

SCT-CIV-2020-0007
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**V.I. WHEEL ESTATE, LLC d/b/a
PEPPERTREE TERRACE,
Appellee/Defendant.**

Consolidated Cases:
S. Ct. Civ. No. 2020-0007
S. Ct. Civ. No. 2020-0008

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OPINION OF THE COURT

CABRET, Associate Justice.

¶ 1 A. Susan Miller (“Miller”) and Lynell Hughes (“Hughes”) appeal from memorandum opinion and orders of the Superior Court entered on January 21, 2020, in their two separate negligence actions—*Miller v. V.I. Wheel Estate*, SX-18-CV-041 and *Hughes v. V.I. Wheel Estate*, SX-18-CV-033—which have since been consolidated for the purposes of this appeal. The orders both granted summary judgment to V.I. Wheel Estate, LLC (“Peppertree”), the owner and operator of Peppertree Terrace, a mobile home park on St. Croix. The court found that proximate causation could only be determined through scientific, technical, or otherwise specialized knowledge, which an expert witness must testify to, and granted summary judgment in Peppertree’s favor because neither Miller nor Hughes presented any expert testimony. We hold that the Superior Court committed no error in holding that expert testimony was required in *Miller*, but erred in finding that expert testimony was required in *Hughes*. Therefore, we affirm summary judgment in *Miller* and reverse in *Hughes*.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 These cases arise from the aftermath of Hurricane Maria, which, on September 19, 2017, tragically struck Saint Croix and Peppertree Terrace. Peppertree leases empty lot spaces at Peppertree Terrace to mobile homeowners. Peppertree also owns mobile homes, which it leases out to prospective tenants. At the time of the hurricane, Miller and Hughes each resided in mobile home units on leased lot space in Peppertree Terrace: Miller on lot 11-7, and Hughes on lot 7-2.

Miller and Hughes allege that, during the storm, mobile home units owned by Peppertree on adjoining lots came loose from their foundations and crashed into their trailers, causing damage to their property. The unit that caused the damages alleged by Miller was on lot 11-8, and the unit that caused the damages alleged by Hughes was on lot 7-1. Miller and Hughes contend that their damages were caused by Peppertree's negligent failure to inspect and maintain the straps and anchors tethering these units, which were rusted, causing the trailers to be unsecured to their foundation and to fly loose during the storm. During the storm, neither Miller nor Hughes were physically present in their respective trailers. Miller and Hughes' allegations are solely supported by testimony from lay witnesses.

¶ 3 In *Miller*, Richard Gideon, a former long-time Peppertree resident, viewed remnants of the straps left after the hurricane that indicated to him that there had been no maintenance done on them, as "[t]hey were so rusted that they did not have the capability of doing their job," i.e., securing the mobile home unit to its foundation. Peppertree maintenance worker Earl Mitchell testified that he installed the straps on the unit approximately 13 years before, around 2005, and that he occasionally checked them, believing the trailer was "still firm", but that he never changed any straps between 2005 and the passage of Hurricane Maria in 2017. No witnesses in *Miller* observed the straps and anchors of unit 11-8 immediately before the hurricane.

¶ 4 In *Hughes*, Lynell Hughes testified that the straps on Peppertree's unit, 7-1, were so rusted and rotted that from the side of the road she could see that they had deteriorated off the unit and were no longer securing the home at all. However, a worker for Peppertree, Henry Mason, testified that he had visually inspected unit 7-1 a few months before the hurricane and had determined that there was no need to change any anchors or straps under the unit.

¶ 5 The Superior Court granted summary judgment, agreeing with Peppertree's contention that the metallurgical properties of the straps and their attendant rusting and rotting are not within the common knowledge of laypersons, and therefore expert testimony is required to make a prima facie case to show proximate cause as an element of negligence, and to avoid speculation by the trier of fact. Miller and Hughes filed their notices of appeal in this Court on January 29, 2020.

II. JURISDICTION AND STANDARD OF REVIEW

¶ 6 We have jurisdiction over this appeal pursuant to title 4, section 32(a) of the Virgin Islands Code, which provides that "[t]he Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." "An order granting summary judgment on all claims in a case is a final order." *Simpson v. Board of Dirs. of Sapphire Bay Condos. West*, 62 V.I. 728, 731 (V.I. 2015) (citing *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379 (V.I. 2014)). Because the Superior Court's January 21, 2020, orders granting Peppertree's motions for summary judgment adjudicated all the claims of each party, and dismissed the actions with prejudice, they are final orders within the meaning of section 32. *Charles v. Arcos Dorados USVI, INC.*, 71 V.I. 1146, 1151 (V.I. 2019).

¶ 7 "A review of the Superior Court's award of summary judgment is plenary." *Id.* When reviewing an order granting summary judgment, we apply the same test the Superior Court applies. *Kennedy Funding Inc. v. GB Props., Ltd.*, 2020 VI 5, ¶ 13. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.I. R. CIV. P. 56(c). "In applying this test, we do 'not weigh the evidence or determine the credibility of witnesses.'" *Charles*, 71 V.I. at 1152 (quoting *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013)). "Instead, we 'must view the facts in the light most favorable to the nonmoving party and draw all inferences in

that party's favor.” *Id.* (quoting *Saldana v. Kmart Corp.*, 260 F.3d 228, 232 (3d Cir. 2001)). The movant may discharge their burden by pointing out to the court an absence of evidence supporting the nonmoving party's case, *Kennedy Funding Inc.*, ¶ 14, including a lack of expert testimony when the issue(s) involve scientific, technical, or specialized knowledge. “If the moving party meets this burden, the non-moving party then has the burden of setting out specific facts showing a genuine issue for trial. *Id.*”

III. DISCUSSION

¶ 8 Miller and Hughes argue that expert testimony is not required to make a prima facie showing of proximate causation as an element of their negligence causes of action because causation in these cases does not involve facts beyond a juror's common understanding and experience, and therefore summary judgment in favor of Peppertree based on the plaintiffs' failure to tender admissible expert opinion is improper.

A. Proximate Causation

¶ 9 “The foundational elements of a negligence cause of action are: (1) a legal duty of care to the plaintiff; (2) defendant's breach of that duty of care; (3) factual and legal [often referred to as ‘proximate’] causation; and (4) damages.” *Aubain v. Kazi Foods of V.I., Inc.*, 70 V.I. 943, 948-49 (V.I. 2019). “Proximate cause is established where the party who bears the burden shows that ‘an original act is wrongful or negligent and in a natural and continuous sequence produces a result which would not have taken place without the act.’” *Sealey-Christian v. Sunny Isle Shopping Center, Inc.*, 52 V.I. 410 (V.I. 2009), *overruled on other grounds by Machado*, 61 V.I. at 385-86 (quoting *Clinger v. Duncan*, 141 N.E.2d 156, 162 (Ohio 1957)). *See Aubain*, 70 V.I. at 949-50 (“[F]oreseeability permeates every element of a negligence claim....” Because of this, “each element requires a distinct and separate analysis.... [I]n a proximate cause analysis, ‘the standard

by which foreseeability is determined is that of looking to the natural and probable consequences of the act complained of.”) (quoting *Jeffords v. Lesesne*, 541 S.E.2d 847, 851 (S.C. Ct. App. 2000)). “Proximate cause is ordinarily a question to be determined by the jury as a fact in view of the attendant circumstances. But if the evidence be so slight as not reasonably to warrant the inference of proximate cause, the court will not leave the matter to the speculation of the jury.” *Taylor v. Shreeji Swami, Inc.*, 820 Fed. Appx. 174, 175-76 (4th Cir. 2020) (quoting *Oxendine v. Lowry*, 133 S.E.2d 687, 690 (N.C. 1963) and *Conley v. Pearce-Young-Angel Co.*, 29 S.E.2d 740, 742 (N.C. 1944) (internal quotation marks and alterations omitted)).

¶ 10 In order to plead a prima facie case on the issue of proximate cause, and thereby preclude the entry of summary judgment, Miller and Hughes were required to plead facts sufficient to create a triable issue for a jury on whether the damages they sustained were the natural and probable consequence of, and part of a natural and continuous sequence stemming from, Peppertree’s failure to secure the mobile homes to their foundations. *Kennedy Funding Inc.*, ¶ 14. *See Charles*, 71 V.I. at 1151-52 (“One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.... Importantly, ‘there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.’”) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986) and *Saldana*, 260 F.3d at 364-65)); *see also Island Tile and Marble, LLC v. Bertrand*, 57 V.I. 596, 625 (V.I. 2012) (“The term ‘prima facie evidence’ is... a term of art, and means ‘evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.’”) (quoting BLACK’S LAW DICTIONARY 638-39 (9th ed. 2009) (emphasis omitted)). Therefore, we must determine whether the trial court correctly found that the capability of the rusted straps and anchors to secure the homes to their foundations requires scientific, technical, or specialized expert knowledge to be understood, or

whether it is “within the common experience of ordinary people in everyday life.” *Aubain*, 70 V.I. at 955. “If the matter in issue is one within the knowledge of experts only and not within the common knowledge of laymen, it is necessary for the plaintiff to introduce expert testimony in order to establish a prima facie case.” *Charles*, 71 V.I. at 1155 (quoting *Money v. Manville Corp.*, 596 A.2d 1372, 1375-76 (Del. 1987)).

B. Legal Standard for Scientific, Technical, or Specialized Knowledge

¶ 11 The Superior Court interpreted two provisions of the Virgin Islands Rules of Evidence, V.I. R. EVID. 701, Opinion Testimony by Lay Witnesses,¹ and Rule 702, Testimony by Expert Witnesses,² as requiring expert testimony in these cases, finding that scientific, technical, or other specialized knowledge is needed to understand the subject matter, as it is outside of the common knowledge of the average juror. We exercise plenary review of the Superior Court’s legal interpretations of the Virgin Islands Rules of Evidence. *Castillo v. People*, 59 V.I. 240, 254 (V.I. 2013); *Billu v. People*, 57 V.I. 455, 461 (V.I. 2012) (“[O]ur review of the trial court’s admission of evidence is only for abuse of discretion, unless the decision involves application of a legal precept, [in which circumstance] this Court exercises plenary review.”).³

¹ Rule 701 provides as follows:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness’s perception;
- (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

² Rule 702 provides as follows:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

³ See also *Harris v. J.B. Robinson Jewelers*, 627 F.3d 235, 240 (6th Cir. 2010) (Utilizing the same standards: “These standards are not in fact inconsistent, because it is an abuse of discretion to make errors of law or clear errors of factual

¶ 12 In parsing the sometimes-thin distinction between issues requiring expert testimony to understand “scientific, technical, or other specialized” subject matter, versus those where lay testimony will suffice, we note that “[n]umerous cases have acknowledged that the line between expert and lay testimony is easily blurred.” *Burke v. City of Santa Monica*, 2011 WL 13213593, at *20 (C.D. Cal. 2011) (citing to *United States v. Paiva*, 892 F.2d 148, 156 (1st Cir. 1989) and *United States v. Figueroa-Lopez*, 125 F.3d 1241, 1246 (9th Cir. 1997)); see *United States v. Perkins*, 470 F.3d 150, 155 (4th Cir. 2006) (analyzing federal analogs to Virgin Islands Rules: “[T]he line between lay opinion testimony under Rule 701 and expert testimony under Rule 702 is a fine one.”); *United States v. Ayala-Pizarro*, 407 F.3d 25, 28 (1st Cir. 2005). Indeed, it is difficult to apply a bright line test to our Rules. Further, “[d]eciding what is within the knowledge of a lay jury and what requires expert testimony depends on the particular facts of [each] case, including the complexity and technical nature of the evidence to be presented and the trial judge’s understanding of a lay person’s knowledge.”⁴ *Babb v. Lee Cty. Landfill SC, LLC*, 747 S.E.2d 468, 481 (S.C. 2013). Therefore, due to the fact-intensive nature of these determinations, what qualifies as scientific, technical, or other specialized knowledge requiring expert testimony under Virgin Islands Rules of Evidence 701(c) and 702(a) is within the discretion of the trial judge, to be evaluated on a case-by-case basis. *Id.*

determination.”); *AKIB Constr. Inc. v. Shipwash*, 582 S.W.3d 791, 802 (Tex. App. 2019) (“Whether expert testimony is necessary to prove a particular issue is a question of law that we consider de novo. Whether expert testimony is necessary is not an admissibility-of-the-evidence question; instead, it is question of what legal weight should be given to non-expert evidence in the record.”) (citing *FFE Transp. Servs., Inc. v. Fulgham*, 154 S.W.3d 84, 89 (Tex. 2004)).

⁴ See *Smith v. Blythe Dev. Co.*, 665 S.E.2d 154, 155 (N.C. Ct. App. 2008), *aff’d*, 678 S.E.2d 657 (N.C. 2009) (per curiam) (“This Court has addressed the issue of whether expert testimony is required to establish the element of causation in flooding cases with differing results based upon the complexity of the facts presented.”).

C. Specialized vs. Common Knowledge: *Miller*

¶ 13 Specialized knowledge and common knowledge lie on a factual continuum, with plainly obvious common knowledge issues at one end of the spectrum [for example: a witness observing rain], and plainly scientific, technical, and specialized matters at the other end [for example: the mechanisms involved in nuclear fission], with a “fine” line dividing them as issues draw closer to the middle. *Perkins*, 470 F.3d at 155. See *Jackson-Flavius v. People*, 57 V.I. 716, 732 (V.I. 2012) (in distinguishing proper lay testimony from expert testimony, or, in essence, common knowledge from specialized knowledge, courts have articulated that “lay testimony results from a process of reasoning familiar in everyday life, whereas an expert’s testimony results from a process of reasoning which can be mastered only by specialists in the field”); *State v. Brown*, 836 S.W.2d 530, 549 (Tenn. 1992); *Harris*, 627 F.3d at 240; *U.S. v. Thompson*, 393 Fed. Appx. 852, 858 (3d Cir. 2010); *State v. Boothby*, 951 N.W.2d 859, 866 (Iowa 2020). The issue in *Miller* lies closer towards the middle of this continuum.

¶ 14 Our case law on scientific, technical, and specialized knowledge issues is sparse, and on metallurgical issues, such as those in the present case, it is nonexistent. Because of this, the Superior Court relies heavily on two inapposite cases where expert testimony was required: *Charles*, 71 V.I. 1146, a medical case, and *Davis v. Hovenssa, LLC*, 63 V.I. 475 (V.I. Super. 2015), a Superior Court ruling dealing with the inner workings of a complex high pressure water blaster.⁵ We find this reliance is misplaced.

¶ 15 *Charles* does not aid us in delineating specialized knowledge from common knowledge as required to decide *Miller*. Almost all medical cases require specialized knowledge and expert

⁵ This case is currently before us on appeal, *sub nom. Davis v. UHP Projects, Inc.*, S. Ct. Civ. No. 2019-0075.

testimony, *see generally In re Lipitor*, 227 F. Supp. 3d 452, 469-77 (D.S.C. 2017) (collecting cases), *aff'd*, 892 F.3d 624 (4th Cir. 2018) (“While the specific language used by courts vary to some degree, all jurisdictions require expert testimony at least where the issues are medically complex and outside common knowledge and lay experience.”), save for those cases where, for example, “the surgeon saws off the wrong leg, or there is injury to a part of the body not within the operative field.” *Barton v. Owen*, 139 Cal. Rptr. 494, 499 (Cal. Dist. Ct. App. 1977); *see also In re Lipitor*, 227 F. Supp. 3d at 477. Like *Charles*, *Hovensha* also falls too far on the plainly scientific, technical, or specialized end of the continuum to be useful here, as it deals with the inner mechanics of a complex piece of equipment and the effect of these inner mechanics on water pressure surges.

¶ 16 A decision issued by this Court on the common knowledge side of the continuum, *Aubain*, more closely resembles the present case than *Charles* or *Hovensha*. There we held that “proffering expert proof on an issue as prosaic as the process of ordinary wear and tear of furniture—... the wooden connecting peg of a bench loosening over time—was not required, as such matters are well within the common experience of ordinary people in everyday life.” 70 V.I. at 955. However, we are not fully persuaded by this case; the facts differ materially from *Miller*, and the wear and tear of a bench’s wooden peg loosening over time and breaking is distinguishable from the wear and tear of metal straps and anchors securing a mobile home rusting over time and breaking, in part because the metal undergoes changes in its metallurgical properties and composition.⁶

⁶ *See TravCo Ins. Co. v. Ward*, 736 S.E.2d 321, 328 (Va. 2012) (“Rust is defined as ‘the reddish porous brittle coating that is formed on iron especially when chemically attacked by moist air and that consists essentially of hydrated ferric oxide but usually contains some ferrous oxide and sometimes iron carbonates and iron sulfates....’”) (quoting Webster’s Int’l Dict. at 1991); *Matheson v. C.I.R.*, 18 B.T.A 674, 676 (B.T.A. 1930) (Salt moisture coming into contact with reenforcing steel bars causes them to rust and corrode, turning critical point of structure into point of weakness).

¶ 17 Generally, “[t]echnical issues requiring expert testimony include ‘engineering, metallurgical[,] and medical principles.’” *Willet v. Johnson & Johnson*, 465 F. Supp. 3d 895, 905 (S.D. Iowa 2020) (quoting *Farm Bureau Property & Casualty Insurance Company v. CNH Industrial America LLC*, 2018 WL 2077727, at *17 (N.D. Iowa 2018) (emphasis added)).⁷ In *Miller*, the capability of the rusted straps and anchors to secure unit 11-8 (and ultimately whether their failure was a proximate cause of Miller’s damages) is directly dependent on an understanding of specific metallurgical principles. The straps and anchors securing the home were 13 years old, rusted, had never been changed, and witnesses Gideon and Mitchell testified as to the straps’ capability to secure the unit based solely on lay observations and opinion. While it may seem to be a common sense determination that worn and rusted straps are not as strong or firm as newer straps, and are more likely to fail, the trial court found that several questions related to the metallurgical properties of the straps and anchors must be answered for a trier of fact to understand the evidence and determine the facts at issue without speculation,⁸ such as, for example: “[W]hat are the standards in the mobile home trailer industry for securing units of the size and weight of those at Peppertree to their foundations? What physical devi[c]les of what size, strength and metallurgic composition are utilized for that purpose to withstand hurricane force winds? To what extent did Peppertree’s unit on lot 11-8 comply or fail to comply with those standards?” These questions, and the metallurgical principles that underlie them, implicate the exact kind of

⁷ Cf. *Dunham v. Midwest Trucking & Transp., Inc.*, 2009 WL 3254468, at *3 (W.D. Mo. 2009) (“The real question is whether it takes scientific, technical, or specialized knowledge to be able to determine a piece of metal contains a weld. This Court finds that it does not. While most lay witnesses might not be qualified to offer testimony regarding proper welding techniques or processes, most witnesses likely would have little problem recognizing the distinct characteristics of a weld made in metal.”).

⁸ “The purpose of expert opinion testimony is to avoid jury findings based on mere speculation or conjecture.” *Lasley v. Georgetown University*, 688 A.2d 1381, 1384 (D.C. 1997) (quoting *Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 181 (D.C. 1990)).

“technical issues [that] requir[e] expert testimony.” *Willet*, 465 F. Supp. 3d at 905. *See Asplundh Mfg. Div. v. Benton Harbor Eng'g*, 57 F.3d 1190, 1204 (3d Cir. 1995) (“Metal fatigue is a technical concept.”); *Shipwash*, 582 S.W.3d at 802 (“While the ordinary person may be able to detect whether a visible bolt is... rusty, determining when that... rust is sufficient to create a danger requires specialized knowledge.”) (quoting *Fulgham*, 154 S.W.3d at 91); *In re Ford Tailgate Litig.*, 2015 WL 7571772, at *1, 6 (N.D. Cal. 2015) (opinions on corrosion and failure of metal components required special expertise, and even an expert qualified in other disciplines could not offer opinions on such matters without proper qualification); *H/S Wilson Outparcels, LLC v. Kroger Limited Partnership I*, 2017 WL 4293404, at *3, 5 (E.D.N.C. 2017) (lay witness could testify as to observations of rust and water in roofing, but technical or specialized knowledge of expert required to create a triable issue of material fact as to whether roof was damaged beyond repair and needed replacement). *Cf. Fullington v. Union Pac. Fruit Exp. Co. Co.*, 1991 WL 126788, at *2 (D. Kan. 1991) (opinion on failure of rusted and cracked welded metal tendered by plaintiff’s expert on long-term metal fatigue was sufficient to defeat summary judgment).

¶ 18 The court did not err in requiring Miller to provide expert testimony. To create a triable issue of fact on whether the damages she sustained were the natural and probable consequence of, and part of a natural and continuous sequence stemming from, Peppertree’s failure to secure the mobile homes to their foundation, expert testimony was required. More specifically, whether the failure of the rusted straps was a cause of damage attributable to Peppertree required technical knowledge, and therefore an expert was necessary for Miller to set out facts specific enough to show a genuine issue for trial. Therefore, we find that the Superior Court correctly granted summary judgment to Peppertree in Miller’s case.

D. Specialized vs. Common Knowledge: *Hughes*

¶ 19 In evaluating the particular facts of *Hughes*, including the complexity and technical nature of the evidence, we are compelled to reach a different conclusion than that in *Miller*. *Babb*, 747 S.E.2d at 481; *Smith*, 665 S.E.2d at 155, *aff'd*, 678 S.E.2d 657.

¶ 20 Here, unlike *Miller*, *Hughes* testified that the straps on unit 7-1 were so rusted and rotted that they had deteriorated *all the way off* the unit, and they were no longer securing the home at all before the hurricane. We do not weigh this evidence, nor make credibility determinations regarding it, and we must accept *Hughes*' allegations, as the nonmoving party, as true if properly supported.⁹ *Chestnut v. Goodman*, 59 V.I. 467, 474 (V.I. 2013). Therefore, even though *Hughes* is a lay witness, her observation that the rusty straps under the trailer were completely broken off indicates that the straps were physically incapable of securing the mobile home, whether they were rusted or not. Thus, unlike the circumstances present in the *Miller* case, their metallurgical properties are not at issue. We conclude that a lay jury could clearly understand this kind of testimony without expert assistance. *See Hanley v. W. Virginia Cent. & P. Ry. Co.*, 53 S.E. 625, 628 (W. Va. 1906) ("The condition of a piece of metal as to rust holes, etc., and the appearance of stays or bolts as to recent break, are matters not of expert but common knowledge."). Here, the proof related to causation is sufficiently obvious so as to lie within the common knowledge of the average juror. *See Lasley*, 688 A.2d at 1384 ("Expert testimony is not required if the issue of causation can be resolved wholly within the realm of ordinary human knowledge and experience, or if the proof is

⁹ *Hughes*' allegations are "supported by proper proofs" if her evidence amounts to "more than a scintilla, but [it] may amount to less (in evaluation of the court) than a preponderance." *Williams v. United Corp.*, 50 V.I. 191, 195 (V.I. 2008). A scintilla is defined as "very slight evidence" *Springs v. City of Charlotte*, 704 S.E.2d 319, 323 (N.C. Ct. App. 2011), or "the least particle of evidence—evidence which, without further evidence, is a mere trifle." *Territory v. Legaspi*, 39 Haw. 660, 664 (Haw. 1953). *Hughes*' direct testimonial evidence amounts to more than a scintilla under the facts of this specific case.

so obvious as to lie within the ken of the average lay juror.”) (citations omitted); *see also Harris*, 627 F.3d at 240.

¶ 21 “Therefore, the Superior Court should have identified the discrepancies in [the competing] testimony [of Hughes and Henry Mason] as evidence creating a triable issue of fact.” *Aubain*, 70 V.I. at 955. Because there is a triable issue of material fact in dispute, the Superior Court erred in granting summary judgment for Peppertree in Hughes’ case, and we reverse and remand for further proceedings.

IV. CONCLUSION

¶ 22 Whether scientific, technical, or other specialized knowledge is required under our Rules of Evidence turns on the particular facts of each case. The Superior Court correctly found that rusted metal straps breaking apart due to a hurricane requires expert testimony about the straps’ metallurgical properties. The court correctly required Miller to tender expert testimony on this issue to preclude summary judgment, but erred by requiring Hughes to present expert testimony on the very different issue presented by the total absence of such straps in her case. By examining the facts of each case, due to Hughes’ testimony that the straps were not connected, the conflict between Hughes’ and Henry Mason’s lay testimony created genuine dispute as to a material fact, precluding summary judgment. Accordingly, we affirm the Superior Court’s order granting summary judgment in *Miller*, and reverse the Superior Court’s order granting it in *Hughes*. We remand *Hughes* for further proceedings consistent with this opinion.

Dated this 18th day of October, 2021.

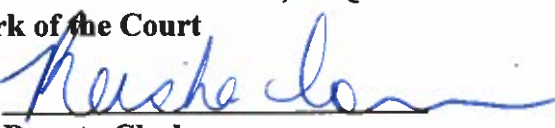
BY THE COURT:



MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: 

Deputy Clerk

Dated: 10-18-21