.

On the first morning of trial, immediately before jury selection, Ginsburg's counsel orally requested that the trial court take judicial notice of FBC "section 1003.2.7.1," which, according to the jury instructions ultimately adopted, provides that "changes in elevation of walking surfaces shall not exceed $\frac{1}{4}$ in. (0.6 cm)," with changes between one-quarter and one-half inch required to be "beveled."¹ PGA's counsel objected, stating that the defense had received no prior written notice of the request, and the code provision applied only to means of egress from buildings, not to exterior parking lots. PGA's counsel stated, "I haven't even heard of the Florida Building Code until this morning."

The trial court overruled PGA's objection, reasoning that the FBC was "a codified statutory thing" subject to mandatory judicial notice as "public statutory law" under section 90.201(1), Florida Statutes (2024). The court did not conduct any inquiry into whether FBC "section 1003.2.7.1" applied to the parking lot, stating: "That's really all I'm doing. I'm not a factfinder. I'm not saying it applies to this case."

¹ The trial transcript and the jury instructions do not establish which Florida Building Code edition Ginsburg's trial counsel provided to the trial court. On appeal, the parties agree that only the 2001 edition contained a "section 1003.2.7.1" with the cited language. Ginsburg concedes on appeal that this 2001 edition was "applicable March 1, 2002, through September 30, 2005."

FBC “section 1003.2.7.1” became a recurring feature of the trial. Ginsburg’s counsel questioned *every* PGA witness—including PGA’s managing director and multiple security officers—about their knowledge of and training on the FBC. In closing argument, Ginsburg’s counsel argued at length that the parking lot was “in violation of the building code, which is prima facie evidence . . . of negligence; therefore, it’s a dangerous condition.” In rebuttal, Ginsburg’s counsel displayed the supposed FBC provision to the jury and challenged PGA for having failed to call an expert to rebut the FBC’s applicability.

The trial court then instructed the jury that “the court has taken judicial notice of certain facts” and that it “must accept those facts as true,” followed immediately by a reading of the provided FBC “section 1003.2.7.1.” The jury returned a verdict for Ginsburg, finding PGA negligent and Ginsburg not comparatively negligent, and awarding Ginsburg \$603,578.70 in damages. The trial court denied PGA’s renewed motion for directed verdict and motion for new trial.²

This appeal follows.

Analysis

“We review a trial court’s decision to grant a request for judicial notice for an abuse of discretion.” *Sayles v. Nationstar Mortg., LLC*, 268 So. 3d 723, 725 (Fla. 4th DCA 2018). The standard of review of an order denying a motion for new trial is likewise abuse of discretion. *Universal Prop. & Cas. Ins. Co. v. Naze*, 417 So. 3d 313, 318 (Fla. 4th DCA 2025). We review de novo a trial court’s erroneous interpretation and application of Florida law. *Barcomb v. State*, 68 So. 3d 412, 414 (Fla. 4th DCA 2011) (citing *Gilliam v. Smart*, 809 So. 2d 905, 907 (Fla. 1st DCA 2002); *Walden v. State*, 17 So. 3d 795, 796 (Fla. 1st DCA 2009)).

A. Ginsburg Failed to Comply with the Procedural Requirements of Sections 90.203 and 90.204, Florida Statutes (2024).

We first hold that Ginsburg failed to comply with section 90.203, Florida Statutes (2024), which states that a party requesting judicial notice of a matter described in section 90.202 must give “each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request,” and must furnish the court with “sufficient information to enable it to take judicial

² The trial court granted PGA’s motion for directed verdict on the failure to warn claim. Ginsburg has not cross-appealed that ruling.

notice of the matter.” § 90.203, Fla. Stat. (2024). Ginsburg did not mention the FBC at any point during discovery or pretrial hearings, and instead orally raised her judicial notice request for the first time on the morning of the first day of trial, right before jury selection. Thus, PGA was deprived of a reasonable opportunity to research the provision, retain an expert, or prepare a response.

A similar failure occurred in *DiGiovanni v. Deutsche Bank National Trust Co.*, 310 So. 3d 1071, 1075 (Fla. 2d DCA 2020), where the Second District reversed a judgment because the party seeking judicial notice had waited until the eve of trial to disclose the relevant document, depriving the opposing party of a meaningful opportunity to challenge the document. The court held that “a request for judicial notice must be made pursuant to section 90.203, Florida Statutes (2012), which requires timely written notice so that the opposing party has sufficient time to meet the request.” *Id.* The same defect is present here and requires the same result. *See also Rodriguez v. Philip*, 413 So. 2d 441, 442 (Fla. 3d DCA 1982) (reversing where the trial court sua sponte took judicial notice without affording “each party reasonable opportunity to present information relevant to the propriety of taking judicial notice and to the nature of the matter noticed”).

Moreover, section 90.204(1), Florida Statutes (2024), requires the trial court to afford the opposing party a reasonable opportunity to be heard before granting a request for judicial notice. *See Scripps Rsch. Inst., Inc. v. Scripps Rsch. Inst.*, 916 So. 2d 988, 991 (Fla. 4th DCA 2005) (reversing where trial court took judicial notice without affording opposing counsel fair warning or a reasonable opportunity to present information). Here, the trial court erred in granting the request over PGA’s immediate objection, without any opportunity for PGA to investigate the applicability of the FBC’s “section 1003.2.7.1” to this case.

B. The FBC is Not Subject to Mandatory Judicial Notice.

The trial court grounded its judicial notice ruling on the conclusion that the FBC constituted “public statutory law” subject to mandatory judicial notice under section 90.201(1), Florida Statutes (2024), which provides that a court “shall take judicial notice of . . . decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States.” This was legal error. The FBC is not a statute—it is an administrative rule adopted by the Florida Building Commission pursuant to sections 120.536(1) and 120.54, Florida Statutes. *See* § 553.73(1)(a), Fla. Stat. (2024) (“The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code . . .”). As an administrative rule, FBC “section 1003.2.7.1” falls

within section 90.202(9), Florida Statutes (2024), which provides that a court *may*, not *must*, take judicial notice of “[r]ules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies.” § 90.202(9), Fla. Stat. (2024). By treating the FBC as a mandatory rather than discretionary subject matter for judicial notice, the trial court misapplied the law.

C. Nothing in the Record Explains Why Section 1003.2.7.1 of a 2001 Code That Expired in 2005 Would Apply Here.

In addition to the foregoing errors, the trial court erred in admitting FBC “section 1003.2.7.1” without determining whether that provision is applicable to this case. *See Jackson v. Fla. Dep’t of Transp.*, 422 So. 3d 586, 591 (Fla. 5th DCA 2025) (“Whether the Florida Building Code is applicable to this case ultimately is a question of law belonging to the court, not the witness.”).

This case illustrates why it is necessary for parties to give opposing counsel and the trial court adequate time to respond to motions for permissive judicial notice, and for the trial court to conduct an adequate inquiry into the subject of the motion and determine whether it actually applies to the case.

Here, on the morning of trial, Ginsburg’s counsel provided the trial court with an administrative code provision that was published in 2001 and expired in 2005, without informing the trial court of those parameters. PGA raised several meritorious contemporaneous objections to Ginsburg’s last-minute judicial notice request, but the lack of adequate notice hindered PGA’s ability to challenge the provision’s applicability (or lack thereof) or discover the fact that the provision had expired twenty years prior.

The most recent Florida Building Code, the eighth edition, was published in 2023 and does not contain a “section 1003.2.7.1.” The edition that was in effect at the time of Ginsburg’s injury was the seventh edition, which was published in 2020 and also did not contain a “section 1003.2.7.1.” Ginsburg did not ask the trial court to take judicial notice of any provision of either of these latter codes, and the court did not do so. Instead, the trial court took judicial notice of a provision that had expired twenty years prior, while explicitly stating, “I’m not saying it applies to this case.” But the trial court was required to determine whether the requested provision applied to the case; otherwise, no justification existed for taking judicial notice of this provision and inserting it in the jury instructions. No evidence or argument in the record explains why a code that was in

effect from 2002 to 2005 would apply to this case.

Separate from the chronological issue, the trial court failed to determine whether a provision about “means of egress” properly applies to PGA’s parking lot. However, we need not reach that question at this stage, because the record is insufficiently developed regarding which code, or which provisions (if any), apply. Ginsburg suggests in a supplemental appellate filing that differently numbered provisions of other editions of the Florida Building Code are substantially similar to the “section 1003.2.7.1” used at trial, but we will not proceed as though Ginsburg had provided the trial court with a different provision than she did. All such matters must be addressed by the trial court in the first instance. See *Century-Nat’l Ins. Co. v. Frantz*, 369 So. 3d 739, 746 (Fla. 2d DCA 2023).

Bottom line: FBC “section 1003.2.7.1” should not have been judicially noticed, included in the jury instructions, or permitted as a cross-examination topic without evidence that the provision was properly applicable or relevant to this case. See *DiGiovanni v. Deutsche Bank Nat’l Tr. Co.*, 226 So. 3d 984, 989 (Fla. 2d DCA 2017) (“[J]udicially noticed documents must be otherwise admissible.”); *Pic ‘N’ Save W. Fla. Corp., Inc. v. Sprague*, 589 So. 2d 313, 314 (Fla. 5th DCA 1991) (reversing premises liability judgment where trial court permitted jury to hear extensive testimony regarding inapplicable safety standard).

D. The Error Was Not Harmless.

Under *Special v. West Boca Medical Center*, 160 So. 3d 1251, 1256 (Fla. 2014), the burden falls on Ginsburg, as the beneficiary of the error, “to prove that the error complained of did not contribute to the verdict.” Ginsburg cannot meet that burden here. The FBC was not a peripheral element of the trial, but rather the centerpiece of Ginsburg’s case. Ginsburg’s counsel discussed FBC “section 1003.2.7.1” during cross-examination of every PGA witness about their knowledge and training, implying that PGA’s ignorance of the FBC demonstrated negligence. In closing, Ginsburg’s counsel argued that the parking lot was “in violation of the building code” and that this constituted “prima facie evidence . . . of negligence.” Later, during rebuttal, Ginsburg’s counsel displayed the FBC to the jury and faulted PGA for not having called an expert to rebut its applicability—which PGA could not have done because Ginsburg had failed to disclose the FBC until the morning of trial. The jury was then instructed that it must accept the facts contained in FBC “section 1003.2.7.1” as true. Accordingly, we cannot say no reasonable possibility exists that the error did not contribute to the verdict. *Special*, 160 So. 3d at 1256; § 59.041, Fla. Stat. (2024).

Conclusion

The trial court's denial of PGA's motion for directed verdict is affirmed. However, because the trial court erred as a matter of law by treating the FBC as public statutory law subject to mandatory judicial notice, failed to afford PGA the procedural protections required by sections 90.203 and 90.204, Florida Statutes, and admitted a provision from an administrative code that expired in 2005 without determining whether and why the provision applies to this case, we reverse the final judgment and remand for a new trial.

Reversed and remanded for a new trial.

GROSS and LEVINE, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.