

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10976
Non-Argument Calendar

MATTHEW T. WINTHER,
TRACEY WINTHER,

*Plaintiffs-Appellants,
Cross-Appellee,*

versus

UNITED STATES STEEL CORPORATION,

*Defendant-Appellee,
Cross-Appellant.*

Appeals from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:18-cv-01693-RDP

Before ROSENBAUM, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

This is an action by topographically lower property owners against a topographically higher property owner for nuisance, trespass, negligence, and interfering with and channeling the natural drainage of surface water. Matthew Winther and Tracy Winther sued United States Steel Corporation (“U.S. Steel”), alleging that U.S. Steel’s development of the upper property caused water, sediment, rock, and other debris to enter and cause damage to their lower-elevation property. The jury returned a verdict for the Winthers on their claims for channeling, nuisance, and trespass, and awarded compensatory damages of \$235,150. The district court granted U.S. Steel’s motion for judgment as a matter of law on the Winthers’ claims for wantonness and punitive damages, but it rejected U.S. Steel’s argument that the Winthers failed to establish sufficient proof of causation between their injuries and U.S. Steel’s activity. The court denied the Winthers’ motion for a new trial on wantonness and punitive damages based on alleged evidentiary errors.

The Winthers appeal the grant of U.S. Steel’s motion for judgment as a matter of law on wantonness and punitive damages, and the denial of their motion for a new trial on those same issues. U.S. Steel cross-appeals the denial of its motion for judgment as a matter of law as to all claims, arguing that the Winthers lack necessary expert testimony to establish that U.S. Steel’s activity caused the harms to their property.

As to the Winthers’ appeal, we vacate the grant of U.S. Steel’s motion for judgment as a matter of law, and the denial of

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the Winthers' motion for a new trial, and we remand for further proceedings. As to U.S. Steel's cross-appeal, we affirm the judgment on the verdict.

I.

The Winthers own three undeveloped, residential lots totaling around six acres (the "Winther property") in Hoover, Alabama. The Winther property is in a ravine that drains to Hurricane Branch, a waterway that flows through the property. The property is next to, and at a lower elevation than, a 325-acre mixed-use development known as The Preserve, which U.S. Steel has been constructing in phases for more than twenty years. The Winthers claim that U.S. Steel, in developing the Preserve, has interfered with the natural drainage of water and caused the discharge of sediment, rock, and debris, resulting in erosion and other damage to their property.

A.

In 2007, the Winthers purchased the six-acre property in Hoover with the intent to build a home. The prior owner, David Rawson, had subdivided the property into three lots and arranged for the construction of building pads and driveways crossing Hurricane Branch on Lots 1 (in 1991) and 3 (in 1999). The driveway construction included the installation of culverts to cross Hurricane Branch. Rawson sized the culverts for a ten-year storm.

The Winther property slopes steeply upward to the Preserve on its western side. Development of the Preserve began in 1998, with construction starting in 2000 and continuing in phases

through the present. U.S. Steel has received City approval for each phase of the development.

Some stormwater runoff flows downhill from the Preserve to Hurricane Branch through a natural drainage way on the Winther property. The drainage way is adjacent to the driveway as it makes its way to the building pad on Lot 1, and it empties into Hurricane Branch immediately adjacent to the Lot 1 stream crossing on the downstream side. The parties refer to this drainage way as “Tributary 1.”

The Winthers relocated to Hoover in 2010, but were initially unsuccessful in securing financing to build a home on the Winther property. And since 2014, according to the Winthers, development has been impeded by increased stormwater flows, erosion, and discharge of sediment, rocks, and debris from the Preserve.

B.

As part of the approval process for the Preserve, the City required a presentation of the development’s master drainage plan. U.S. Steel retained an engineering firm, Walter Schoel Engineering, Inc. (“Schoel Engineering”), to develop the master drainage plan and all subsequent drainage plans for the Preserve.

The focus of the master drainage plan was Hurricane Branch, flooding of which had impacted existing developments in Hoover long before the Preserve’s development. The Preserve contributes about 185 acres of drainage area to the Hurricane Branch basin, or approximately 15% of the overall basin.

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The central component of the master drainage plan was the installation of an undersized culvert at an upstream location to detain and slow stormwater flows in Hurricane Branch. The City accepted and approved the plan, and the Federal Emergency Management Agency (“FEMA”) approved the undersized culvert’s installation. The culvert has been successful in reducing peak flows in Hurricane Branch by 15% to 35%, depending on the particular storm event.

Notably, the master drainage plan called for more water to be discharged into Tributary 1, relative to predevelopment levels, so long as there was no cumulative increase in Hurricane Branch’s flows. Schoel Engineering had evaluated downstream effects of the Preserve but did not see or consider the Winther property. Development of the Preserve in fact increased the amount of water that was being discharged onto the Winther property through Tributary 1.

C.

Following a substantial rain event in April 2014, Mr. Winther began noticing increased stormwater runoff through Tributary 1 and resulting erosion. He also observed that there was more sediment and debris coming down the drainage way, including trees, branches, and construction materials like buckets. Meanwhile, U.S. Steel had embarked on deforestation and lot clearing for Phase XIII of the Preserve’s development.

Mr. Winther complained to U.S. Steel, the City, the Alabama Department of Environmental Management (“ADEM”), and

the U.S. Army Corp of Engineers. He then met with the City Engineer and representatives from U.S. Steel and Schoel Engineering at City offices on March 17, 2015.

During the March 17 meeting, Schoel Engineering explained its view that increased flows from the Preserve were not causing increased erosion to Tributary 1. Rather, in Schoel Engineering's view, the prior construction of the driveway and building pad on Lot 1 had narrowed the natural drainage way, which channelized and increased the velocity of stormwater flows. The City Engineer agreed with Schoel Engineering. U.S. Steel offered to pay to "armor" Tributary 1 where the increased erosion was observed, but Mr. Winther did not believe this was an acceptable solution to the problem. Mr. Winther made clear at that time and "on many occasions" that he wanted the water flow down Tributary 1 to return to predevelopment levels.

After the March 17 meeting, Schoel Engineering began researching other possibilities for reducing stormflow down Tributary 1. According to a Schoel Engineering employee who worked on the issue, he and his team were working on fixes because they knew the Winther property was experiencing erosion and damage due to the additional discharge of water down Tributary 1.

One proposal, which was not adopted, called for the installation of detention ponds on Preserve property to lower stormwater velocity and allow debris to settle. Instead, U.S. Steel adopted a proposal to partially reroute stormwater flows to another drainage feature on its property that empties into Hurricane

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Branch upstream of the Winther property. This alternative drainage way is referred to as “Tributary 2” or the “Preserve Brook.” The City approved the plans to reroute the stormwater flows in October 2015. Since then, the volume of water flowing to Tributary 2 has increased.

D.

The jury heard testimony and saw videos and photographs of changes to the Winther property over time. Rawson and Mr. Winther testified that the property was essentially unchanged from the 1990s through 2014, when Mr. Winther first noticed increased stormwater runoff in Tributary 1. Mr. Winther acknowledged that, after U.S. Steel partially rerouted stormwater flows to Tributary 2, the volume of water down Tributary 1 had lessened, “especially in big events.” But Mr. Winther otherwise testified that the flow of water down Hurricane Branch had steadily increased since 2014.

Mr. Winther also testified that, since September 2019, he has observed the creek crossing on Lot 3 of the Property being topped with more water with greater frequency than before September 2019. And since 2019, this had happened with any substantial rain event.

James Connors, Ph.D., testified that deforestation efforts in residential development, like those at the Preserve, can increase stormwater runoff and cause erosion. He also described his observations at the Winther property during four site visits in May 2019, August 2019, August 2022, and September 2024, including how he

observed increases in stormwater flow and the depositing of non-native riprap—rock used for erosion control—along the stream on the Winthers’ property.¹ Testimony also connected the riprap to the Preserve.

It’s undisputed that, in October 2021, a massive rain event—between a 100-year and a 500-year storm—caused box culverts at Tributary 2, upstream of the Winther property, to fail. As a result of the culvert failure, some construction fill, including soil, gravel, and riprap materials, could have been carried off-site through Tributary 2.

An expert hired by U.S. Steel inspected the Winther property and observed limestone riprap, what was “not native to Hurricane Branch,” and had been carried there from some other location, though he did not say where. The expert also opined that off-

¹ The record shows that Connors conducted a site visit on September 17, 2024, the day before he testified at trial. U.S. Steel objected, claiming unfair surprise. The district court overruled the objection but permitted U.S. Steel to question Connors about the site visit outside the presence of the jury. After this examination, it does not appear U.S. Steel requested any specific relief on the matter, such as a continuance. Nor did U.S. Steel raise it as an issue in briefing on the parties’ cross motions for post-verdict relief. And even on appeal, U.S. Steel does not appear to request relief from the jury’s verdict on that ground. Instead, it “requests a new trial on this point only to the extent the Court determines a new trial is warranted for any of the reasons stated in the Winthers’ appeal.” But the Winthers seek a new trial only with respect to wantonness and punitive damages, which the jury did not reach, so U.S. Steel fails to show how it was prejudiced on those issues by any evidentiary error at trial, even assuming this issue had been properly preserved.

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site impacts from development were unavoidable, that the Preserve had increased the volume of water flowing in Tributary 2, and that sediment from the Preserve had been deposited onto the Winther property.

In 2022, U.S. Steel asked Schoel Engineering to inspect erosion in Tributary 2, and then implemented some erosion control measures recommended by the firm. Even after these events, however, Schoel Engineering did not design or implement any measures to capture sediment or erosion before it leaves Preserve property, and there was nothing to prevent riprap from being carried downstream, even though the water flow in Tributary 2 can be strong enough to move them.

II.

In 2017, the Winthers sued U.S. Steel in Alabama state court seeking damages and injunctive relief. The operative amended complaint raised four causes of action: (1) common-law water claim (channelization); (2) trespass; (3) nuisance; and (4) negligence/wantonness. U.S. Steel removed the action to federal district court based on diversity jurisdiction. *See* 28 U.S.C. § 1332.

After proceedings not relevant to this appeal, the case proceeded to trial before a jury over five days in September 2024. The Winthers sought damages for injuries through the date of the trial. The jury found in favor of the Winthers on their claims for channeling, nuisance, and trespass, and in favor of U.S. Steel on the negligence claim. The jury awarded compensatory damages of \$235,150, representing the loss of fair market value of the Winther

property due to U.S. Steel's wrongful conduct, and the district court entered judgment on the verdict. The court declined to submit the issue of wantonness or punitive damages to the jury, as we explain below.

A.

Before trial, the district court granted in part U.S. Steel's motion to exclude testimony from the Winthers' experts, Dr. Connors and Chris Johnson. The court excluded their opinions that the Preserve was the source of foreign materials and increases in stormwater flows on the Winther property, finding that these opinions were not supported by any reliable methodology. Nonetheless, the court found that Connors was qualified to testify as to certain matters that may assist the trier of fact, and Connors ultimately testified at trial. Johnson did not testify.

The district court also granted U.S. Steel's motion to exclude evidence that ADEM had taken action against U.S. Steel for stormwater mitigation violations at the Preserve, culminating in two consent decrees that imposed civil penalties. The Winthers argued that the ADEM materials involved stormwater runoff and debris discharge from the Preserve to Hurricane Branch, so they were relevant to establish a pattern of wanton conduct. The court found that the consent decrees were not admissible under Federal Rule of Evidence 408, that the evidence was of limited probative value, and that its probative value was substantially outweighed by the danger of unfair prejudice under Federal Rule of Evidence 403.

B.

At the close of evidence, U.S. Steel moved for judgment as a matter of law on each of the Winthers' claims. U.S. Steel argued that the Winthers had not established causation between activity at the Preserve and damage to their property. They also asserted that judgment as a matter of law was warranted on the wantonness claim and the requests for punitive damages on other claims. The district court granted the motion as to wantonness and punitive damages but otherwise denied it. The court did not see "any evidence of wantonness" given undisputed evidence that U.S. Steel had implemented measures, and offered other action, recommended by Schoel Engineering to fix issues at the Winther property.

After trial, U.S. Steel filed a renewed motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b), again arguing that the Winthers had failed to prove causation. At the same time, the Winthers moved for a new trial under Rule 59(a), Fed. R. Civ. P., based on the grant of judgment as a matter of law on their claims for wantonness and punitive damages, and the exclusion of the ADEM materials and expert testimony from Dr. Connors and Johnson, among other matters. The district court denied both motions in a thorough memorandum decision.

The Winthers appeal the grant of U.S. Steel's motion for judgment as a matter of law and the denial of their motion for a new trial. U.S. Steel cross-appeals the denial of its renewed motion for judgment as a matter of law.

III.

We review de novo a district court's ruling on a motion for judgment as a matter of law under Rule 50, Fed. R. Civ. P., applying the same standard as the district court. *Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1192 (11th Cir. 2004). "Under Rule 50, a court should render judgment as a matter of law when there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." *Id.* In making that determination, we view the trial evidence in the light most favorable to the nonmoving party, disregarding all evidence favorable to the moving party that the jury is not required to believe. *Id.* at 1193.

We review the denial of a motion for a new trial for abuse of discretion. *Ruiz v. Wing*, 991 F.3d 1130, 1137 (11th Cir. 2021). Likewise, we generally review a district court's evidentiary rulings for abuse of discretion. *Id.* "A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous." *Cent. Baptist Church v. Church Mut. Ins. Co.*, 146 F.4th 1003, 1010 (11th Cir. 2025) (quotation marks omitted).

IV.

We start with the Winthers' appeal. First, they argue that the district court erred by granting U.S. Steel's motion for judgment as a matter of law on the issues of wantonness and punitive damages because, in their view, the evidence was sufficient for the jury to find that U.S. Steel acted with reckless disregard for their property rights. Second, they maintain that the court should have

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granted a new trial on wantonness and punitive damages because it incorrectly excluded or limited evidence of the ADEM materials and expert testimony from Dr. Connors and Johnson.

A.

We “must apply the Alabama definition of wantonness” in this diversity action. *Salter v. Westra*, 904 F.2d 1517, 1524 (11th Cir. 1990). But “a federal rather than a state test” applies to determine “the sufficiency of evidence to create a jury question.” *Id.* (quotation marks omitted).

To recover punitive damages for a tort action in Alabama, the plaintiff must prove by “clear and convincing evidence that the defendant consciously or deliberately engaged in . . . wantonness . . . with regard to the plaintiff.” Ala. Code § 6-11-20. The term “wantonness” is defined as “[c]onduct which is carried on with a reckless or conscious disregard of the rights or safety of others.” *Id.* § 6-11-20(b)(3); see *Pugh v. Taylor*, 507 So. 2d 428, 431 (1987) (“‘Wantonness’ is the conscious doing of some act or the omission of some duty under the knowledge of the existing conditions, and conscious that from the doing of such act or omission of such duty injury will likely or probably result.”). Whether there was sufficient “proof of wantonness must be determined by the facts and circumstances of each case.” *Pugh*, 507 So. 2d at 431.

Wantonness is established where the defendant, “with reckless indifference to the consequences, consciously and intentionally did some wrongful act or omitted some known duty, and . . . this act or omission produced the injury.” *Id.* To make that showing,

it's not necessary to prove that the defendant "entertained a specific design or intent to injure the plaintiff." *Joseph v. Staggs*, 519 So. 2d 952, 954 (Ala. 1988) (quoting another source). Rather, wantonness requires "knowledge on the part of the defendant that its action would cause [the alleged harms to] the plaintiffs' property." *Chestang v. IPSCO Steel (Ala.), Inc.*, 50 So. 3d 418, 436 (Ala. 2010); see *Cummins v. Dobbins*, 575 So. 2d 81, 82 (Ala. 1991) ("Wantonness in a trespass action is established by the mere knowledge on the part of the defendant of his invasion of the plaintiff's rights.").

In *Peak v. Parks*, for instance, the Alabama Court of Civil Appeals found sufficient evidence of wantonness where, after the defendant "was made aware of the surface-water runoff that his excavation work had caused, he repeatedly failed to implement appropriate and sufficient [best management practices] to control the runoff and, as a result, the Peaks suffered damage." 886 So. 2d 97, 104 (Ala. Civ. App. 2003). The court reasoned that the jury could have concluded from this and other evidence, including complaints by other homeowners, that the defendants were "aware that their failure to implement appropriate BMPs during their subdivision excavation activity would likely result in injury." *Id.*; see also *Calvert & Marsh Coal Co., Inc. v. Pass*, 393 So. 2d 955, 957 (Ala. 1980) ("This case involves numerous, separate acts of trespass on plaintiffs' land. While the initial entries may have been negligent, subsequent entries could well have been wanton.").

The Alabama Supreme Court has cautioned, however, that "notice of a complaint is not the equivalent of knowledge on the

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part of the defendant that it was the cause of the problem.” *Chestang*, 50 So. 3d at 435. *Chestang* involved homeowners who sought to recover damages for dust accumulation caused by the operations of an industrial facility that made steel from scrap metal. *Id.* at 421–22, 424. Although several homeowners had complained to ADEM of grey or black dust on their properties, and the defendant was aware of some by-product dust outside its facility that could travel by wind, the court reasoned that the evidence failed to show that the defendant “knew that its activities were causing an invasion of the homeowners’ rights,” particularly in light of evidence “indicating that only minuscule quantities were released into the environment.” *Id.* at 434–35.

Nonetheless, a jury question of wantonness may be presented by evidence of a “response consistent with an acknowledgment of fault coupled with continued wrongdoing.” *Id.* at 435. In *W.T. Ratliff Co., Inc. v. Henley*, for example, the Alabama Supreme Court found sufficient evidence of wantonness where the defendant “knew about the washing of sand and gravel onto [the plaintiff’s] property, for testimony revealed that [the plaintiff] complained frequently to [the defendant’s] representatives, who replied that they would take care of the problem.” 405 So. 2d 141, 146 (Ala. 1981).

Thus, the question is whether sufficient evidence “support[s] a conclusion that [U.S. Steel], knowing it was the cause of the problem, continued to inflict damage.” *Chestang*, 50 So. 3d at 437. Construing the record in the light most favorable to the

Winthers, we respectfully disagree with the district court's conclusion that no such evidence exists in the record. Rather, we hold that sufficient record evidence would allow a jury to find wantonness for at least part of the period in question.

The district court correctly found that the events culminating in the partial rerouting of stormwater flows to Tributary 2 do not support a finding of wanton conduct. The Winthers point to evidence that U.S. Steel knew its actions could have downstream consequences and did not consider effects on the Winther property in developing its initial drainage plan. But we see little to suggest that U.S. Steel knew its initial drainage plans would cause an actionable invasion of adjacent property rights. *But cf. Chestang*, 50 So. 3d at 434–35 (stating that wantonness could be established where the defendant “actively carried an extensive and invasive trespass on property without any attempt to establish ownership,” including clearing trees, sprinklers, fencing, and landscaped plans).

Moreover, once informed by the Winthers of stormwater problems in Tributary 1 that may have been caused by its activities, U.S. Steel took action to implement a fix and to reroute stormwater flows to Tributary 2. There is no evidence that the Winthers complained about the water levels in Tributary 1 after the rerouting was complete. Even assuming there may have been a better alternative in the form of detention ponds (and the evidence is far from clear on that point), we fail to see how this conduct could reasonably be construed as evidencing reckless or conscious disregard for the Winthers' rights.

Nevertheless, the Winthers' claims, as we understand them, are not limited to 2014 and 2015, when the initial complaints and rerouting decision occurred. Instead, they extend through the date of trial in 2024. A jury could reasonably conclude that, over this lengthy period, U.S. Steel developed sufficient "knowledge of not only a problem, but also a problem it had caused." *Chestang*, 50 So. 3d at 436.

U.S. Steel had more than just notice of the Winthers' complaints of increased stormwater runoff, erosion, and discharge of sediment and debris on their property, along with a general awareness that its conduct could have downstream consequences. *See id.* U.S. Steel had Schoel Engineering visit the property and observe the erosion, even if it did not believe it was responsible at the time. *See W.T. Ratliff*, 405 So. 2d at 146. And Schoel Engineering began developing proposals based on the understanding that increased discharge from the Preserve down Tributary 1 caused in part the erosion Mr. Winther reported. A reasonable jury could also infer that, by 2022, U.S. Steel was aware that runoff from the Preserve was causing erosion in Tributary 2, just as the Winthers had claimed regarding Tributary 1, and that sediment and other debris had been deposited downstream during development of the Preserve. And the jury heard and saw evidence that U.S. Steel took no action to prevent sediment, rocks, and debris from leaving the Preserve, even after the October 2021 storm that resulted in construction fill, including soil, gravel, and riprap materials, being carried off-site through Tributary 2 into Hurricane Branch, or after erosion was observed in Tributary 2 in 2022.

Viewing the trial evidence in the light most favorable to the Winthers, a reasonable jury could conclude that U.S. Steel, having been made aware that its activities were harming the Winther property, failed to implement reasonable measures to control discharges of stormwater, including sediment and debris, causing additional damage. *See Peaks*, 886 So. 2d at 104. Accordingly, the district court erred in granting U.S. Steel's motion for judgment as a matter of law with respect to wantonness and punitive damages.

B.

Because we are remanding this case for further proceedings in which challenged evidentiary rulings may again arise, we address the evidentiary issues the Winthers raised in their appeal of the district court's order denying their motion for a new trial. And we hold in the alternative that the district court abused its discretion by denying the Winthers' motion for a new trial. For the reasons we've explained, the trial evidence, standing alone, was sufficient to present a triable issue of wantonness. We also conclude that the court's exclusion of the ADEM materials was influenced by a mistake of law. We otherwise conclude that the court did not abuse its discretion.

1. ADEM Materials

Before trial, the district court granted U.S. Steel's motion *in limine* to exclude ADEM documents, notices of violations, consent decrees, and City of Hoover reports relating to other alleged stormwater violations at the Preserve. The district court found that evidence was not admissible under Rule of Evidence 408, because it

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reflected settlements or settlement negotiations. The court also found that the danger of unfair prejudice substantially outweighed the evidence's "minimal" probative value. We respectfully disagree.

Relevant evidence is generally admissible. Fed. R. Evid. 402. Evidence is relevant if (1) it has any tendency to make a fact more or less probable than it would be without the evidence, and (2) the fact is of consequence in determining the action. Fed. R. Evid. 401. Under Rule of Evidence 403, though, the "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

"Rule 403 is an extraordinary remedy which should be used sparingly, and a district court's discretion to exclude evidence as unduly prejudicial is narrowly circumscribed." *Jackson v. Catanzariti*, 159 F.4th 874, 884 (11th Cir. 2025) (quotation marks omitted). In reviewing a court's Rule 403 ruling, "we look at the evidence in the light most favorable to its admission" by "maximizing its probative value and minimizing its undue prejudicial impact." *Id.* (quotation marks omitted). Still, "we review a trial court's evidentiary rulings only for abuse of discretion, and a district court enjoys considerable leeway in making these determinations." *Cook v. Sheriff of Monroe Cnty.*, 402 F.3d 1092, 1105 (11th Cir. 2005) (quotation marks omitted).

Rule 408 bars evidence of settlements or offers to settle “to prove liability for, invalidity of, or amount of a claim.” Fed. R. Evid. 408(a). There appears to be no dispute that Rule 408 generally covers the ADEM materials. But even so, the court may admit such evidence for “another purpose.” Fed. R. Evid. 408(b).

The Winthers plainly had another purpose. They had to prove U.S. Steel’s “knowledge of not only a problem, but also a problem it had caused.” *Chestang*, 50 So. 3d at 436. Evidence that U.S. Steel had received notice of other alleged stormwater runoff violations at the Preserve, similar to the Winthers’ allegations, has a tendency to make it more likely that U.S. Steel was aware it was causing the problems that the Winthers alleged. See *Bradbury v. Phillips Petroleum Co.*, 815 F.2d 1356, 1364–65 (10th Cir. 1987) (“[E]vidence that the project created problems for local land owners on seven other occasions is probative on the issue of whether the incident . . . was simply an isolated mistake or, rather, part of a series of incidents that might illustrate outrageous conduct . . . towards the rights and feelings of landowners.”).

In *Peak*, for instance, the court found sufficient evidence of wantonness in part based on evidence that neighboring landowners had complained about the defendant’s excavation activity, and the defendant had “ignored the neighbors’ complaints and stated that he would do as he pleased with the property.” 886 So. 2d at 104. Similarly, *Chestang* appears to recognize that “evidence of many complaints of [similar problems] being lodged by surrounding property owners other than the homeowners” may be relevant

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to the defendant’s “knowledge of not only a problem, but also a problem it had caused.” *See* 50 So. 3d at 436 (declining to resolve whether such evidence “would tip the scale in favor of substantial evidence” for lack of adequate briefing in that case).

Accordingly, the district court erred as a matter of law in finding that the Winthers lacked another non-prohibited purpose under Rule 408—that is, to prove U.S. Steel’s knowledge for the wantonness and punitive-damages claims. *See AcryliCon USA, LLC v. Silikal GMBH & Co.*, 46 F.4th 1317, 1324 (11th Cir. 2022) (“A district court by definition abuses its discretion when it makes an error of law.”) (quotation marks omitted). While the court went on to exclude the evidence under Rule 403, even assuming it was offered for a permissible purpose, it appears the court’s legal error caused it to shortchange the evidence’s probative value and magnify the dangers of unfair prejudice.

To be sure, the district court had reasonable concerns about unfair prejudice under Rule 403. As the Tenth Circuit has noted, “[i]n the admission of prior acts, and likewise in the admission of compromise evidence, there is always the risk that the jury will either draw the forbidden . . . inference from bad act to bad person to guilt or give way to an unthinkable and emotional impulse to punish.” *Bradbury*, 815 F.2d at 1365. We also take U.S. Steel’s point about the risk of confusing the issues and misleading the jury about properties other than the Winther property. But we see no reason why these concerns could not be mitigated through carefully drawn restrictions on the evidence and limiting instructions.

Finally, the district court properly concluded that the incidents described in the ADEM materials do not reflect a “systematic response to specific situations” so as to constitute “habit” evidence under Federal Rule of Evidence 406. *See Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261, 1285 (11th Cir. 2008) (explaining that “conduct admitted as evidence of habit must reflect a systematic response to specific situations to avoid the danger of unfair prejudice that ordinarily accompanies the admission of propensity evidence”). But even if not “admissible as evidence of habit,” some of the ADEM materials may be “otherwise admissible” to prove U.S. Steel’s knowledge in this case. *See id.* at 1286 (reasoning that “me too” evidence in a discrimination case, while not admissible as “habit” evidence, was otherwise admissible to prove the defendant’s intent, motive, or plan); *see also Bradbury*, 815 F.2d at 1365 (“The question of similarity necessarily depends upon the nature of the case and the purpose for which the evidence is offered.”).

For these reasons, we conclude that the district court’s decision to exclude nearly all evidence about ADEM under Rule 403 was influenced by a mistake of law. We otherwise leave these matters to the court’s discretion on remand.

2. Expert Testimony

Next, the Winthers challenge the exclusion of expert testimony from Dr. Connors and Johnson. These witnesses opined, among other things, that the Preserve caused the depositing of foreign materials and increased stormwater runoff on the Winther property.

The Winthers bore the burden to show that their experts were qualified to testify competently on the matters, that the experts' methodologies were "sufficiently reliable," and that the testimony would assist the trier of fact. *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1257 (11th Cir. 2002); see *United States v. Ware*, 69 F.4th 830, 846 (11th Cir. 2023). "[O]ur review of evidentiary rulings by trial courts on the admission of expert testimony is very limited." *McCorvey*, 298 F.3d at 1257 (quotation marks omitted). "In reviewing these evidentiary issues under an abuse of discretion standard, we will not micromanage trial courts from the appellate bench." *Ware*, 69 F.4th at 846.

The district court did not abuse its discretion in finding that Dr. Connors and Johnson failed to support the excluded opinions with any reliable methodology. See *McCorvey*, 298 F.3d at 1257.

As to Johnson, the court noted that he did not test, or even attempt to test, his theory that sediment and other debris came from the Preserve and instead relied on water samples collected by the Winthers, even though he conceded such testing was possible. Johnson also contradicted himself on whether stormwater runoff had increased or decreased, "another subject on which testing could have been performed."

Similarly, as to Dr. Connors, the court noted that he took no water samples himself and performed no testing to measure changes in flow volume or speed, did not know how fast Hurricane Branch flowed either before or after development of the Preserve, did not account for important stormwater features at the Preserve,

and admitted his opinions were simply “observational.” The record shows that the court carefully evaluated the proposed expert testimony and its supporting methodology and reasonably exercised its gatekeeping function.

Nor have the Winthers shown that they were harmed by the exclusion of this expert testimony. As the district court noted, the jury’s verdict reflected that it found that sediment and debris from the Preserve had entered the Winther property. And for the reasons we explain below, we agree with the district court that U.S. Steel is not entitled to judgment as a matter of law for lack of expert testimony establishing a causal connection between activity at the Preserve and damage to the Winther property. We also note that the expert testimony does not appear to have any direct bearing on U.S. Steel’s knowledge with respect to the Winthers’ wantonness and punitive-damages claims.

3. Agency Status and Knowledge

Finally, the Winthers assert that any knowledge obtained by Schoel Engineering can be imputed to U.S. Steel under a theory of agency. The district court denied a new trial on this ground because the Winthers had “not submitted any evidence to suggest Schoel was an agent of U.S. Steel.” The court also noted that the agency argument was “new” and had not been properly raised during the litigation.

The question of agency is “normally a question of fact to be determined by the jury.” *Calvert v. Cas. Reciprocal Exch. Ins. Co.*, 523 So. 2d 361, 362 (Ala. 1998). Both parties cite the same standard

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from *Ware v. Timmons*: “The test for determining whether a person is an agent or employee of another, rather than an independent contractor with that other person, is whether that other person has reserved the right of control over the means and method by which the person’s work will be performed.” 954 So. 2d 545, 549–50 (Ala. 2006) (quotation marks omitted).

Here, the Winthers have not shown that the district court abused its discretion. The court reasonably concluded that the Winthers failed to advance in litigation or prove at trial the theory that U.S. Steel and Schoel Engineering had a “classic agent-principal relationship,” such that its knowledge could be imputed to U.S. Steel. While there is evidence that U.S. Steel substantially relied upon Schoel Engineering with respect to drainage and stormwater issues at the Preserve, the Winthers fail to identify evidence that U.S. Steel “reserved the right of control over the *means* and *method* by which the person’s work will be performed.” *Ware*, 954 So.2d at 555 (emphasis added). They also don’t challenge the court’s observation that “no claims or allegations related to agency were made in fact or expert discovery, and this theory was not advanced in either the joint Pretrial Order or proposed jury instructions.” See *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366 (11th Cir. 1997) (recognizing that “district courts enjoy broad discretion in deciding how best to manage the cases before them”). On this record, the court did not abuse its discretion by denying a new trial based on imputed knowledge.

V.

Turning to the cross-appeal, U.S. Steel contends that the district court erred in denying its motion for judgment as a matter of law on all claims. U.S. Steel maintains that the Winthers failed to present evidence establishing a causal connection between activity at the Preserve and damage to the Winther property. In U.S. Steel's view, determining the cause of erosion or other damage to the Winther property required expert testimony that U.S. Steel's activity, rather than "confounding factors" unrelated to that activity, caused the injuries.

Generally speaking, expert testimony is necessary to prove causation if the defendant's alleged actions and the plaintiff's harm is not a "natural inference that a juror could make through human experience[.]" *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1320 (11th Cir. 1999). Thus, expert testimony is generally required to establish medical or scientific causation. *See, e.g., id.*

But we agree with the district court that the facts and circumstances here do not present technical issues that would require expert testimony to untangle. U.S. Steel does not cite any Alabama caselaw for the proposition that expert testimony is required in a case like this one. Nor does our own review suggest as much. *See, e.g., Johnson v. Washington*, 474 So. 2d 651, 653 (Ala. 1985); *W.T. Ratliff Co.*, 405 So. 2d at 146–47; *Peak*, 886 So. 2d at 104. And this case is clearly distinguishable from the cases on which U.S. Steel primarily relies. *Ramsey v. Consol. Rail Corp.*, 111 F. Supp. 2d 1030 (N.D. Ind. 2000), concerned the migration of groundwater contaminants, while *Baskett v. United States*, 8 Cl. Ct. 201 (1985), was about

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erosion on the Ohio River, a major river with extensive development. The circumstances here are much more contained, and the consequences more immediate, since the Winthers presented evidence that the Preserve's activities resulted in direct, substantial effects to their property within the realm of ordinary jurors to assess.

The jury heard and saw evidence that—apart from the construction of the stream crossings—the waterways on the Winther property were effectively unchanged from 1991 to 2014, when U.S. Steel began deforestation and clearing for Phase XIII. *Cf. Johnson*, 474 So. 2d at 653 (“The evidence in the instant case indicates that the Washingtons never had any water problem until after Johnson began construction on his property.”). There was testimony that deforestation efforts like this can increase stormwater runoff and cause erosion. And that's exactly what Mr. Winther observed. Mr. Winther testified that, beginning in 2014, he saw increased stormwater flows and erosion, as well as trees and other construction debris coming down the waterway onto his property. The evidence also shows that U.S. Steel's drainage plans called for collecting and increasing flows down Tributary 1. And an employee with Schoel Engineering testified that the increased flows down Tributary 1 caused, at least in part, erosion on the Winther property. It requires no expertise to infer that construction debris or riprap was carried downhill from the Preserve onto the Winther property, or that an intermittent creek may suffer erosion and other damage when overtaxed by channelized stormwater runoff.

Although U.S. Steel identified other potential causes, including the prior inadequate construction of the driveways and storm frequency and intensity, the Winthers showed that U.S. Steel also experienced erosion at Tributary 2 after it had rerouted stormwater flows there, suggesting a causal connection between the erosion and U.S. Steel's activity in both instances. The jury also heard that the Preserve had not implemented any measures to control the discharge of sediment, rock, and other debris, and U.S. Steel's own expert confirmed that sediment from the Preserve had been deposited onto the Winther property. Thus, while the evidence of causation was disputed, the jury was permitted to resolve any conflicts and make inferences based on the record before it. And in our view, there was sufficient evidence for the jury to conclude that U.S. Steel caused damage to the Winther property even without expert causation testimony.

Apart from its sweeping expert-testimony argument, U.S. Steel's initial brief fails to engage with the district court's claim-by-claim and element-by-element assessment of the evidence. Thus, any more specific challenge to the Winthers' proof has been abandoned. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) ("When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed."). U.S. Steel's arguments in reply briefing "come too late." *See id.* at 683. Insofar as U.S. Steel disputes whether the evidence supports

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the extent of damages awarded, it has failed to develop that argument on appeal. *See id.* at 681 (“A party fails to adequately brief a claim when he does not plainly and prominently raise it, for instance by devoting a discrete section of his argument to those claims.”) (quotation marks omitted). Accordingly, we affirm the judgment on the verdict.

VI.

In sum, we vacate the grant of U.S. Steel’s motion for judgment as a matter of law on the Winthers’ claims for wantonness and punitive damages, and the denial of the Winthers’ motion for a new trial, and we remand for further proceedings consistent with this opinion. We affirm the denial of U.S. Steel’s motion for judgment as a matter of law asserting a lack of causation evidence on all claims.

VACATED AND REMANDED IN PART; AFFIRMED IN PART.