

2019 IL App (1st) 181473-U

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Appellate Court of Illinois, First District,
First Division.

DAWN COX, as Special Administrator of the
Estate of Bonnie Wyllie, Deceased,
Plaintiff-Appellant,

v.

UNIVERSITY OF CHICAGO MEDICAL CENTER,
Defendant-Appellee.

No. 1-18-1473

|
October 7, 2019

Appeal from the Circuit Court of Cook County

No. 12 L 14574

The Honorable John P. Kirby, Judge Presiding.

ORDER

JUSTICE PIERCE delivered the judgment of the court.

*1 ¶ 1 *Held*: The judgment of the circuit court is affirmed. Plaintiff failed to demonstrate that the circuit court abused its discretion by denying her motion for a new trial because she failed to demonstrate that the jury's verdict was against the manifest weight of the evidence.

¶ 2 Plaintiff Dawn Cox, in her capacity as special administrator of the estate of Bonnie Wyllie, filed wrongful death and survival claims against defendant University of Chicago Medical Center following Bonnie's death.¹ Plaintiff alleged that defendant was negligent in its treatment of Bonnie after she suffered a [heart attack](#). Specifically, plaintiff alleged that defendant was negligent in allowing a pressure sore to develop on Bonnie's lower back, that defendant was negligent in treating the pressure sore—which became infected, resulting in sepsis and Bonnie's death—and that defendant's negligence was a

proximate cause of Bonnie's injuries. Defendant denied the allegations of negligence, and raised an affirmative defense of contributory negligence, alleging in part that Bonnie's long history of smoking and her refusal to follow the advice of her doctors in the years preceding her heart attack were proximate causes of her injuries. The circuit court denied plaintiff's pretrial motion *in limine* to bar defendant from presenting evidence of Bonnie's contributory negligence of smoking, and the matter proceeded to a jury trial. The jury returned a general verdict in favor of defendant, and the circuit court denied plaintiff's posttrial motion for a new trial.

¶ 3 Plaintiff appeals, arguing that the circuit court abused its discretion by permitting defendant to introduce evidence of Bonnie's history of smoking at trial. Defendant responds to plaintiff's arguments, and also argues that plaintiff's appellate brief is deficient, that the record on appeal is incomplete, and that the general verdict rule precludes plaintiff from obtaining any appellate relief, since the jury could have found that defendant's treatment of Bonnie was not negligent.

¶ 4 We agree with defendant that plaintiff's appellate brief and the record on appeal are deficient. Her failure to provide us with a complete statement of facts supported by appropriate citations to the record, as well as a complete report of the trial proceedings, limits our ability to evaluate her appellate arguments. Her procedural violations result in the forfeiture of all of her arguments on appeal, leaving us with no adequate basis for reversing the circuit court's judgment. We therefore affirm the judgment of the circuit court.

¶ 5 I. BACKGROUND

¶ 6 As we noted above—and as we explain in more detail below—plaintiff's appellate brief does not adequately describe the circuit court proceedings. The following facts are therefore taken from the record on appeal and from the statement of facts in defendant's appellee brief.

*2 ¶ 7 Plaintiff's amended complaint contained the following allegations. Bonnie was admitted to defendant on December 20, 2010, after she suffered a [heart attack](#). Bonnie remained at defendant until January 10, 2011, when she was transferred to Riverside Medical Center, but returned to defendant on January 31, 2011, where she remained until her death on March 17, 2011. Bonnie did

not have any pressure sores when she was admitted on December 20, 2010, but “was at risk” for developing them. Bonnie developed a pressure sore on her sacral region sometime between December 20, 2011, and January 10, 2011. Defendant failed to follow its guidelines, policies, procedures, and safety rules that would have prevented the development of a pressure sore, or that would have helped treat Bonnie’s pressure sore. When Bonnie returned to defendant on January 31, 2011, she still had a pressure sore and remained at risk for the worsening of the sore. Between January 31, 2011, and March 17, 2011, defendant failed to regularly reposition Bonnie, resulting in the sore getting bigger and deeper, resulting in “severe tunneling” and an infection. On February 21, 2011, a resident physician at defendant identified a need for a wound care consultation, but no such consultation took place until March 3, 2011. Bonnie’s pressure sore worsened and became infected, resulting in sepsis and conscious pain and suffering. Bonnie died on March 17, 2011, “as a direct consequence of the failures and omissions” of defendant.

¶ 8 Count I of plaintiff’s amended complaint asserted a claim under the Wrongful Death Act (730 ILCS 180/1 *et seq.* (West 2012)), alleging that defendant was negligent by failing to (1) take precautions to minimize or prevent the development of the pressure sore; (2) timely intervene; (3) physically turn and reposition Bonnie on a regular basis; (4) establish and implement an appropriate skin treatment and nutrition program; (5) keep Bonnie’s buttock and sacral area clean and dry; (6) obtain a timely wound care consultation; (7) provide Bonnie with appropriate bedding and pressure relief devices; (8) adequately treat the pressure sore; and (9) adequately care for the pressure sore. Count II asserted a survival claim for Bonnie’s conscious pain and suffering, disability, disfigurement, and medical expenses prior to her death.

¶ 9 Defendant answered plaintiff’s amended complaint, denying all of the allegations of negligence. Defendant raised an affirmative defense of contributory negligence that contained the following allegations. Bonnie had a duty to exercise ordinary care to avoid injuring herself. When Bonnie was admitted to defendant on December 20, 2010, and again on January 31, 2011, her diagnoses included numerous preexisting comorbidities, including cardiogenic shock, hypertension, chronic kidney disease, osteoarthritis, gout, hyperlipidemia, respiratory abnormality, coronary atherosclerosis, ventral septal defect, respiratory failure, thrombocytopenia, metabolic encephalopathy, renal failure, and anemia. All of the injuries and damages alleged in the amended complaint might have been caused in whole or in part by Bonnie’s and plaintiff’s “conduct, intentional acts, contributory

negligence, comparative fault, comparative negligence, or want of care.” Bonnie breached her duties of ordinary care and failed to mitigate her damages because she (1) smoked cigarettes; (2) failed to follow her physician’s instructions; (3) failed to follow staff instructions; (4) failed to follow recommendations for medication; (5) failed to follow recommendations for diet; (6) failed to follow recommendations for treatment; (7) failed to follow reasonable medical advice; and (8) was noncompliant.

¶ 10 The parties engaged in discovery. Prior to trial, the parties filed numerous motions *in limine*, only one of which is relevant to plaintiff’s arguments on appeal. Plaintiff’s motion *in limine* no. 61 sought to bar defendant “from introducing any evidence, suggesting[,] or arguing” that Bonnie was contributorily negligent in causing her pressure sore. Plaintiff argued that Bonnie’s “conduct prior to her heart attack and subsequent development of pressure ulcers is irrelevant to [d]efendant’s negligent treatment of Bonnie *** after her injuries.” (Emphases in original.) Plaintiff argued that there was no evidence that Bonnie was negligent after defendant’s duty to treat her arose. After full briefing and hearing oral argument, the circuit court denied plaintiff’s motion *in limine*, and denied plaintiff’s subsequent motion to reconsider.

*3 ¶ 11 The case was then tried before a jury over the course of two weeks. The manner in which the trial progressed is not clear; plaintiff’s appellate brief does not describe the progression of the trial, she does not provide citations to the record for portions of the trial that she does describe, and she has not supplied this court with sequential, verbatim transcripts of the trial.² After closing arguments, the circuit court instructed the jury, *inter alia*, on the principles of negligence, and that it was plaintiff’s burden to prove that defendant was negligent, that Bonnie was injured, and that defendant’s negligence was a proximate cause of Bonnie’s injuries. The jury was instructed that

“If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict shall be for the Defendant. On the other hand, if you find from your consideration of all the evidence that each of these propositions has been proved, then you must consider the Defendant’s claim that the decedent, Bonnie Wyllie, was contributorily negligent.”

The jury was instructed on the principles of contributory negligence and what defendant was required to prove, and how damages should be reduced in the event that the jury found that Bonnie was contributorily negligent. The jury was given two verdict forms. Verdict Form B was to be

used if the jury found in favor of plaintiff and against defendant, and contained lines for itemizing damages and attributing fault between plaintiff and defendant, as well instructions on how to reduce plaintiff's damages based on a finding of contributory negligence. Verdict Form C was to be used if the jury found in favor of defendant and against plaintiff. No special interrogatories were requested or tendered to the jury.

¶ 12 The jury returned a verdict on Verdict Form C in favor of defendant and against plaintiff. Plaintiff filed a posttrial motion for a new trial, arguing in relevant part that the circuit court abused its discretion by permitting defendant to introduce evidence in support of its affirmative defense of contributory negligence. Defendant responded in part by arguing that the jury returned a general verdict in favor of defendant, and that plaintiff failed to test the basis of the jury's verdict. Defendant argued that it presented multiple theories, including that it was not negligent, that it did not proximately cause Bonnie's injuries, and that Bonnie was contributorily negligent. Defendant cited trial testimony that it had complied with the standard of care, and therefore the jury could have concluded that defendant was not negligent, or that its conduct was not the proximate cause of Bonnie's injuries. After full briefing and hearing, the circuit court denied plaintiff's motion for a new trial. Plaintiff filed a timely notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 As noted above, plaintiff's appellate brief does not contain the "facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal," in violation of [Illinois Supreme Court Rule 341\(h\)\(6\)](#) (eff. May 25, 2018). There are two serious problems with plaintiff's brief: (1) she does not provide us with a complete statement of facts, and (2) she does not provide proper citations to the record on appeal in support of her statement of facts.³ We address how both of these violations **severely** impede our review of the circuit court's judgment.

*4 ¶ 15 Our supreme court's rules governing appellate briefs are mandatory. [Hall v. Naper Gold Hospitality, LLC](#), 2012 IL App (2d) 111151, ¶ 7. As a court of review, we are entitled to have the issues on appeal clearly presented. [Holmstrum v. Kunis](#), 221 Ill. App. 3d 317, 325 (1991). "Reviewing courts will not search the record for

purposes of finding error in order to reverse [a] judgment when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." [In re Estate of Parker](#), 2011 IL App (1st) 102871, ¶ 47. It is not our duty to scour the record in an effort to understand an appellant's case when the appellant fails to adequately describe the proceedings below. "A party's failure to comply with [Rule 341](#) is grounds for disregarding its arguments on appeal." [In re Estate of Jackson](#), 354 Ill. App. 3d 616, 620 (2004) (citing [Jeffrey M. Goldberg & Associates, Ltd. v. Collins Tuttle & Co., Inc.](#), 264 Ill. App. 3d 878, 886 (1994)). This court has "the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with [Rule 341](#)." [Fryzel v. Miller](#), 2014 IL App (1st) 120597, ¶ 25. "[D]oing so is a harsh sanction and is appropriate only when the procedural violations interfere with our review." [In re Marriage of Iqbal & Khan](#), 2014 IL App (2d) 131306, ¶ 14 (citing [Carter v. Carter](#), 2012 IL App (1st) 110885, ¶ 12).

¶ 16 Plaintiff's statement of facts focuses exclusively on the arguments surrounding plaintiff's motion *in limine* and the evidence presented by defendant at trial in support of its contributory negligence defense. She does not provide us with any facts as to what evidence was presented at trial by either party on the issue of defendant's alleged negligence. She cites no facts that might tend to show that she presented *prima facie* evidence that defendant's conduct fell below the standard of care, that Bonnie was injured, or that defendant's breach was a proximate cause of Bonnie's injuries.

¶ 17 These omissions are critical for two separate but related reasons. First, plaintiff is appealing from the denial of her motion for a new trial, and a motion for a new trial should only be granted where the jury's verdict is against the manifest weight of the evidence. [York v. Rush-Presbyterian Luke's Medical Center](#), 222 Ill. 2d 147, 178-79 (2006). "A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly evident or when the jury's findings prove to be unreasonable, arbitrary and not based upon any of the evidence." *Id.* at 179. We review the circuit court's decision on a motion for a new trial for an abuse of discretion. *Id.* Without a sufficiently complete statement of the trial evidence, we do not know what evidence the jury heard, or whether its verdict was unreasonable, arbitrary, or not based on the evidence. Plaintiff's violations of [Rule 341\(h\)\(6\)](#) have impeded our ability to ascertain whether plaintiff is entitled to any appellate relief, resulting in forfeiture of all her appellate arguments.

¶ 18 Second, even if we were to excuse plaintiff's forfeiture, we note—and defendant argues—that the jury returned a general verdict. Our supreme court has explained that when a jury returns a general verdict where more than one theory of a party's liability was presented a trial, the “verdict will be upheld if there was sufficient evidence to sustain either theory[.]” *Witherell v. Weimer*, 118 Ill. 2d 321, 329 (1987). In the absence of any indication in the record as to which theory of liability the jury rested its decision on, a party on appeal may not obtain relief from the jury's verdict if at least one theory of liability would be sufficient to sustain the verdict. *Id.* Here, defendant presented multiple theories as to why it was not liable for Bonnie's death: (1) it was not negligent; (2) it complied with the standard of care; (3) its conduct was not the proximate cause of Bonnie's injuries; and (4) if defendant was negligent, Bonnie was contributorily negligent, which was a proximate cause of her own injuries. Defendant directs our attention to trial testimony from its witnesses who stated that defendant's treatment of Bonnie complied with the standard of care.

*5 ¶ 19 Sunitha Nair, M.D., was qualified as an expert witness in wound care. She testified that she reviewed “certain documents in order to form opinions,” which were apparently listed on Defense Exhibit 160, although that exhibit has not been included in the record on appeal. She testified that “no action or omission of [defendant] was a proximate cause of [Bonnie's] pressure ulcer or its progression,” and that defendant's topical treatments of the wound, its interventions used to treat Bonnie's skin, and the timing of defendant's debridement of Bonnie's wound all fell within the standard care. Henry Sullivan, M.D., who was qualified as an expert in the area of cardiovascular surgery, testified that nurses caring for Bonnie charted that she “was too unstable to be turned” following her heart surgery, and that all of the cardiovascular surgeons who treated Bonnie complied with the standard of care. Pamela McShane, M.D., a pulmonary critical care physician at the University of Chicago, treated Bonnie on March 16 and March 17, 2011, testified that Bonnie was not septic at the time of her death, that Bonnie was on appropriate antibiotics, and that her treatment of Bonnie complied with the standard of care. While this evidence does not paint a complete picture of the trial testimony, it is evident that the jury heard evidence on the issue of whether defendant was negligent, whether defendant complied with the standard of care in treating Bonnie, and whether defendant's conduct was a proximate cause of Bonnie's injuries. From that evidence, a jury could reasonably conclude that defendant was not negligent. Plaintiff has not directed us to any facts in the record that would show that the jury's verdict was unreasonable, arbitrary, or not based on the

evidence. Because there appears to be a sufficient basis for the jury's general verdict—that defendant was not negligent, that defendant complied with the standard of care, or that Bonnie's injuries were not proximately caused by defendant—the general verdict rule precludes plaintiff from obtaining any relief on appeal.

¶ 20 The second serious problem with plaintiff's appellate brief is that the facts she provides in her brief are not supported by proper citations to the record on appeal. Rule 341(h)(6) plainly requires citations to “the pages of the record on appeal.” Ill. S. Ct. R. 341(h)(6). Throughout her statement of facts, plaintiff cites to pretrial hearing proceedings and trial testimony by providing the date of the proceeding, along with the pages and line numbers that ostensibly contain the testimony she relies on, without providing any citations to the actual pages of record on appeal where those materials can be found. We have no way to tell whether the materials she cites are even present in the record. It is not our duty to scour the record in an effort to understand an appellant's case when the appellant fails to adequately describe the proceedings below. Given that the circuit court conducted a jury trial over the span of two weeks that involved complex medical testimony, we will not scour the nearly 4500 page record on our own to find support for plaintiff's statement of facts.

¶ 21 III. CONCLUSION

¶ 22 Plaintiff's violations of our supreme court's rules governing appellate briefs are severe, and have impeded our ability to meaningfully review the circuit court's judgment, resulting in forfeiture. We have no basis from which to conclude that the circuit court abused its discretion by denying plaintiff's motion for a new trial, as we have no basis to conclude that the jury's verdict was against the manifest weight of the evidence. For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 23 Affirmed.

Presiding Justice Griffin and Justice Hyman concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2019 IL App (1st) 181473-U,
2019 WL 4957981

Footnotes

- 1 Plaintiff also asserted claims against Riverside Medical Center, but those claims were dismissed before trial and are not part of this appeal.
- 2 We will discuss some of the trial testimony—which is properly cited in defendant’s appellate brief—as part of our discussion of why the circuit court’s judgment is affirmed.
- 3 We also note that her statement of facts is argumentative and is replete with unnecessary and impermissible commentary, in violation of [Rule 341\(h\)\(6\)](#), and that the argument section of her brief is devoid of any citations to the record on appeal, in violation of [Rule 341\(h\)\(7\)](#).